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Subject: 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 and Directives 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU and (EU) 2017/1132
- Mandate for negotiations with the European Parliament

Delegations will find attached the Presidency compromise text for a mandate for negotiations with the European Parliament.

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 and Directives 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU and (EU) 2017/1132

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,¹

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,²

Having regard to the opinion of the European Central Bank,³

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

- (2) Central counterparties (CCPs) are key components of financial markets, stepping in between participants to act as the buyer to every seller and the seller to every buyer, and playing a central role in processing financial transactions and managing exposures to diverse risks inherent in those transactions. CCPs centralise the handling of counterparties' transactions and positions, and honour the obligations created by the transactions and receive adequate collateral from their members as margin and as contributions to default funds.
- (3) The integration of Union financial markets has meant that CCPs have evolved from primarily serving domestic needs and markets to constituting critical nodes in Union financial markets more widely. CCPs authorised in the Union today clear several product classes, from listed and over-the-counter (OTC) financial and commodity derivatives to cash equities, bonds and other products such as repos. They provide their services across national borders to a broad range of financial and other institutions across the Union. While some CCPs authorised in the Union remain focussed on domestic markets, they are all systemically important in at least their home markets.
- (4) As a significant amount of the financial risk of the Union financial system is processed by and concentrated in CCPs on behalf of clearing members and their clients, effective regulation and robust supervision of CCPs is essential. In force since August 2012, Regulation (EU) No 648/2012 of the European Parliament and of the Council⁴ requires CCPs to observe high prudential, organisational and conduct of business standards. Competent authorities are tasked with the full oversight of their activities, working together within colleges which group together relevant authorities for the specific tasks allocated to them. In accordance with commitments entered into by G20 leaders since the financial crisis, Regulation (EU) No 648/2012 also requires standardised OTC derivatives to be centrally cleared by a CCP. As the obligation to centrally clear OTC derivatives comes into effect, the volume and range of business done by CCPs is likely to increase which may, in turn, provide additional challenges for the CCPs' risk management strategies.
- (5) Regulation (EU) No 648/2012 has contributed to the increased resilience of CCPs and of wider financial markets against the broad range of risks processed and concentrated in

⁴ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

CCPs. However, no system of rules and practices can prevent existing resources from being inadequate in managing the risks incurred by the CCP, including one or more defaults by clearing members. Faced with a scenario of severe distress or impending failure, financial institutions should in principle remain subject to normal insolvency proceedings. However, as the financial crisis has shown, in particular during a period of prolonged economic instability and uncertainty, such proceedings can disrupt functions critical to the economy, jeopardising financial stability. Normal corporate insolvency procedures may not always ensure sufficient speed of intervention or adequately prioritise the continuation of the critical functions of financial institutions for the sake of preserving financial stability. In order to prevent these negative consequences of normal insolvency proceedings, it is necessary to create a special recovery and resolution framework for CCPs.

- (6) The crisis also highlighted the lack of adequate tools to preserve the critical functions provided by failing financial institutions. It further demonstrated the lack of frameworks to enable cooperation and coordination amongst authorities, in particular those located in different Member States or jurisdictions, to ensure the implementation of swift and decisive action. Without such tools and lack of cooperation and coordination frameworks, Member States were compelled to save financial institutions using taxpayers' money in order to stem contagion and reduce panic. While CCPs were not direct recipients of extraordinary public financial support in the crisis, they were protected from the effects which banks failing on their obligations would otherwise have had on them. A recovery and resolution framework for CCPs complements the bank resolution framework adopted under Directive 2014/15/EU, and is therefore necessary to prevent reliance on taxpayers' money in the event of their disorderly failure.
- (7) The objective of a credible recovery and resolution framework is to ensure, to the greatest extent possible, that CCPs set out measures to recover from financial distress, to maintain the critical functions of a CCP which is failing or likely to fail while winding down the remaining activities through normal insolvency proceedings, and to preserve financial stability while minimising the cost of a CCP failure on taxpayers. The recovery and resolution framework further bolsters CCPs' and authorities' preparedness to mitigate financial stress and provide authorities with further insight into CCPs' preparations for stress scenarios. It also provides authorities with powers to prepare for the potential resolution of a CCP and deal with the declining health of a CCP in a coordinated manner, thus contributing to the smooth functioning of financial markets.

- (8) Currently, there are no harmonised provisions for the recovery and resolution of CCPs across the Union. Some Member States have already enacted legislative changes that require CCPs to draw up recovery plans and that introduce mechanisms to resolve failing CCPs. Furthermore, there are considerable substantive and procedural differences between Member States on the laws, regulations and administrative provisions which govern the insolvency of CCPs. The absence of common conditions, powers and processes for recovery and resolution of CCPs is likely to constitute a barrier to the smooth operation of the internal market and hinder cooperation between national authorities when dealing with the failure of a CCP and applying appropriate loss allocation mechanisms on its clearing members, both in the Union and globally. This is particularly true where different approaches mean that national authorities do not have the same level of control or the same ability to resolve CCPs. Those differences in recovery and resolution regimes may affect CCPs, clearing members and their clients differently across Member States, potentially creating competitive distortions across the internal market. The absence of common rules and tools for how distress or failure in a CCP would be handled can affect clearing members' and their clients' choice to clear and CCPs' choice of their place of establishment, thereby preventing CCPs from fully benefiting from their fundamental freedoms within the single market. In turn, this could discourage clearing members and their clients from accessing CCPs across borders in the internal market and hinder further integration in Europe's capital markets. Common recovery and resolution rules in all Member States are therefore necessary to ensure that CCPs are not limited in exercising their internal market freedoms by the financial capacity of Member States and their authorities to manage their failure.
- (9) The review of the regulatory framework applicable to banks and other financial institutions which has taken place in the wake of the crisis, and in particular the strengthening of banks' capital and liquidity buffers, better tools for macro-prudential policies and comprehensive rules on the recovery and resolution of banks, have reduced the likelihood of future crises and enhanced the resilience of all financial institutions and market infrastructures, including CCPs, to economic stress, whether caused by systemic disturbances or by events specific to individual institutions. Since 1 January 2015, a recovery and resolution regime for banks has applied in all Member States pursuant to Directive 2014/59/EU of the European Parliament and of the Council⁵.

⁵ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and

- (10) Building on the approach for bank recovery and resolution, Member States' authorities should be prepared and have adequate resolution tools at their disposal to handle situations involving CCP failures. However, due to their different functions and business models, the risks inherent in banks and CCPs are different. Specific tools and powers are therefore needed for CCP failure scenarios caused both by the failure of the CCP's clearing members or as a result of non-default events.
- (11) The use of a Regulation is necessary in order to complement and build on the approach established by Regulation (EU) No 648/2012, which provides for uniform prudential requirements applicable to CCPs. Setting recovery and resolution requirements in a Directive could create inconsistencies by the adoption of potentially different national laws in respect of an area otherwise governed by directly applicable Union law and increasingly characterised by the cross-border provision of CCPs' services. It is therefore appropriate to also adopt uniform and directly applicable rules on recovery and resolution of CCPs.
- (12) In order to ensure consistency with existing Union legislation in the area of financial services, as well as the greatest possible level of financial stability across the Union, the recovery and resolution regime should apply to all CCPs subject to the prudential requirements laid down in Regulation (EU) No 648/2012, regardless of whether they have a bank licence. As CCPs are stand alone entities that must fulfil all requirements under this Regulation and under Regulation (EU) No 648/2012 independently from their parent undertaking or other group entities, the group of which a CCP may form part do not need to be subject to this Regulation. The group dimension, including, inter alia, the operational, personal and financial relations of the CCP with group entities, should, however, be taken into account in the CCP's recovery and resolution planning insofar it could affect the recovery or resolution of the CCP or insofar recovery and resolution actions could have an impact on other entities of the group.
- (13) In order to ensure that resolution actions are taken efficiently and effectively, and in line with resolution objectives, Member States should appoint public administrative authorities

investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

or authorities entrusted with public administrative powers to perform functions and tasks in relation to resolution, including any resolution authorities. Member States should also ensure that appropriate resources are allocated to those resolution authorities. In Member States where a CCP is established, adequate structural arrangements should be put in place to separate the CCP resolution functions from other functions, in particular where the authority responsible for the prudential supervision of CCPs is designated as the resolution authority, to avoid any conflicts of interest and risk of regulatory forbearance.

- (14) In light of the consequences that the failure of a CCP and the subsequent actions may have on the financial system and the economy of a Member State, as well as the possible ultimate need to use public funds to resolve a crisis, the Ministries of Finance or other relevant ministries in the Member States should have the final say in line with national democratic procedures on any use of public funds as a last resort and consequently should be closely involved, at an early stage, in the process of recovery and resolution. This Regulation should be without prejudice to the distribution of competences between the relevant ministries or the Government and the Resolution Authority as set in the legal systems of the Member States.
- (15) As CCPs often provide services across the Union, effective recovery and resolution requires cooperation among competent authorities and resolution authorities within supervisory and resolution colleges, notably at the preparatory stages of recovery and resolution. That includes assessing recovery plans, drawing up and maintaining resolution plans and addressing any impediments to resolvability of a CCP.
- (16) Resolution of CCPs should strike the balance between the need, on the one hand, for procedures that take into account the urgency of the situation and allow for efficient, fair and timely solutions and, on the other, the necessity to protect financial stability in all the Member States where the CCP provides services. The authorities whose areas of competence would be affected by the failure of a CCP should share their views in the resolution college to achieve these objectives. This should include in particular sharing information on the preparation of clearing members and, where relevant, clients with regard to potential default management, recovery and resolution measures and the supervisory treatment of the related exposures towards the CCP. The authorities of Member States whose financial stability could be impacted by the failure of the CCP should be able to participate in the resolution college based on their assessment of the impact that the CCP's

resolution could have on the financial stability of their respective Member State. Member States should have the possibility to be represented in the resolution college by the competent and resolution authorities of clearing members. Member States which are not represented by clearing members' authorities should be able to participate by choosing between the participation in the college of the competent authority and the resolution authority of clearing members' clients. The authorities should provide appropriate justification for their participation, based on their analysis of the negative impact that the CCP's resolution could have on their Member States, to the resolution authority of the CCP. Similarly, in order to ensure a regular exchange of views and coordination with relevant third countries authorities, these should be invited to participate in resolution colleges as observers where necessary. Authorities should always take into account the impact of their decisions on the financial stability in the Member States where the CCP's operations are critical or important for local financial markets, including where clearing members and, where relevant information is available, their clients are located and where linked trading venues and financial market infrastructures, including interoperable CCPs, are established.

- (17) *[deleted]*
- (18) In order to address the potential failure of a CCP in an effective and proportionate manner, authorities should take into account a number of factors when exercising their recovery and resolution powers such as the nature of the CCP's business, ownership structure, legal form, risk profile, size, legal status, substitutability and interconnectedness to the financial system. The authorities should also take account of whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other financial institutions, or on the wider economy.
- (19) In order to deal in an efficient manner with failing CCPs, authorities should have the power to impose preparatory measures on CCPs. A minimum standard should be established as regards the contents and information to be included in recovery plans to ensure that all CCPs in the Union have sufficiently detailed plans for recovery should they face financial distress. Such plans should be based on realistic assumptions applicable in a range of robust and severe scenarios, including deteriorations arising from a default event or from a non-default event. The recovery plan should form part of the operating rules of the CCP agreed contractually with clearing members. Those operating rules should further contain provisions to ensure the enforceability of recovery measures outlined in the plan in all

scenarios. Recovery plans should not assume access to extraordinary public financial support or expose taxpayers to the risk of loss.

- (20) CCPs should be required to draw up and regularly review and update their recovery plans. The recovery phase in this context should start when there is a significant deterioration of the CCP's financial situation or risk of breach of its capital and prudential requirements under Regulation (EU) 648/2012 that could lead to the infringement of its authorisation requirements that would justify the withdrawal of its authorisation pursuant to Regulation (EU) No 648/2012. This should be indicated with relation to a framework of qualitative or quantitative indicators included in the recovery plan. The plans should cover a broad range of scenarios including scenarios resulting from default events, non-default events and a combination of both; and should include comprehensive arrangements for the re-establishment of a matched book, for the full allocation of losses arising from clearing member default, and adequate absorbency for all other types of losses. Recovery plans should distinguish between different types of non-default events.
- (21) The CCP should submit its recovery plan to the competent authority which should promptly transmit the plan to the supervisory college, established under Regulation (EU) No 648/2012, for a complete assessment, to be reached by joint decision of the college. The assessment should include whether the plan is comprehensive and whether it could feasibly restore the viability of the CCP, in a timely manner, including in periods of severe financial stress.
- (22) Recovery plans should comprehensively set out the actions that the CCP would take to address any unmatched outstanding obligations, uncovered loss, liquidity shortfall, or capital inadequacy, as well as the actions to replenish any depleted pre-funded financial resources and liquidity arrangements in order to restore the CCP's viability and its continuing ability to meet its requirements for authorisation. As an incentive for a proper risk management, the CCP should use a proportion of the CCP's own resources, held by the CCP to comply with Article 16 of Regulation (EU) No 648/2012, as a recovery measure before resorting to other recovery measures requiring financial contributions from clearing members. This requirement should not constitute an increase in the capital requirements in excess of Article 16 of Regulation (EU) No 648/2012 and could be met by the existing capital and own resources of the CCP that are not dedicated to the compliance with Article 45(4) of Regulation (EU) No 648/2012. In line with article 45(4) of Regulation (EU) No 648/2012,

CCPs should not use the margins posted by non-defaulting clearing members to cover losses resulting from the default of another clearing member. The presence of a resolution cash call that is reserved for the resolution authority in resolution should affect neither the right of the CCP to introduce recovery cash calls in its rules nor the risk management of the CCP.

- (23) CCPs should ensure that their recovery plan is non-discriminatory and balanced in terms of its impact and the incentives it creates. The effects of the recovery measures on clearing members and their clients and on the financial system of the Union or one of its Member States more broadly should be proportionate. In particular, in accordance with Regulation (EU) No 648/2012 CCPs should ensure that their clearing members have limited exposures toward the CCP. CCPs should ensure that all relevant stakeholders are consulted on the recovery plan through their involvement in the CCP's risk committee, and by being involved in drawing up of the recovery plan.
- (24) To ensure the ability of a CCP to apply the recovery options where necessary to contracts or assets governed by the law of a third country or to entities based in third countries, the CCP's operating rules should include contractual provisions for that purpose.
- (25) Where a CCP does not present an adequate recovery plan, competent authorities should be able to require the CCP to take measures necessary to redress the material deficiencies of the plan in order to strengthen the business of the CCP and ensure that the CCP can allocate losses, restore its capital and, where relevant, re-match its book in case of failure. That power should allow competent authorities to take preventive action to the extent that it is necessary to address any deficiencies and therefore to meet the objectives of financial stability.
- (26) Resolution planning is an essential component of effective resolution. The plans should be drawn up by the resolution authority of the CCP and jointly agreed by the relevant authorities of the resolution college. The plans should cover a broad range of scenarios, distinguishing scenarios resulting from default events, non-default events and a combination of both, as well as different types of non-default events. Authorities should have all the information necessary to identify and ensure the continuance of critical functions. The content of a resolution plan should, however, be appropriate to the activities of the CCP and the types of products it clears and based, inter alia, on the information provided by it.

- (27) Resolution authorities, on the basis of the assessment of resolvability, should have the power to require changes to the structure and organisation of CCPs directly or indirectly through the competent authority, to take measures which are necessary and proportionate to reduce or remove material impediments to the use of resolution tools and ensure the resolvability of the entities concerned.
- (28) Resolution plans and resolvability assessments constitute areas where day-to-day supervisory considerations are taken over by the need to expedite and ensure swift restructuring actions in order to secure a CCP's critical functions and safeguard financial stability. In the event of disagreement between the different members of the resolution college on decisions to be taken with regard to the CCP's resolution plan, the assessment of the CCP's resolvability and the decision to remove any impediments thereto, ESMA should play a mediation role in accordance with Article 19 of Regulation (EU) No 1095/2010. Such binding mediation by ESMA should nonetheless be prepared for its consideration by an ESMA internal committee, in view of the competences of ESMA members to ensure financial stability and to oversee clearing members in several Member States. Certain competent authorities under the EBA Regulation should be invited to participate as observers to that ESMA internal committee in view of the fact that such authorities carry out similar tasks under Directive 2014/59/EU. Such binding mediation should not prevent non-binding mediation in accordance with Article 31 of Regulation (EU) No 1095/2010 in other cases. In accordance with Article 38 of that Regulation, such binding mediation may not impinge on the fiscal responsibilities of Member States.
- (29) It can be necessary that the recovery plan of the CCP sets out the conditions under which the provision of possible financial support, guarantees or other forms of operational support from a parent undertaking or another group-entity to a CCP within the same group would be triggered. Transparency on such arrangements would mitigate risks to the liquidity and solvency of the group entity providing support to a CCP facing financial distress. Therefore, any change to such arrangements affecting the quality and nature of such group support should be considered to be a material change for the purpose of reviewing the recovery plan.

- (30) Given the sensitivity of the information contained in the recovery and resolution plans, those plans should be subject to appropriate confidentiality provisions.
- (31) Competent authorities should transmit the recovery plans and any changes thereto to the relevant resolution authorities, and the latter should transmit the resolution plans and any changes thereto to competent authorities, thus permanently keeping every relevant authority fully informed.
- (32) In order to preserve financial stability, it is necessary that competent authorities are able to remedy the deterioration of a CCP's financial and economic situation before that CCP reaches a point at which authorities have no other alternative but to resolve it or to direct the CCP to change course where its actions could be detrimental for overall financial stability. Therefore, competent authorities should be granted early intervention powers to avoid or minimise adverse effects on financial stability that could result from the CCP's implementation of certain measures. The early intervention powers should be conferred on competent authorities in addition to their powers provided for in the national law of Member States or under Regulation (EU) No 648/2012 for circumstances other than those considered to be early intervention.
- (33) During the recovery and early intervention phases shareholders should retain their rights in full. They should no longer fully retain such rights once the CCP has been put under resolution. Equity holders of a CCP should absorb losses first in resolution in a way that minimises the risk of legal challenge by them where such losses are greater than the losses that they would have incurred under normal insolvency proceedings (the no-creditor-worse-off principle). A resolution authority should be able to deviate from the no-creditor-worse-off principle when applying a write down and conversion tool. However, a shareholder or a creditor incurring greater loss than it would have incurred under normal insolvency proceedings would be entitled to the payment of the difference.

- (34) The resolution framework should provide for timely entry into resolution before a CCP is insolvent. A CCP should be considered to be failing or likely to fail when it infringes or is likely in the near future to infringe the requirements for continuing authorisation, when its recovery has failed to restore its viability, when the CCP is unable or is likely to be unable to provide a critical function, when the assets of the CCP are or are likely in the near future to be less than its liabilities, when the CCP is or is likely in the near future to be unable to pay its debts as they fall due, or when the CCP requires extraordinary public financial support. However, the fact that a CCP does not comply with all the requirements for authorisation should not justify by itself the entry into resolution.
- (35) The provision for emergency liquidity assistance from a central bank – where such a facility is available – should not be a condition that demonstrates that a CCP is or will be, in the near future, unable to pay its liabilities as they fall due. In order to preserve financial stability, in particular in the case of a systemic liquidity shortage, State guarantees on liquidity facilities provided by central banks or State guarantees of newly issued liabilities to remedy a serious disturbance in the economy of a Member State should not trigger the resolution framework provided that a number of conditions are met.
- (35a) Members of the ESCB, other Member States' bodies performing similar functions, other Union public bodies charged with or intervening in the management of the public debt, and the Bank for International Settlements as well as other entities listed in Article 1(4) and 1(5) of Regulation (EU) No 648/2012 may act in the capacity of a clearing member in connection with their operations. The resolution authorities should not use loss allocation tools with regard to these entities in order to avoid the exposure of public money.
- (36) Where a CCP meets the conditions for resolution, the resolution authority of the CCP should have at its disposal a harmonised set of resolution tools and powers. They should enable the resolution authority to address scenarios caused both by default and non-default events, or a combination of both. Their exercise should be subject to common conditions, objectives, and general principles. In particular, the use of such tools or powers should not impinge on the effective resolution of cross-border groups.
- (37) The prime objectives of resolution should be to ensure the continuity of critical functions, to avoid adverse effects on financial stability, and to protect public funds by minimising reliance on extraordinary public financial support to failing CCPs.

- (38) The critical functions of a failing CCP should be maintained, albeit re-structured with changes to the management where appropriate, through the use of resolution tools and use, to the greatest extent possible without reliance on extraordinary public financial support. That could be achieved by allocating outstanding losses and restoring the CCP to a matched book through use of the position and loss allocation tools in the case of default losses, or, in the case of non-default losses, through write down and conversion to equity of unsecured liabilities to absorb losses and recapitalise the CCP. To prevent the need for the use of government stabilisation tools, the resolution authority should be able to use the resolution cash call also following a non-default event. A CCP or specific clearing service may also be sold to or merged with a solvent third party CCP that is able to conduct and manage the transferred clearing activities. In line with this objective, prior to these actions, the resolution authority should generally enforce any existing and outstanding contractual obligations to the CCP in line with how they would be called its operating rules as well as any outstanding obligations of financial commitments of the parent undertaking towards its CCP.
- (39) Rapid and decisive action is necessary to sustain market confidence and minimise contagion. Once the conditions for resolution have been met, the resolution authority of the CCP should not delay in taking appropriate and coordinated resolution action in the public interest. The failure of a CCP can occur under circumstances requiring an immediate reaction by the relevant resolution authority. That authority should therefore be allowed to take resolution action notwithstanding the exercise of recovery measures by the CCP or without imposing an obligation to first use the early intervention powers.
- (40) When taking resolution actions, the resolution authority of the CCP should take into account and follow the measures provided for in the resolution plans drawn up within the resolution college, unless the resolution authority considers, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans. The resolution authority should take into account the general principles of decision-making, including the need to balance the interests of different stakeholders of the CCP and to ensure the transparency towards and involvement of the authorities of the Member States where the proposed decision or action could have implications on the financial stability or fiscal resources. In particular, the resolution

authority should inform the resolution college of the planned resolution actions, including where such actions deviate from the resolution plan.

- (41) Interference with property rights should be proportionate to the financial stability risk. Resolution tools should therefore be applied only to those CCPs that meet the conditions for resolution, specifically where it is necessary to pursue the objective of financial stability in the public interest. Given that resolution tools and powers may disrupt the rights of shareholders, clearing members and their clients and creditors, resolution action should be taken only where necessary in the public interest and any interference with those rights should be compatible with the Charter of Fundamental Rights of the European Union (the Charter).
- (42) Affected shareholders, clearing members and other creditors of the CCP should not incur losses greater than those which they would have incurred if the resolution authority had not taken resolution action in relation to the CCP and they had instead been subject to all applicable outstanding obligations pursuant to the CCP's default rules or other contractual arrangements in its operating rules and the CCP had been wound up in normal insolvency proceedings. In the event of a partial transfer of assets of a CCP under resolution to a private purchaser or to a bridge CCP, the residual part of the CCP under resolution should be wound up under normal insolvency proceedings.
- (43) For the purpose of protecting the rights of shareholders, clearing members and other creditors, clear obligations should be laid down concerning the valuation of the assets and liabilities of the CCP and the valuation of the treatment that shareholders, clearing members and other creditors would have received if the resolution authority would not have taken resolution action. This should compare the treatment that shareholders, clearing members and other creditors have actually been afforded in resolution and the treatment they would have received if the resolution authority would not have taken resolution action in relation to the CCP and they would instead have been subject to possible outstanding obligations pursuant to the CCP's recovery plan or other arrangements in its operating rules and the CCP had been wound up in normal insolvency proceedings. As the use of the resolution cash call, which should be included in the CCP's rulebook, is reserved for the resolution authority in resolution and cannot be used by the CCP, or an administrator or liquidator in insolvency, it should not be part of the treatment that shareholders, clearing members and other creditors would have received if the resolution authority would not have taken resolution action.

Where shareholders, clearing members and other creditors have received, in payment of, or compensation for, their claims, less than the amount that they would have received if the resolution authority had not taken resolution action in relation to the CCP and they would instead have been subject to possible outstanding obligations pursuant to the CCP's default rules or other contractual arrangements in its operating rules and the CCP had been wound up in normal insolvency proceedings, they should be entitled to the payment of the difference. Clients should only be included in that comparison and should only be entitled to the payment of any difference in treatment when they have direct claims against the CCP making them creditors of the CCP, in particular when those claims stem from holding an individually segregated account as referred to in Regulation (EU) No 648/2012. Only in such cases, the resolution authority can control the direct impact of its actions. It should be possible to challenge that comparison separately from the resolution decision. Member States should be free to decide on the procedure as to how to pay any difference of treatment that has been determined to shareholders, clearing members and other creditors.

- (44) To ensure an effective resolution, the valuation process should determine as accurately as possible any losses that need to be allocated for the CCP to re-establish a matched book of outstanding positions and to meet ongoing payment obligations. The valuation of assets and liabilities of failing CCP should be based on fair, prudent and realistic assumptions at the moment when the resolution tools are used. The value of liabilities should not, however, be affected in the valuation by the financial state of the CCP. It should be possible, for reasons of urgency, that resolution authorities make a rapid valuation of the assets or the liabilities of a failing CCP. That valuation should be provisional and should apply until an independent valuation is carried out.
- (45) Upon entry of the CCP into resolution, the resolution authority should enforce any outstanding contractual obligations set out in the operating rules of the CCP, including outstanding recovery measures, except where the exercise of another resolution power or tool is more appropriate to mitigate adverse effects for financial stability or to secure the critical functions of the CCP in a timely manner. The resolution authority should have the right, but not the obligation, to enforce those contractual obligations still after resolution if the reasons for refraining from their enforcement no longer exist. In order to allow for the clearing members and other relevant parties to prepare for the enforcement, the resolution authority should notify the relevant clearing members and other parties in advance of its decision to enforce remaining obligations. This pre-notification period should be from three

to six months. The resolution authority should determine, in consultation with the competent authorities and resolution authorities of the affected clearing members and any other parties committed by existing and outstanding obligations, whether the reasons for refraining from enforcing the contractual obligations have ceased to exist and whether to enforce the remaining obligations. If the reasons continue to exist, the resolution authority should refrain from enforcing these obligations. The proceeds from the delayed enforcement of the outstanding contractual obligations should be used to recover any public funds used for the payment of no creditor worse off claims resulting from the resolution authority's decision to refrain from enforcing these obligations or the application of any government stabilisation tool. The resolution authority should use this power of delayed enforcement only to the extent that the no creditor worse off safeguard with respect to the stakeholder that will be subject to the delayed enforcement is not breached. In the case of default losses, the resolution authority should restore the CCP to a matched book and allocate outstanding losses through use of position and loss allocation tools. In the case of non-default losses, losses should be absorbed by regulatory capital instruments and should be allocated to shareholders up to their capacity either through the cancellation or transfer of instruments of ownership or through severe dilution. Where those instruments are not sufficient, resolution authorities should have the power to write down unsecured debt and liabilities, in accordance with their ranking under applicable national insolvency law, and use loss allocation tool, to the extent necessary without jeopardising broader financial stability.

- (46) If, after losses have been absorbed and, where applicable, the CCP has been restored to a matched book and the pre-funded resources of the CCP remain depleted, the resolution authority should ensure that those resources are restored to the levels necessary to meet regulatory requirements, either through the continued exercise of the tools in the CCP's operating rules or through other actions. In particular, resolution authorities should have the possibility to compensate non-defaulting clearing members for the use of loss allocation tools that would result in losses in excess of those that the clearing members would have borne under their obligations under the CCP's operating rules with instruments of ownership, debt instruments or instruments recognising a claim on the CCP's future profits. The resolution authority can consider e.g. the financial soundness of the CCP, the qualities of instruments available for compensation and no creditor worse off -safeguard when assessing the amount and the form of compensation. To maintain an adequate incentive structure, such compensation should consider the extent to which a clearing member has supported the

recovery of the CCP and therefore take into account the remaining outstanding contractual obligations of the clearing members towards that CCP. Such compensation should be deducted from any entitlement to no creditor worse off -payment.

- (47) Resolution authorities should also ensure that the costs of the resolution of the CCP are minimised and that creditors of the same class are treated in an equitable manner. The resolution authority may take a resolution action which deviates from the principle of equal treatment of creditors if it is justified in the public interest to achieve the resolution objectives and is proportionate to the risk addressed. If the resolution authority uses such measure it should not discriminate anybody on the basis of nationality.
- (48) The resolution of a CCP should not entail calling on extraordinary public financial support. The resolution tools, in particular the write down tool, should be used to the fullest extent possible before or together with any public sector injection of capital or equivalent extraordinary public financial support is given to a CCP. The use of extraordinary public financial support to assist in the resolution of failing institutions must be a last resort, be limited in time and comply with the relevant State aid provisions.
- (49) An effective resolution regime should minimise the costs of the resolution of a failing CCP borne by the taxpayers. It should ensure that CCPs can be resolved without jeopardising financial stability. The write down tool and the loss and position allocation tools achieve that objective by ensuring that shareholders and counterparties who are among the creditors of the failing CCP suffer appropriate losses and bear an appropriate part of the costs arising from the failure of the CCP. The write down and the loss and position allocation tools therefore give shareholders and counterparties of CCPs a stronger incentive to monitor the health of a CCP during normal circumstances in accordance with the recommendations of the Financial Stability Board⁶.
- (50) In order to ensure that resolution authorities have the necessary flexibility to allocate losses and positions to counterparties in a range of circumstances, it is appropriate that those authorities are able to apply the position and loss allocation tools both where the objective is to maintain critical clearing services within the CCP under resolution and in conjunction with the transfer of critical services to a bridge CCP or a third party after which the residual part of the CCP ceases to operate and is wound up.

⁶ http://www.fsb.org/wp-content/uploads/r_141015.pdf

- (51) Where the loss and position allocation tools are applied with the objective of restoring the viability of the failing CCP to enable it to continue to operate as a going concern, the resolution should be accompanied by replacement of management, except where retention of management is appropriate and necessary for the achievement of the resolution objectives, and a subsequent restructuring of the CCP and its activities in a way that addresses the reasons for its failure. That restructuring should be achieved through the implementation of a business reorganisation plan, which should be compatible with the restructuring plan that the CCP might be required to submit pursuant to the State aid framework.
- (52) The loss and position allocation tools should be exercised with a view to re-matching the CCP's book, stemming any further losses and obtaining additional resources to help recapitalise the CCP and replenish its prefunded resources. In order to ensure that they are effective and achieve their objective, they should be able to apply to as wide a range of contracts giving rise to unsecured liabilities or creating an unmatched book for the failing CCP as possible. They should provide for the possibility to auction defaulters' positions among remaining clearing members, forcibly allocate them to the extent that voluntary arrangements established as part of recovery plan are not exhausted upon entry into resolution, partially or fully tear-up the contracts of defaulted clearing members, product lines and of the CCP, further haircut outgoing variation margin payments taking the segregation of accounts into account where relevant, exercise any outstanding cash calls set out in recovery plans, exercise additional cash calls reserved for the resolution authority and write-down of capital and debt instruments issued by the CCP or other unsecured liabilities and a conversion of any debt instruments into shares.
- (53) Resolution authorities should be able to exclude or partially exclude some contracts from loss and position allocation in a number of circumstances. Where those exclusions are applied, the level of loss or exposure applied to other contracts may be increased to take account of such exclusions subject to the "no creditor worse off principle" being respected.
- (54) Where the resolution tools have been used to transfer the critical functions or viable business of a CCP to a sound entity such as a private sector purchaser or bridge CCP, the residual part of the CCP should be liquidated within an appropriate time frame having regard to any need for the failing CCP to provide services or support to enable the purchaser or bridge CCP to carry out the activities or provide the services acquired by virtue of that transfer.

- (55) The sale of business tool should enable authorities to sell the CCP or parts of its business to one or more purchasers without the consent of shareholders. When applying the sale of business tool, authorities should make arrangements for the marketing of that CCP or part of its business in an open, transparent and non-discriminatory process, while aiming to maximise, as far as possible, the sale price.
- (56) Any net proceeds from the transfer of assets or liabilities of the CCP under resolution when applying the sale of business tool should benefit the entity left in the winding up proceedings. Any net proceeds from the transfer of instruments of ownership issued by the CCP under resolution when applying the sale of business tool should benefit the shareholders. Proceeds should be calculated net of the costs arisen from the failure of the CCP and from the resolution process.
- (57) In order to perform the sale of business in a timely manner and protect financial stability, the assessment of the buyer of a qualifying holding should be carried out in a timely manner that does not delay the application of the sale of business tool. The CCP, the purchaser or both, depending on the effects of the sale of business tool and the form of acquisition, should be able to exercise or maintain existing rights of membership and accessing payment and settlement systems and other linked financial market infrastructures and trading venues. Such rights should not be denied neither on the basis of non-compliance with the relevant criteria for membership or participation, nor on the basis of insufficient credit rating.
- (58) Information concerning the marketing of a failing CCP and the negotiations with potential acquirers prior to the application of the sale-of-business tool is likely to be of systemic importance. In order to ensure financial stability, it is important that the disclosure to the public of such information required by Regulation (EU) No 596/2014 of the European Parliament and of the Council⁷ may be delayed for the time necessary to plan and structure the resolution of the CCP in accordance with delays permitted under the market abuse regime.
- (59) As a CCP which is wholly or partially owned by one or more public authorities or controlled by the resolution authority, a bridge CCP should have as its main purpose ensuring that essential financial services continue to be provided to the clearing members and clients of

⁷ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

the CCP that had been placed under resolution and that essential financial activities continue to be performed. The bridge CCP should be operated as a viable going concern entity and be put back on the market when conditions are appropriate or wound up if not longer viable.

- (60) Should all other options be practically unavailable or be demonstrably insufficient to safeguard financial stability, government participation in the shape of equity support or temporary public ownership should be possible, in accordance with applicable rules on State aid, including a restructuring of the operations of the CCP. In order to avoid moral hazard, the extraordinary public financial support should be provided only as a last resort, and funds provided should always be recovered over an appropriate period of time. The requirement for the recoupment of funds should not, however, be an obstacle in using the government stabilisation tools in case the established criteria for their use is met. The use of government stabilisation tools is notwithstanding the role of any central bank in potentially providing liquidity to the financial system even in times of stress that is subject to its ultimate discretion.
- (61) To ensure the ability of a resolution authority to apply the loss and position allocation tools to contracts with entities based in third countries, recognition of that possibility should be included in the operating rules of the CCP.
- (62) Resolution authorities should have all the necessary legal powers that, in different combinations, could be exercised when using the resolution tools. They should include the power to transfer instruments of ownership, assets, rights, obligations or liabilities of a failing CCP to another entity such as another CCP or a bridge CCP, the power to write down or cancel instruments of ownership, or write down or convert liabilities of a failing CCP, the power to write down variation margin, the power to enforce any outstanding obligations of third parties in relation to the CCP including cash calls and position allocations, the power to tear up contracts of the CCP partially and fully, the power to replace the management and the power to impose a temporary moratorium on the payment of claims. The CCP and the members of its board and senior management should remain liable, subject to Member State law, under civil or criminal law for their responsibility for the failure of the CCP.
- (63) The resolution framework should include procedural requirements to ensure that resolution actions are properly notified and made public. However, as information obtained by resolution authorities and their professional advisers during the resolution process is likely to be sensitive, before the resolution decision is made public, it should be subject to an

effective confidentiality regime. The fact that information on the contents and details of recovery and resolution plans and the result of any assessment of those plans may have far-reaching effects, in particular on the undertakings concerned, must be taken into account. Any information provided in respect of a decision before it is taken, be it on whether the conditions for resolution are satisfied, on the use of a specific tool or of any action during the proceedings, must be presumed to have effects on the public and private interests concerned by the action. However, information that the resolution authority is examining a specific CCP could be enough for there to be negative effects on that CCP. It is therefore necessary to ensure that there are appropriate mechanisms for maintaining the confidentiality of such information, such as the content and details of recovery and resolution plans and the result of any assessment carried out in that context.

- (64) Resolution authorities should have ancillary powers to ensure the effectiveness of the transfer of instruments of ownership or debt instruments and assets, liabilities, rights and obligations, including positions and related margin. Subject to the safeguards, those powers should include the power to remove third parties rights from the transferred instruments or assets and the power to enforce contracts and to provide for the continuity of arrangements vis-à-vis the recipient of the transferred assets and instruments of ownership. However, the rights of employees to terminate a contract of employment should not be affected. The right of a party to terminate a contract with a CCP under resolution, or a group entity thereof, for reasons other than the resolution of the failing CCP should not be affected either. Resolution authorities should have the ancillary power to require the residual CCP that is being wound up under normal insolvency proceedings to provide services that are necessary to enable the CCP to which assets, contracts or instruments of ownership have been transferred by virtue of the application of the sale of business tool or the bridge CCP tool to operate its business.
- (65) In accordance with Article 47 of the Charter, the parties concerned have a right to due process and to an effective remedy against the measures affecting them. Therefore, the decisions taken by the resolution authorities should be subject to a right of appeal.
- (66) Resolution action taken by national resolution authorities may require economic assessments and a large margin of discretion. The national resolution authorities are specifically equipped with the expertise needed for making those assessments and for determining the appropriate use of the margin of discretion.

- (67) In order to cover situations of extreme urgency, and since the suspension of any decision of the resolution authorities might impede the continuity of critical functions, it is necessary to provide that the lodging of any appeal should not result in automatic suspension of the effects of the challenged decision and that the decision of the resolution authority should be immediately enforceable.
- (68) In addition, where necessary in order to protect third parties who have acquired assets, contracts, rights and liabilities of the CCP under resolution in good faith by virtue of the exercise of the resolution powers by the authorities and to ensure the stability of the financial markets, a right of appeal should not affect any subsequent administrative act or transaction concluded on the basis of an annulled decision. In such cases, remedies for a wrongful decision should therefore be limited to the award of compensation for the damages suffered by the affected persons.
- (69) Given that resolution action may be required to be taken urgently due to serious financial stability risks in the Member State and the Union, any procedure under national law relating to the application for ex-ante judicial approval of a crisis management measure and the court's consideration of such an application should be swift. This is without prejudice to the right that interested parties might have in making an application to the court to set aside the decision for a limited period after the resolution authority has taken the crisis management measure.
- (70) It is in the interest of an efficient resolution, and in order to avoid conflicts of jurisdiction, that no normal insolvency proceedings for the failing CCP be opened or continued whilst the resolution authority is exercising its resolution powers or using the resolution tools, except at the initiative of, or with the consent of, the resolution authority. It is useful and necessary to suspend, for a limited period, certain contractual obligations so that the resolution authority has time to put into practice the resolution tools. This should not, however, apply to obligations of a failing CCP towards systems designated under Directive 98/26/EC of the European Parliament and of the Council⁸, other central counterparties and central banks. Directive 98/26/EC reduces the risk associated with participation in payment and securities settlement systems, in particular by reducing disruption in the event of the insolvency of a participant in such a system. To ensure that those protections apply appropriately in crisis

⁸ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11. 6. 1998, p. 45).

situations, whilst maintaining appropriate certainty for operators of payment and securities systems and other market participants, a crisis prevention measure or a resolution action should not be deemed to be insolvency proceedings within the meaning of Directive 98/26/EC, provided that the substantive obligations under the contract continue to be performed. However, the operation of a system designated under or the right to collateral security guaranteed by Directive 98/26/EC should not be undermined.

- (71) In order to ensure that resolution authorities, when transferring assets and liabilities to a private sector purchaser or bridge CCP, have an adequate period to identify contracts that need to be transferred, it might be appropriate to impose proportionate restrictions on counterparties' rights to close out, accelerate or otherwise terminate financial contracts before the transfer is made. Such a restriction would be necessary to allow authorities to obtain a true picture of the balance sheet of the failing CCP, without the changes in value and scope that extensive exercise of termination rights would entail. In order to interfere with the contractual rights of counterparties to the minimum extent necessary, the restriction on termination rights should apply only in relation to the crisis prevention measure or resolution action, including the occurrence of any event directly linked to the application of such a measure, and rights to terminate arising from any other default, including failure to pay or deliver margin, should remain and should be limited to the shortest period possible.
- (72) In order to preserve legitimate capital market arrangements in the event of a transfer of some, but not all, of the assets, contracts, rights and liabilities of a failing CCP, it is appropriate to include safeguards to prevent the splitting of linked liabilities, rights and contracts, as appropriate. Such a restriction on selected practices in relation to linked contracts and related collateral should extend to contracts with the same counterparty covered by security arrangements, title transfer financial collateral arrangements, set-off arrangements, close out netting agreements, and structured finance arrangements. Where the safeguard applies, resolution authorities should seek to transfer all linked contracts within a protected arrangement, or leave them all with the residual failing CCP. Those safeguards should ensure that the regulatory capital treatment of exposures covered by a netting agreement for the purposes of Directive 2013/36/EU is affected to a minimum degree.

- (73) EU CCPs provide services to clearing members and their clients located in third countries and third country CCPs provide services to clearing members and their clients located in the EU. Effective resolution of internationally active CCPs requires cooperation between Member States and third-country authorities. For that purpose ESMA should provide guidance on the relevant content of cooperation arrangements to be concluded with authorities of third countries. Those cooperation arrangements should ensure effective planning, decision-making and coordination in respect of internationally active CCPs. National resolution authorities should recognise and enforce third-country resolution proceedings in certain circumstances. Cooperation should also take place with regard to subsidiaries of Union or third-country CCPs and their clearing members and their clients .
- (73a) In order to provide deterrence and consistent application of the sanctions across Member States, this Regulation should provide a list of key administrative sanctions and other administrative measures that need to be available to the resolution authorities and the competent authorities, for the power to impose those sanctions and other administrative measures on all persons, whether legal or natural, responsible for an infringement, for a list of key criteria when determining the level and type of those sanctions and other administrative measures and for levels of administrative pecuniary sanctions. Administrative sanctions and other administrative measures should take into account factors such as any identified financial benefit resulting from the infringement, the gravity and duration of the infringement, any aggravating or mitigating factors, the need for administrative fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the resolution authority or the competent authority. The adoption and publication of sanctions should respect fundamental rights as laid down in the Charter in particular the rights to respect for private and family life (Article 7), the right to the protection of personal data (Article 8), the freedom to conduct business (Article 16), the right to property (Article 17), the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and the right of defence (Article 48) and the principles of legality and proportionality of criminal offences and penalties (Article 49).
- (74) In order to ensure consistent harmonisation and adequate protection for market participants across the Union, the Commission should adopt draft regulatory technical standards developed by ESMA by means of delegated acts pursuant to Article 290 TFEU, in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 to specify the content

of the written arrangements and procedures for the functioning of the resolution colleges, the assessment methodology for recovery plans, the contents of resolution plans and elements relevant to the conduct of valuations.

- (75) The Commission should be able to suspend any clearing obligation established pursuant to Article 5 of Regulation (EU) No 648/2012, following a request from the resolution authority, the competent authority of a CCP in resolution or the competent authority of a clearing member of a CCP in resolution, and following a non-binding opinion by ESMA, for specific classes of OTC derivatives which are cleared by a CCP which is in resolution. The decision to suspend the clearing obligation should be adopted only if it is necessary to preserve financial stability and market confidence, in particular to avoid contagion effects and to prevent counterparties and investors having high and uncertain risk exposures to a CCP. In order to adopt its decision, the Commission should take into account the resolution objectives and the criteria stated in Regulation (EU) No 648/2012 for subjecting OTC derivatives to the clearing obligation regarding those OTC derivatives for which the suspension is requested. ESMA may request the Commission to suspend the trading obligation laid down in Regulation (EU) 600/2014⁹ where it considers the suspension of the clearing obligation to be a material change in the criteria for the trading obligation. The suspension should be of a temporary nature with a possibility of extension. Likewise, the role of the CCP's risk committee, as set out on Article 28 of Regulation (EU) No 648/2012, should be enhanced to further encourage the CCP to manage its risks prudently and improve its resilience. Members of the risk committee should be able to inform the competent authority when the CCP does not follow the risk committee's advice, and representatives of clearing members and clients on the risk committee should be able to use information provided to monitor their exposures to the CCP, in accordance with confidentiality safeguards. Finally, resolution authorities of CCPs should also have access to all necessary information in trade repositories. Regulation (EU) No 648/2012 and Regulation (EU) 2365/2015 of the European Parliament and of the Council¹⁰ should therefore be amended accordingly.

⁹ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

¹⁰ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

- (75aa) In order to ensure the proper implementation of the Financial Stability Board’s interest rate benchmark reform it is necessary to provide clarity to market participants that transactions entered into or novated before the entry into application of the clearing or margin requirements to OTC derivative transactions referencing an interest rate benchmark (‘legacy trades’) will not be subject to these requirements when they are novated for the sole purpose of implementing or preparing for the implementation of the interest rate benchmark reform. Doing so would also prevent any risk that European counterparties to those legacy trades find themselves unprepared when a specific benchmark is materially changed or discontinued, therefore alleviating related financial stability concerns. Such approach is in line with the international guidance from BCBS and IOSCO.
- (75b) To implement resolution of CCPs effectively, the safeguards provided for in Directive 2002/47/EC¹¹ should not apply to any restriction of the enforcement of a financial collateral arrangement or on the effect of a security financial collateral arrangement, any close-out netting or set-off provision imposed by virtue of this Regulation.
- (75c) Directive 2017/1132¹², Directive 2011/35/EU¹³, Directive 2005/56/EC¹⁴, Directive 2004/25/EC¹⁵ and Directive 2007/36/EC¹⁶ contain rules for the protection of shareholders and creditors of CCPs that fall within the scope of those Directives. In a situation where resolution authorities need to act rapidly under this Regulation, those rules may hinder effective resolution action and use of resolution tools and powers by resolution authorities. Derogations under Directive 2014/59/EU should therefore be extended to acts taken in accordance with this Regulation. In order to guarantee the maximum degree of legal certainty for stakeholders, the derogations should be clearly and narrowly defined, and they should only be used in the public interest and when resolution triggers are met.

¹¹ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, OJ L 168, 27.6.2002, p.43

¹² Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

¹³ Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies (OJ L 110, 29.4.2011, p. 1).

¹⁴ Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, p. 1).

¹⁵ Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004, p. 12).

¹⁶ Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p. 17).

- (75d) In order to avoid a duplication of requirements, Directive 2014/59/EU should be amended to exclude from its scope those CCPs in respect of which, pursuant to Regulation (EU) No 648/2012, Member States apply certain requirements for authorisation under Directive 2013/36/EU and are therefore also authorised as credit institutions.
- (76) In order to ensure that resolution authorities of CCPs are represented in all relevant fora, and to ensure that the ESMA benefits from all expertise necessary to carry out the tasks related to the recovery and resolution of CCPs, Regulation (EU) No 1095/2010 should be amended in order to include national CCP resolution authorities in the concept of competent authorities established by that Regulation.
- (77) In order to prepare the decisions of ESMA in relation to the tasks allocated to it involving the development of draft technical standards on ex ante and ex-post valuations and on resolution colleges and plans, and of guidelines on the conditions for resolution, and on binding mediation, and to ensure the comprehensive involvement of EBA and its members in the preparation of these decisions, ESMA should create an internal Resolution Committee with resolution authorities as members; where relevant EBA competent authorities should be invited to participate as observers.
- (78) This Regulation respects the fundamental rights and observes the rights, freedoms and principles recognised in particular by the Charter, and, in particular, the rights to respect for private and family life (Article 7), the right to the protection of personal data (Article 8), the freedom to conduct a business (Article 16), the right to property (Article 17), the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and the right of defence (Article 48) and the principles of legality and proportionality of criminal offences and penalties (Article 49).
- (79) When taking decisions or actions under this Regulation, competent authorities and resolution authorities should always have due regard to the impact of their decisions and actions on financial stability in other Member States and on the economic situation in other Member States and should give consideration to the significance of any clearing member for the financial sector and the economy of the Member State where such a clearing member is established.

- (80) Since the objective of this Regulation, namely the harmonisation of the rules and processes for the recovery and resolution of CCPs, cannot be sufficiently achieved by the Member States, but can rather, by reason of the effects of a failure of any CCPs in the whole Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (81) The application of this Regulation should be deferred until *[PO: Please insert date 24 months from the date of entry into force of this Regulation]* to establish all essential implementing measures and to allow CCPs and other market participants to take the necessary steps for compliance purposes.
- (81a) This Regulation should ensure that CCPs have sufficient loss-absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses and recapitalisation with a minimum impact on financial stability and while aiming to avoid an impact on taxpayers. Consistently with the internationally agreed principles for effective resolution regimes for financial institutions developed by the Financial Stability Board ('FSB')¹⁷, this Regulation should ensure that equity holders of a CCP absorb losses first in resolution in a way that minimises the risk of legal challenge by equity holders, on the basis that their losses in resolution are greater than the losses that they would have incurred under normal insolvency proceedings (the no-creditor-worse-off principle). On 15 November 2018, the FSB published a consultation paper on the use of financial resources to support CCP resolution and the treatment of CCP equity in resolution¹⁸. Based on the feedback received to that paper and further assessments, the FSB plans to issue guidance at the end of 2020 on how equity should be used in the event of resolution of CCPs in a manner that minimises the risk of legal challenge by equity holders resulting from the application of the no-creditor-worse-off principle. Following the publication of that guidance, the Commission should review the application of the rules laid down in this Regulation with regard to the write down of equity in resolution by taking into account those internationally agreed standards. In addition to this

¹⁷ Key Attributes of Effective Resolution Regimes for Financial Institutions, October 2011
https://www.fsb.org/wp-content/uploads/r_111104cc.pdf

¹⁸ Financial resources to support CCP resolution and the treatment of CCP equity in resolution – Discussion paper for public consultation <http://www.fsb.org/wp-content/uploads/P151118-2.pdf>

specific review, the Commission should review the application of this Regulation after five years following the date of its application, inter alia by taking into account any further international developments. That general review should cover at least certain core matters related to the recovery and resolution of CCPs, such as financial resources available to resolution authorities to cover non-default losses and the CCPs' own resources to be used in recovery and resolution.

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER AND DEFINITIONS

Article 1 *Subject matter*

This Regulation lays down rules and procedures relating to the recovery and resolution of central counterparties (CCPs) authorised in accordance with Regulation (EU) No 648/2012 and rules relating to the arrangements with third countries in the field of recovery and resolution of CCPs.

Article 2 *Definitions*

For the purposes of this Regulation the following definitions apply:

- (1) 'CCP' means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;
- (2) 'resolution college' means the college established pursuant to Article 4;
- (3) 'resolution authority' means an authority designated by a Member State in accordance with Article 3;
- (4) 'resolution tool' means a resolution tool referred to in Article 27(1);
- (5) 'resolution power' means a power referred to in Articles 48 to 58;
- (6) 'resolution objectives' means the resolution objectives laid down in Article 21;
- (7) 'competent authority' means an authority designated by a Member State in accordance with Article 22 of Regulation (EU) No 648/2012;
- (8) 'resolution plan' means a resolution plan for a CCP drawn up in accordance with Article 13;
- (9) 'resolution action' means the decision to place a CCP under resolution pursuant to Article 22, the application of a resolution tool, or the exercise of one or more resolution powers;
- (10) 'clearing member' means a clearing member as defined in point 14 of Article 2 of Regulation (EU) No 648/2012;

- (11) 'parent undertaking' means a parent undertaking as defined in point (15)(a) of Article 4(1) of Regulation (EU) No 575/2013;
- (12) 'third-country CCP' means a CCP, the head office of which is established in a third country;
- (13) 'set-off arrangement' means an arrangement under which two or more claims or obligations owed between the CCP under resolution and a counterparty can be set off against each other;
- (14) 'financial market infrastructure' or 'FMI' means a central counterparty, a central securities depository, a trade repository, a payment system or another system defined and designated by a Member State under Article 2(a) of Directive 98/26/EC;
- (14a) 'trading venue' means a trading venue as defined in point 4 of Article 2 of Regulation (EU) No 648/2012;
- (15) 'client' means a client as defined in point 15 of Article 2 of Regulation (EU) No 648/2012;
- (15a) 'indirect client' means an indirect client as defined in point 1 (a) of Article 1 of Commission Delegated Regulation (EU) No. 149/2013;
- (16) 'interoperable CCP' means a CCP with which an interoperability arrangement has been set up under Title V of Regulation (EU) No 648/2012;
- (17) [*deleted*]
- (18) 'recovery plan' means a recovery plan drawn up and maintained by a CCP in accordance with Article 9;
- (19) 'board' means the administrative or supervisory board, or both, set up pursuant to national company law in accordance with Article 27(2) of Regulation (EU) No 648/2012;
- (20) 'supervisory college' means the college referred to in Article 18(1) of Regulation (EU) No 648/2012;
- (21) 'capital' means capital in accordance with point 25 of Article 2 of Regulation EU No. 648/2012;

- (22) 'default waterfall' means default waterfall in accordance with Article 45 of Regulation (EU) No 648/2012;
- (23) 'critical functions' means activities, services or operations provided to third parties external to the CCP the discontinuance of which is likely to lead to the disruption of services that are essential to the real economy or to disrupt financial stability in one or more Member States due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of a CCP, with particular regard to the substitutability of those activities, services or operations;
- (24) 'group' means a group as defined in point 16 of Article 2 of Regulation (EU) No. 648/2012;
- (25) 'linked FMI' means an FMI with which the CCP has contractual arrangements;
- (26) 'extraordinary public financial support' means State aid within the meaning of Article 107(1) TFEU, or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of a CCP ;
- (27) 'financial contracts' means contracts and agreements as set out in point 100 of Article 2(1) of Directive 2014/59/EU;
- (28) 'normal insolvency proceedings' means collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator or an administrator normally applicable to CCPs under national law and either specific to those institutions or generally applicable to any natural or legal person;
- (29) 'instruments of ownership' means shares, other instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and instruments representing interests in shares or other instruments of ownership;
- (30) 'designated national macroprudential authority' means the authority entrusted with the conduct of macroprudential policy referred to in Recommendation B1 of the Recommendation of the European Systemic Risk Board (ESRB) of 22 December 2011 on the macroprudential mandate of national authorities (ESRB/2011/3);

- (31) 'default fund' means a default fund held by a CCP in accordance with Article 42 of Regulation (EU) No 648/2012;
- (32) 'pre-funded resources' means resources which are held by and freely available to the relevant legal person;
- (33) 'senior management' means the person or persons who effectively direct the business of the CCP, and the executive member or members of the board;
- (34) 'trade repository' means a trade repository as defined in point 2 of Article 2 of Regulation (EU) No 648/2012 or in point 1 of Article 3 of Regulation (EU) 2015/2365 of the European Parliament and of the Council¹⁹;
- (35) 'Union State aid framework' means the framework established by Articles 107, 108 and 109 of the Treaty on the Functioning of the European Union (TFEU) and regulations and all Union acts, including guidelines, communications and notices, made or adopted pursuant to Article 108(4) or Article 109 TFEU;
- (36) 'debt instruments' means bonds or other forms of unsecured transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments;
- (36a) 'initial margin' means margins collected by the CCP to cover potential future exposure to clearing members providing the margin and, where relevant, interoperable CCPs in the interval between the last margin collection and the liquidation of positions following a default of a clearing member or of an interoperable CCP default;
- (36b) 'variation margin' means margins collected or paid out to reflect current exposures resulting from actual changes in market prices;
- (37) 'resolution cash call' means a request for cash resources to be provided by clearing members to the CCP, additional to prefunded resources, based on statutory powers available to a resolution authority in accordance with Article 31 ;

¹⁹ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

- (38) 'cash calls' means requests for cash resources to be provided by clearing members to the CCP, additional to prefunded resources, based on contractual arrangements laid out in the operating rules of the CCP;
- (39) 'transfer powers' means the powers specified in points (c) or (d) of Article 48(1) to transfer shares, other instruments of ownership, debt instruments, assets, rights, obligations or liabilities, or any combination of those items from a CCP under resolution to a recipient;
- (40) 'derivative' means a derivative as defined in point 5 of Article 2 of Regulation (EU) No 648/2012;
- (41) 'netting arrangement' means an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim, including 'close-out netting provisions' as defined in point (n)(i) of Article 2(1) of Directive 2002/47/EC of the European Parliament and of the Council²⁰ and 'netting' as defined in point (k) of Article 2 of Directive 98/26/EC;
- (42) 'crisis prevention measure' means the exercise of powers to require a CCP to take measures to remedy deficiencies in its recovery plan under Article 10(8) and (9), the exercise of powers to address or remove impediments to resolvability under Article 17, or the application of an early intervention measure under Article 19;
- (43) 'termination right' means a right to terminate a contract, a right to accelerate, close out, set-off or net obligations or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract or a provision that prevents an obligation under the contract from arising that would otherwise arise;
- (44) 'title transfer financial collateral arrangement' means a title transfer financial collateral arrangement as defined in point (b) of Article 2(1) of Directive 2002/47/EC;

²⁰ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

- (45) 'covered bond' means an instrument as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council²¹;
- (46) 'third-country resolution proceedings' means an action under the law of a third country to manage the failure of a third-country CCP that is comparable, in terms of objectives and anticipated results, to resolution actions under this Regulation;
- (47) 'relevant national authorities' means the resolution authorities, competent authorities or competent ministries designated in accordance with this Regulation or pursuant to Article 3 of Directive 2014/59/EU or other authorities in Member States with powers in relation to assets, rights, obligations or liabilities of third-country CCPs providing clearing services in their jurisdiction;
- (48) 'relevant third-country authority' means a third-country authority responsible for carrying out functions comparable to those of resolution authorities or competent authorities pursuant to this Regulation.

²¹ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32)

TITLE II

AUTHORITIES, RESOLUTION COLLEGE AND PROCEDURES

SECTION I

RESOLUTION AUTHORITIES, RESOLUTION COLLEGES AND INVOLVEMENT OF EUROPEAN SUPERVISORY AUTHORITIES

Article 3

Designation of resolution authorities and competent ministries

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

Resolution authorities shall be national central banks, competent ministries, public administrative authorities or other authorities entrusted with public administrative powers.
2. Resolution authorities shall have the expertise, resources and operational capacity to apply resolution measures and exercise their powers with the speed and flexibility that are necessary to achieve the resolution objectives.
3. Where a resolution authority designated pursuant to paragraph 1 is entrusted with other functions, adequate structural arrangements shall be in place to avoid conflicts of interest between the functions entrusted to the resolution authority pursuant to this Regulation and all other functions entrusted to that authority.
4. The staff involved in carrying out the functions entrusted to the resolution authority pursuant to this Regulation shall be structurally separated from, and subject to separate reporting lines from, the staff involved in carrying out the tasks pursuant to Regulation (EU) No 648/2012.

The resolution authority shall adopt and make public the internal rules ensuring the structural separation referred to in the first subparagraph, including rules regarding professional secrecy and information exchanges between the different functional areas. Where required under national law in a Member State, the rules referred to in this paragraph may be adopted in national law.

- 4a. In derogation from paragraphs 3 and 4, in Member States where no CCP is established the structural separation of the functions and the staff involved in carrying out those functions shall not be required where the resolution authority designated for the purposes of this Regulation is the competent authority or the resolution authority designated in accordance with Article 3 of Directive 2014/59/EU. In that case, necessary arrangements to avoid conflicts of interests in the decision making process shall nevertheless be put in place.
5. Each Member State shall designate a single ministry which is responsible for exercising the functions entrusted to the competent ministry pursuant to this Regulation.
6. Where the resolution authority in a Member State is not the competent ministry, the resolution authority shall inform the competent ministry of the decisions taken pursuant to this Regulation and, unless otherwise stipulated in national law, have its approval before implementing decisions that have a direct fiscal impact or systemic implications.
7. (deleted)
8. Member States shall notify the Commission and the European Securities and Markets Authority (ESMA) of the resolution authorities designated pursuant to paragraph 1.

9. Where a Member State designates more than one resolution authority pursuant to paragraph 1, the notification referred to in paragraph 8 shall include the following:
- (a) the reasons justifying that multiple designation;
 - (b) the allocation of functions and responsibilities between those authorities;
 - (c) the way in which coordination between them is ensured;
 - (d) the resolution authority designated as the contact authority for the purposes of cooperation and coordination with the relevant authorities of other Member States.
10. ESMA shall publish a list of the resolution authorities and the contact authorities notified pursuant to paragraph 8.

Article 4

Resolution colleges

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

Resolution colleges shall provide a framework for resolution authorities and other relevant authorities to perform the following tasks:

- (a) exchange information relevant for drawing up resolution plans, for the application of preparatory and preventative measures and for resolution;
 - (b) draw up resolution plans pursuant to Article 13;
 - (c) assess the resolvability of CCPs pursuant to Article 16;
 - (d) identify, address and remove impediments to the resolvability of CCPs pursuant to Article 17;
 - (e) coordinate public communication about resolution plans and strategies.
2. The following shall be members of the resolution college:

- (a) the resolution authority of the CCP;
- (b) the competent authority of the CCP;
- (c) the competent authorities and the resolution authorities of the clearing members referred to in point (c) of Article 18(2) of Regulation (EU) No 648/2012, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013²² and the SRB in its role as a competent resolution authority of credit institutions within the single resolution mechanism conferred upon it in accordance with Regulation (EU) No 806/2014 of the European Parliament and of the Council²³;
- (ca) the competent authorities and the resolution authorities of clearing members, other than those referred to in point (c). Those competent authorities and resolution authorities shall inform the resolution authority of the CCP and justify their participation in the college based on their assessment of the impact that the CCP's resolution could have on the financial stability of their respective Member State.
- (cb) the competent authorities or the resolution authorities of clearing members' clients, provided that the college does not already have a member from their respective Member State in accordance with points (c), (ca) or (d) – (f) of this paragraph. Those authorities shall inform the resolution authority of the CCP and justify their participation in the college based on their assessment of the impact that the CCP's resolution could have on the financial stability of their respective Member State.
- (d) the competent authorities referred to in point (d) of Article 18(2) of Regulation (EU) No 648/2012;
- (e) the competent authorities and the resolution authorities of the CCPs referred to in point (e) of Article 18(2) of Regulation (EU) No 648/2012;

²² Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring special tasks on the European Central Bank concerning policies to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p.63).

²³ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) 1093/2010 (OJ L 225, 30.7.2014, p.1).

- (f) the competent authorities referred to in point (f) of Article 18(2) of Regulation (EU) No 648/2012;
- (g) the members of the ESCB referred to in point (g) of Article 18(2) of Regulation (EU) No 648/2012;
- (h) the central banks referred to in point (h) of Article 18(2) of Regulation (EU) No 648/2012;
- (ha) the central banks of issue of the Union currencies of the financial instruments cleared by the CCP, other than those referred to in point (h). Those central banks of issue shall inform the resolution authority of the CCP and justify their participation in the college based on their assessment of the impact that the CCP's resolution could have on their respective currency of issue.
- (i) *[deleted]*
- (j) the competent ministry, where the resolution authority referred to in point (a) is not the competent ministry;
- (k) ESMA;
- (l) the European Banking Authority (EBA).

3. ESMA, EBA and the authorities referred to in points (ca), (cb) and (ha) shall not have voting rights in resolution colleges.

Where the ECB is a member of the college pursuant to points (c) and (h) of paragraph 2 of this article, it shall have two votes in the college.

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

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

- (a) effective and coordinated enforcement of resolution actions, in particular in accordance with Articles 53 and 75;
- (b) identifying and removing possible impediments to effective resolution action that may stem from divergent laws governing collateral, netting and set-off arrangements and different recovery and resolution powers or strategies;
- (c) identifying and coordinating any need for new licensing, recognition or authorisation requirements, considering the need for resolution actions to be carried out in a timely fashion;
- (d) the possible suspension of any clearing obligation for the relevant asset classes affected by the resolution of the CCP pursuant to Article 6a of Regulation (EU) No 648/2012 or to any equivalent provision under the national law of the third country concerned;
- (e) the possible influence of different time-zones on the applicable close of business hours regarding the end of trading.

5. The resolution authority of the CCP as the chair of the resolution college shall be responsible for the following tasks:
- (a) establishing written arrangements and procedures for the functioning of the resolution college, after consulting the other members of the resolution college;
 - (b) coordinating all activities of the resolution college;
 - (c) convening and chairing all meetings of the resolution college;
 - (d) keeping all members of the resolution college fully informed in advance of the organisation of meetings, of the main issues to be discussed in those meetings and of the items to be considered for the purposes of those discussions;
 - (e) deciding whether and which third-country authorities are invited to attend particular meetings of the resolution college in accordance with paragraph 4;
 - (f) coordinating the timely exchange of all relevant information between members of the resolution college;
 - (g) keeping all members of the resolution college informed, in a timely manner, of the decisions and outcomes of those meetings.
- 5a. In order to facilitate the performance of the tasks assigned to the college, members of the college referred to in paragraph 2 shall be entitled to contribute to the setting of the agenda of the college meetings, in particular by adding points to the agenda of the meeting.

6. In order to ensure the consistent and coherent functioning of resolution colleges across the Union, ESMA shall develop draft regulatory technical standards in order to specify the content of the written arrangements and procedures for the functioning of the resolution colleges referred to in paragraph 1.

For the purposes of preparing the regulatory standards referred to in the first subparagraph, ESMA shall take into account the relevant provisions of the Commission Delegated Regulation (EU) No 876/2013²⁴, of Section 1 of Chapter 6 of Commission Delegated Regulation (EU) –/2016 supplementing Directive 2014/59/EU with regard to regulatory technical standards adopted on the basis of Article 88(7) of Directive 2014/59/EU²⁵.

ESMA shall submit those draft regulatory technical standards to the Commission by [*PO: insert date 12 months after the date of entry into force of this Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 6 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

²⁴ Commission Delegated Regulation (EU) No 876/2013 of 28 May 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties (OJ L 244, 13.9.2013, p. 19)

²⁵ Commission Delegated Regulation (EU) ... of 23.3.2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges, C(2016) 1691 final [*Note to Publication Office – Please introduce number of Delegated Regulation*]

Article 5
ESMA Resolution Committee

1. ESMA shall create a resolution committee pursuant to Article 41 of Regulation (EU) No 1095/2010 for the purpose of preparing the decisions entrusted to ESMA in this Regulation, except for the decisions to be adopted pursuant to Article 12 of this Regulation.

The resolution committee shall also promote drawing up and coordination of resolution plans and strategies for the resolution of failing CCPs.

2. The resolution committee shall be composed of the authorities designated pursuant to Article 3(1) of this Regulation.

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

3. For the purposes of this Regulation, ESMA shall cooperate with the European Insurance and Occupational Pensions Authority (EIOPA) and EBA within the framework of the Joint Committee of the European Supervisory Authorities established in Article 54 of Regulation (EU) No 1093/2010, Article 54 of Regulation (EU) No 1094/2010 and Article 54 of Regulation (EU) No 1095/2010.
4. For the purposes of this Regulation, ESMA shall ensure structural separation between the resolution committee and other functions referred to in Regulation (EU) No 1095/2010.

Article 6

Cooperation between authorities

1. Competent authorities and resolution authorities shall cooperate closely for the purposes of this Regulation.
2. Competent authorities and resolution authorities shall cooperate with ESMA for the purposes of this Regulation in accordance with Regulation (EU) No 1095/2010.

Competent authorities and resolution authorities shall, without delay, provide ESMA with all the information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1095/2010.

SECTION II

DECISION-MAKING AND PROCEDURES

Article 7

General principles regarding decision-making

Competent authorities, resolution authorities and ESMA shall take account of all the following principles when making decisions and taking action pursuant to this Regulation:

- (a) that the proportionality of any decision or action in relation to an individual CCP is ensured, taking into account at least the following factors:
 - i) the CCP's legal form;
 - ii) the nature, size and complexity of the CCP's business in particular the size, structure and liquidity in stressed conditions of the underlying markets it serves;

- iii) the CCP's clearing membership structure and, where relevant information is available to the CCP, clients and indirect clients ;
 - iii bis) the substitutability of the CCP in all the markets it serves;
 - iv) the CCP's ownership structure;
 - v) the CCP's interconnectedness with other financial market infrastructures, trading venues, financial institutions and with the financial system in general;
 - vi) the actual or potential consequences of the infringements referred to in Articles 19(1) and 22(2).
- (b) that the imperatives of efficacy of decision-making and of keeping costs as low as possible when taking early intervention measures or resolution action are observed;
 - (ba) that the use of extraordinary public financial support should be avoided and that such support shall only be available and used as a last resort in accordance with the conditions laid out in Article 45;
 - (c) that decisions are made and action is taken in a timely manner and with due urgency when required while at the same time ensuring that market disruption is mitigated to the greatest extent possible;
 - (d) that resolution authorities, competent authorities and other authorities cooperate with each other to ensure that decisions are made and action is taken in a coordinated and efficient manner;
 - (e) that the roles and responsibilities of relevant authorities within each Member State are defined clearly;
 - (f) that due consideration is given to the interests of the Member States where the CCP provides services and where its clearing members, and to the extent the information is available, their clients and indirect clients, including where they are designated by Member States as Other Systemically Important Institutions pursuant to Article 131(3) of Directive 2013/36/EU and any linked FMIs, including interoperable CCPs, are established, and in particular the impact of any decision or action or inaction on

the financial stability or fiscal resources of those Member States and the Union as a whole;

- (fa) that, notwithstanding the considerations under this Article, a resolution authority or resolution college cannot require Member States to provide extraordinary public financial support or impinge on the budgetary sovereignty and fiscal responsibilities of a Member State;
- (g) the need to balance the interests of affected clearing members, and to the extent the information is available, their clients and indirect clients, creditors and other stakeholders of the CCP in the Member States involved by avoiding unfairly prejudicing or unfairly protecting the interests of particular actors and avoiding unfair burden allocation ;
- (h) that any obligation under this Regulation to consult an authority before any decision or action is taken implies at least an obligation to consult on those elements of the proposed decision or action which have or which are likely to have:
 - (i) an effect on the clearing members, clients or linked FMIs including interoperable CCPs;
 - (ii) an impact on the financial stability of the Member State where the clearing members, clients or linked FMIs, including interoperable CCPs and trading venues, are established or located;
- (ha) that where an authority raises an issue concerning the financial stability of its Member State, the resolution authority and the resolution college of the CCP considers it thoroughly and if they do not take the concerns expressed into account, explain the reasons for doing so in writing;
- (i) that resolution plans referred to in Article 13 are complied with, unless taking into account the circumstances of the case, the resolution objectives will be achieved more effectively by deviation from those plans;
- (j) that transparency is ensured towards the competent authority and resolution authority whenever a proposed decision or action could have implications on the financial stability or fiscal resources of any relevant Member State ;

- (k) that they coordinate and cooperate as closely as possible, also with the goal to lower the overall cost of resolution;
- (l) that negative economic and social effects of any decision are mitigated in all the Member States where the CCP provides services, including negative impacts on financial stability.

Article 8

Information exchange

1. Resolution authorities and competent authorities shall, on request, provide each other with all the information relevant for the exercise of their tasks under this Regulation.
2. By way of derogation from paragraph 1, the resolution authorities shall only divulge confidential information provided by a third-country authority where that authority has given its prior written consent. Resolution authorities shall provide the competent ministry with all information relating to decisions or measures that require notification, consultation or consent of that ministry.

TITLE III PREPARATION

CHAPTER I Recovery and resolution planning

SECTION 1 RECOVERY PLANNING

Article 9

Recovery plans

1. CCPs shall draw up and maintain a recovery plan providing for measures to be taken in order to restore their financial soundness and allow them to continue to provide critical functions following a significant deterioration of their financial situation or a risk of breaching their capital and prudential requirements under Regulation (EU) No 648/2012. The recovery plan shall take into consideration scenarios that would severely affect the financial soundness or operational viability of the CCP resulting from the default of one or more of its clearing members and other non-default events, including, but not limited to, losses from the CCP's investment activities and operational problems.

The measures included in the recovery plan shall:

- (a) thoroughly address all the risks identified in the different scenarios, including possible uncovered liquidity shortfalls;
- (b) in the case of default losses ensure the re-establishment of a matched book and the full allocation of uncovered losses to clearing members and to their clients holding individually segregated accounts in accordance with Article 39 of Regulation (EU) No 648/2012 and shareholders, taking into account the interests of all stakeholders;
- (ba) include loss absorbing arrangements that are adequate to cover the losses that might arise from all types of non-default risks;(c) enable the replenishment of the CCP's financial resources.

2. The recovery plan shall include a framework of indicators that identify the circumstances referred to in the second subparagraph of paragraph 1 under which measures in the recovery plan are to be taken . The indicators may be of either a qualitative or a quantitative nature relating to the financial soundness and operational viability of the CCP and should enable recovery actions to be taken early enough to provide sufficient time for the plan to be implemented.

CCPs shall put in place appropriate arrangements for the regular monitoring of the indicators.

3. CCPs shall not be prevented from deciding any of the following, where duly justified and where consistent with the CCP operating rules:
- (a) to take measures provided for in their recovery plan despite the fact that the relevant indicators have not been met;
 - (b) to refrain from taking measures provided for in their recovery plan despite the fact that the relevant indicators have been met.

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

4. Where a CCP intends to activate its recovery plan, it shall inform the competent authority of the nature and magnitude of the problems it has identified, setting out all relevant circumstances and indicating the recovery measures or other measures it intends to take to address the situation as well as envisaged time-frames to restore their financial soundness by use of the above-mentioned measures.

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

Following the notification received under the second subparagraph of paragraph 3, the competent authority shall immediately assess whether the circumstances require the use of early intervention powers in accordance with Article 19.

5. The competent authority shall promptly inform the resolution authority and the supervisory college, and the resolution authority shall promptly inform the resolution

college of any notification received in accordance with the second subparagraph of paragraph 3 and the first subparagraph of paragraph 4 and any subsequent instruction by the competent authority in accordance with the second subparagraph of paragraph 4.

6. CCPs shall review, test and update their recovery plans at least annually and similarly after a change to their legal or organisational structure or business or financial situation which could have a material effect on those plans or otherwise necessitate a change to the plans. Competent authorities may require CCPs to update their recovery plans more frequently.
7. Recovery plans shall be drawn up in accordance with Section A of the Annex and take into account the interdependencies within the group the CCP belongs to where relevant. Competent authorities may require CCPs to include additional information in their recovery plans.
8. The board of the CCP shall assess, taking into account the advice of the risk committee in accordance with Article 28(3) of Regulation (EU) No 648/2012, and approve the recovery plan before submitting it to the competent authority.
- 8a. Where the board of the CCP has decided not to follow the advice of the risk committee, it shall explain its decision in detail to the competent authority in accordance with Article 28 (5) of Regulation (EU) No 648/2012.
9. Recovery plans shall be integrated in the corporate governance and the overall risk management framework of the CCP .

The measures set out in the recovery plans that create financial or contractual obligations on clearing members and, where relevant, clients and indirect clients, linked FMIs or trading venues shall form part of the operating rules of CCPs.

CCPs shall ensure that the measures set out in the recovery plans are enforceable at all times in all jurisdictions where the clearing members, linked FMIs or trading venues are located.

In order to ensure the common, uniform and consistent application of paragraph 2, ESMA shall issue guidelines to specify the minimum list of qualitative and quantitative indicators by [12 months after the date of entry into force of this Regulation].

Article 9a

Use of own resources in recovery

The CCP shall use its own resources, held by the CCP to comply with Article 16 of Regulation (EU) No 648/2012, as a recovery measure before resorting to other recovery measures requiring financial contributions from clearing members. The mandatory use of own resources shall be equal in amount to what the CCP is obliged to keep pursuant to Article 45(4) of Regulation (EU) No 648/2012 and the delegated act adopted on the basis of Article 45(5) of Regulation (EU) No 648/2012. This requirement shall not constitute additional capital requirements in excess of those required by Article 16 of Regulation (EU) No 648/2012.

Article 10

Assessment of recovery plans

1. CCPs shall submit their recovery plans to the competent authority within 24 months after the date of entry into force of this Regulation. The competent authority shall review the recovery plan and assess the extent to which it satisfies the requirements set out in Article 9 within 6 months of the submission of the plan and in coordination with the supervisory college in accordance with the procedure in Article 12.
2. The competent authority shall promptly transmit each plan to the supervisory college and to the resolution authority.
3. When assessing the recovery plan, the competent authority and the supervisory college shall take into consideration the following factors:
 - (a) the CCP's capital structure, its default waterfall, the level of complexity of the organisational structure, the substitutability of its activities and the risk profile of the CCP;
 - (b) the overall impact that the implementation of the recovery plan would have on:
 - i. clearing members, and to the extent the information is available, their clients and indirect clients, including where they have been designated as Other Systemically Important Institutions pursuant to Article 131 (3) of Directive 2013/36/EU;

- ii. any linked FMIs;
 - iii. financial markets, including trading venues, served by the CCP; and
 - iv. the financial system of any Member State and the Union as a whole;
- (c) whether the recovery tools and their sequence specified by the recovery plan create appropriate incentives for the CCP's owners and clearing members as relevant to control the amount of risk that they bring to or incur in the system, monitor the CCP's risk-taking and risk management activities and assist in the CCP's default management process.

ESMA, in cooperation with the ESCB, shall develop draft regulatory technical standards specifying the methodology for assessing the factors referred to in points (a), (b) and (c) of the first subparagraph.

ESMA shall submit those draft regulatory standards to the Commission by [PO please insert date: twelve months from the date of entry into force of this Regulation]

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

- 3a. The supervisory college shall examine each recovery plan and where any member of the college considers that there are material deficiencies in the recovery plan or any material impediment to its implementation it shall make recommendations to the competent authority of the CCP with regard to those matters within two months of the transmission of each recovery plan by the competent authority.
4. The resolution authority shall examine the recovery plan in order to identify any measures which may adversely impact the resolvability of the CCP. Should the resolution authority identify any such measures, the resolution authority shall make recommendations to the competent authority with regard to those matters within two months of the transmission of each recovery plan by the competent authority.
5. Where the competent authority decides not to act on the recommendations of the resolution authority pursuant to paragraph 4, it shall justify that decision in full to the resolution authority.

6. Where the competent authority agrees with the recommendations of the resolution authority, or considers in co-ordination with the supervisory college in accordance with Article 12 that there are material deficiencies in the recovery plan or material impediments to its implementation, it shall notify the CCP and shall give it the opportunity to submit its views.
7. The competent authority, taking into account the CCP's views, may require the CCP to submit, within two months, extendable by one month with the competent authority's approval, a revised plan demonstrating how those deficiencies or impediments are addressed. The revised plan shall be assessed in accordance with paragraphs 2,3, 3a, 4,5,6 and 7 of this Article.
8. Where the competent authority, after consulting the resolution authority and in coordination with the supervisory college in accordance with Article 12, considers that the deficiencies and impediments have not been adequately addressed by the revised plan, or where the CCP has not submitted a revised plan, it shall require the CCP to make specific changes to the plan within a reasonable period, as defined by the competent authority.
9. Where it is not possible to adequately remedy the deficiencies or impediments through specific changes to the plan, the competent authority, after consulting the resolution authority and in coordination with the supervisory college in accordance with the procedure in Article 12, shall require the CCP to identify within a reasonable timeframe any changes to be made to its business in order to address the deficiencies in or impediments to the implementation of the recovery plan.

Where the CCP fails to identify such changes within the timeframe set by the competent authority, or where the competent authority, after consulting the resolution authority and in coordination with the supervisory college in accordance with the procedures in Article 12, considers that the actions proposed would not adequately address the deficiencies or impediments to the implementation of the recovery plan, the competent authority shall require the CCP to take within a reasonable period, as defined by the competent authority, specified actions with regard to one or more of the following objectives, taking into account the seriousness of the deficiencies and impediments and the effect of the measures on the CCP's business and ability to remain in compliance with Regulation (EU) 648/2012:

- (a) to reduce the risk profile of the CCP;
 - (b) to enhance the CCP's ability to be recapitalised in a timely manner to meet its capital and prudential requirements;
 - (c) to review the CCP's strategy and structure;
 - (d) to make changes to the default waterfall, recovery measures and other loss allocation arrangements so as to improve resolvability and the resilience of critical functions;
 - (e) to make changes to the governance structure of the CCP.
10. The request referred to in the second subparagraph of paragraph 9 shall be reasoned and be notified in writing to the CCP.

Article 11
[deleted]

Article 12
Coordination procedure for recovery plans

1. The supervisory college shall reach a joint decision on all of the following issues:
 - (a) the review and assessment of the recovery plan;
 - (b) the application of the measures referred to in Article 10 (6), (7), (8) and (9);
2. The supervisory college shall reach a joint decision on the issues referred to in points (a) and (b) of paragraph 1 within four months of the date of the transmission of the recovery plan by the competent authority.

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

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

The competent authority of the CCP shall make the decision referred to in the first subparagraph taking into account the views of the other college members expressed during the four-month period. The competent authority of the CCP shall notify in writing that decision to the CCP and to the other members of the college.
4. Where, by the end of that four-month period a joint decision has not been reached, any voting member of the college, based on a majority of the voting members has referred to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010 a matter in relation to the assessment of recovery plans and implementation of the measures pursuant to points (a), (b) and (d) of Article 10(9) of this Regulation, the competent authority of the CCP shall await the decision taken by ESMA in accordance with Article 19(3) of Regulation (EU) No 1095/2010 and decide in accordance with the decision of ESMA.
5. The four-month period shall be deemed to be the conciliation phase within the meaning of Regulation (EU) No 1095/2010. ESMA shall take its decision within one month from the

referral of the matter to it. The matter shall not be referred to ESMA after the end of the four month time period or after a joint decision has been reached. In the absence of an ESMA decision within one month, the decision of the competent authority of the CCP shall apply.

SECTION 2

RESOLUTION PLANNING

Article 13

Resolution plans

1. The resolution authority of the CCP shall, after consultation with the competent authority and in coordination with the resolution college, in accordance with the procedure set out in Article 15, draw up a resolution plan for the CCP.
2. The resolution plan shall provide for the resolution actions that the resolution authority may take where the CCP meets the conditions for resolution referred to in Article 22.
3. The resolution plan shall take into consideration at least the following:
 - (a) the CCP's failure due to one of the following or any combination thereof:
 - i. the default of one or more of its members;
 - ii. other reasons including losses from its investment activities or operational problems;
 - iii. broader financial instability or system wide events;
 - (b) the impact that the implementation of the resolution plan would have on:
 - i. clearing members, and to the extent the information is available, their clients and indirect clients, including where they have been designated as Other Systemically Important Institutions pursuant to Article 131 (3) of Directive 2013/36/EU and those likely to be subject to recovery measures or resolution actions in accordance with Directive 2014/59/EU;
 - ii. any linked FMIs;
 - iii. financial markets, including trading venues, served by the CCP; and

- iv. the financial system in any Member State or the Union as a whole;
 - (c) the manner and the circumstances under which a CCP may apply for the use of central bank facilities provided under standard collateralisation, tenor and interest rate terms and the identification of the assets that would be expected to qualify as collateral.
4. The resolution plan shall not assume any of the following:
- (a) extraordinary public financial support;
 - (b) central bank emergency liquidity assistance;
 - (c) central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.
5. The resolution authority of a CCP shall, after consultation with the competent authority and in coordination with the resolution college in accordance with the procedure in Article 15, review resolution plans and where appropriate update them, at least annually and in any case after changes to the legal or organisational structure of the CCP, its business or financial situation or any other change that materially affects the effectiveness of the plan. The CCP and the competent authority shall promptly inform the resolution authority of any such change.
6. The resolution plan shall specify the circumstances and different scenarios for using the resolution tools and exercising the resolution powers. It shall clearly distinguish between failure caused by default events, non-default events, and a combination of both, as well as between different types -of non-default events . The resolution plan shall include the following, quantified whenever appropriate and possible:
- (a) a summary of the key elements of the plan on the basis of the distinction referred to in the first subparagraph;
 - (b) a summary of the material changes to the CCP that have occurred since the resolution plan was last updated;

- (c) an assessment of how and whether the CCP's critical functions could be legally and economically separated, to the extent necessary, from its other functions so as to ensure their continuity in the resolution of the CCP;
- (d) an estimation of the timeframe for implementing each material aspect of the plan;
- (e) a detailed description of the assessment of resolvability carried out in accordance with Article 16;
- (f) a description of any measures required pursuant to Article 17 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 16;
- (g) a description of the processes for determining the value and marketability of the critical functions and assets of the CCP;
- (h) a detailed description of the arrangements for ensuring that the information required pursuant to Article 14 is up to date and available to the resolution authorities at all times;
- (i) an explanation as to how resolution actions will be financed without the assumption of the elements referred to in paragraph 4;
- (j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and their related timeframes;
- (k) a description of critical interdependencies between the CCP, critical service providers and other market participants and interoperability arrangements and links with other FMIs;
- (ka) a description of critical intra-group interdependencies;
- (l) a description of the different options to ensure:
 - i. access to payments and clearing services and other infrastructures;
 - ii. timely settlement of obligations due to clearing members and, where applicable, their clients and any linked FMIs;

- iii. access of clearing members, and, where applicable, their clients on a transparent and non-discriminatory basis to securities or cash accounts provided by the CCP and securities or cash collateral posted to and held by the CCP that is owed to such participants;
 - iv. continuity in the operations of links between the CCP and other FMIs;
 - v. the portability of the positions and related assets of direct and indirect clients is not affected ;
 - vi. preservation of the licenses, authorisations, recognitions and legal designations of a CCP where necessary for the continued performance of the CCP's critical functions including its recognition for the purposes of the application of the relevant settlement finality rules and the participation in or links with other FMIs;
- (m) an analysis of the impact of the plan on the employees of the CCP, including an assessment of any associated costs, and a description of envisaged procedures to consult with staff during the resolution process, taking into account any national rules and systems for dialogue with social partners;
- (n) a plan for communicating with the media and the public;
- (o) a description of essential operations and systems for maintaining the continuous functioning of the CCP's operational processes;
- (p) a description of the measures to facilitate the portability of positions and related assets of the clearing members and clients of the defaulting CCP from the defaulting CCP to another CCP or a bridge CCP while not affecting the contractual relationships between the clearing members and their clients.

The information referred to in point (a) of paragraph 6 shall be disclosed to the CCP concerned. The CCP may express its opinion in writing on the resolution plan to the resolution authority. That opinion shall be included in the plan.

7. (deleted)

8. ESMA, after consulting with the ESRB and taking into account the relevant provisions of Commission Delegated Regulation (EU) 2016/1075 supplementing Directive 2014/59/EU with regard to regulatory technical standards adopted on the basis of Article 10(9) of Directive 2014/59/EU, shall develop draft regulatory technical standards further specifying the contents of the resolution plan in accordance with paragraph 6.

ESMA shall submit those draft regulatory technical standards to the Commission by [*PO: please, insert date: twelve months from the date of entry into force of this Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 14

CCPs' duty to cooperate and provide information

CCPs shall cooperate as necessary in drawing up of resolution plans and provide their resolution authority, either directly or through their competent authority, with all the information necessary to draw up and implement those plans, including the information and analysis specified in Section B of the Annex.

Competent authorities shall provide resolution authorities with any information referred to in the first subparagraph which is already available to them.

Resolution authorities may require CCPs to provide them with detailed records of the contracts referred to in Article 29 of Regulation (EU) No 648/2012 to which it is a party. Resolution authorities may specify a time limit to provide those records and may specify different time limits for different types of contracts.

Article 15

Coordination procedure for resolution plans

1. The resolution college shall reach a joint decision regarding the resolution plan and any changes thereto within a period of four months of the date of the transmission of that plan by the resolution authority as referred to in paragraph 2.

2. The resolution authority shall transmit to the resolution college a draft resolution plan, the information provided in accordance with Article 14 and any additional information relevant to the resolution college.

The resolution authority shall ensure that ESMA is provided with all the information that is relevant to its role in accordance with this Article.

3. The resolution authority may decide to involve third country authorities in the review of the resolution plan in accordance with Article 4(4), provided that they meet the confidentiality requirements laid down in Article 71 and are from jurisdictions in which any of the following entities are established:
 - (a) the CCP's parent undertaking, where applicable;
 - (b) clearing members of the CCP where their contribution to the default fund of the CCP is, on an aggregate basis over a one-year period, higher than those of the third Member State with the largest contributions as referred to in Article 18(2)(c) of Regulation (EU) No 648/2012;
 - (c) the CCP's subsidiaries, where applicable;
 - (d) other providers of critical services to the CCP;
 - (e) interoperable CCPs.
4. ESMA may, at the request of a resolution authority, assist the resolution college in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1095/2010.
5. Where, after four months from the date of transmission of the resolution plan, the resolution college has failed to reach a joint decision, the resolution authority shall make its own decision on the resolution plan. The resolution authority shall make its decision taking into account the views of the other college members expressed during the four-month period. The resolution authority shall notify in writing the decision to the CCP and to the other members of the college.
6. Where, by the end of that four-month period, a joint decision has not been reached, any voting member of the college, based on a majority of the voting members has referred to

ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010 a matter in relation to the resolution plan, the resolution authority of the CCP shall await any decision that ESMA may take in accordance with Article 19(3) of that Regulation and take its decision in accordance with the decision of ESMA.

The four-month time period shall be deemed to be the conciliation phase within the meaning of Regulation (EU) No 1095/2010. ESMA shall take its decision within one month from the referral of the matter to it. The matter shall not be referred to ESMA after the end of the four month time period or after a joint decision has been reached. In the absence of an ESMA decision within one month, the decision of the resolution authority shall apply.

7. Where a joint decision is taken pursuant to paragraph 1 and any resolution authority or competent ministry considers under paragraph 6 that the subject matter of the disagreement impinges on the fiscal responsibilities of its Member State, the resolution authority of the CCP shall initiate a reassessment of the resolution plan.

CHAPTER II

Resolvability

Article 16

Assessment of resolvability

1. The resolution authority, in coordination with the resolution college in accordance with Article 17, and after consultation with the competent authority, shall assess the extent to which a CCP is resolvable without assuming any of the following:
 - (a) extraordinary public financial support;
 - (b) central bank emergency liquidity assistance;
 - (c) central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.
2. A CCP shall be deemed resolvable where the resolution authority considers it feasible and credible to either liquidate it under normal insolvency proceedings or to resolve it using the resolution tools and exercising the resolution powers while ensuring the continuity of the CCP's critical functions and avoiding any use of extraordinary public financial support and

to the maximum extent possible any significant adverse effect on the financial system as well as the potential for undue disadvantage to affected stakeholders.

The adverse effects referred to in the first subparagraph shall include broader financial instability or system wide events in any Member State.

The resolution authority shall notify ESMA in a timely manner where it considers a CCP not to be resolvable.

3. Upon request by the resolution authority, a CCP shall demonstrate that:
 - (a) there are no impediments to the reduction of the value of instruments of ownership following the exercise of resolution powers, regardless of whether outstanding contractual arrangements or other measures in the CCP's recovery plan have been fully exhausted;
 - (b) the contracts of the CCP with clearing members or third parties do not enable those clearing members or third parties to successfully challenge the exercise of resolution powers by a resolution authority or otherwise avoid being subject to those powers.
4. For the purposes of the assessment of resolvability referred to in paragraph 1, the resolution authority shall, as relevant, examine the matters specified in Section C of the Annex.
5. The resolution authority in coordination with the resolution college shall make the resolvability assessment at the same time as drawing up and updating the resolution plan in accordance with Article 13.

Article 17

Addressing or removing impediments to resolvability

1. Where, following the assessment in Article 16, the resolution authority, in coordination with the resolution college in accordance with the procedure referred to in Article 18, conclude that there are material impediments to the resolvability of a CCP, the resolution authority, in cooperation with the competent authority, shall prepare and submit a report to the CCP and to the resolution college.

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

2. The requirement for resolution colleges to reach a joint decision on resolution plans laid down in Article 15 shall be suspended following the submission of the report referred to in paragraph 1 until the measures to remove the material impediments to resolvability have been accepted by the resolution authority pursuant to paragraph 3 of this Article or alternative measures have been decided pursuant to paragraph 4 of this Article.
3. Within four months of the date of receipt of the report submitted in accordance with paragraph 1, the CCP shall propose to the resolution authority possible measures to address or remove the material impediments identified in the report. The resolution authority shall communicate to the resolution college any measure proposed by the CCP. The resolution authority and resolution college shall assess, in accordance with point (b) of Article 18(1), whether those measures effectively address or remove those impediments.
4. Where the resolution authority in coordination with the resolution college concludes that the measures proposed by a CCP in accordance with paragraph 3 would not effectively reduce or remove the impediments identified in the report, the resolution authority shall identify alternative measures which it shall communicate to the resolution college for joint decision in accordance with point (c) of Article 18(1).

The alternative measures referred to in the first subparagraph shall take into account the following:

- (a) the threat to financial stability of those material impediments to the resolvability of a CCP;
- (b) the likely effect of the alternative measures on:
 - i. the particular CCP, including its business model and operational efficiency;
 - ii. its clearing members, and to the extent the information is available, their clients and indirect clients, including where they

have been designated as Other Systemically Important Institutions pursuant to Article 131 (3) of Directive 2013/36/EU;

- iii. any linked FMIs;
- iv. financial markets, including trading venues, served by the CCP; and
- v. the financial system in any Member State or the Union as a whole.

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

5. The resolution authority shall, in accordance with Article 18, notify the CCP in writing, either directly or indirectly through the competent authority, of the alternative measures to take in order to achieve the objective of removing impediments to resolvability. The resolution authority shall justify why the measures proposed by the CCP would not be able to remove the material impediments to resolvability and how the alternative measures would be effective in doing so.
6. The CCP shall propose within one month a plan to comply with the alternative measures, with a reasonable timeframe for the implementation of the plan.
7. For the purposes of paragraph 4, the resolution authority, allowing for a reasonable timeframe for implementation, may:
 - (a) require the CCP to revise or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;
 - (b) require the CCP to limit its maximum individual and aggregate uncovered exposures;
 - (c) require the CCP to make changes to how it collects and holds margin pursuant to Article 41 of Regulation (EU) No 648/2012;
 - (d) require the CCP to make changes to the composition and number of its default funds referred to in Article 42 of Regulation (EU) No 648/2012;

- (e) impose on the CCP specific or regular additional information requirements;
- (f) require the CCP to divest specific assets;
- (g) require the CCP to limit or cease specific existing or proposed activities;
- (h) require the CCP to make changes to its recovery plan, its operating rules, including as regards its terms of participation, and other contractual arrangements;
- (i) restrict or prevent the development of new or existing business lines or provision of new or existing services;
- (j) require changes to legal or operational structures of the CCP or any group entity directly or indirectly under its control to ensure that critical functions may be legally and operationally separated from other functions through the application of resolutions tools;
- (ja) require the CCP to operationally and financially segregate its different clearing services so as to isolate some specific asset classes from other asset classes and where deemed appropriate, to restrict netting sets covering different asset classes.
- (k) require the CCP to set up a parent undertaking in the Union ;
- (l) require the CCP to issue liabilities that can be written down and converted or to set aside other financial resources to increase the capacity for loss absorption, recapitalisation and the replenishment of pre-funded resources;
- (m) require the CCP to take other steps to enable capital, other liabilities and contracts to be able to absorb losses, to recapitalise the CCP or to replenish pre-funded resources, including in particular to attempt to renegotiate any liability it has issued or to revise contractual terms, with a view to ensuring that any decision of the resolution authority to write down, convert or restructure that liability, instrument or contract would be effected under the law of the jurisdiction governing that liability or instrument;
- (n) where the CCP is a subsidiary, coordinate with relevant authorities with a view to requiring the parent undertaking to set up a separate holding company to control the CCP, where that measure is necessary in order to facilitate the resolution of the CCP

and to avoid the adverse effects that the use of the resolution tools and the exercise of the resolution powers could have on other entities of the group;

- (p) restrict or prohibit interoperable links of the CCP where such a restriction or prohibition is necessary to avoid adverse effects on resolution.

Article 18

Coordination procedure to address or remove impediments to resolvability

1. The resolution college shall reach a joint decision regarding:
 - (a) the identification of the material impediments to resolvability pursuant to Article 16(1);
 - (b) the assessment of the measures proposed by the CCP pursuant to Article 17(3), as necessary;
 - (c) the alternative measures required pursuant to Article 17(4).
2. The joint decision on the identification of material impediments to resolvability referred to in point (a) of paragraph 1 shall be adopted within four months of the submission of the report referred to in Article 17(1) to the resolution college.

The joint decision referred to in point (b) of paragraph 1 shall be adopted within four months of submission of the CCP's proposed measures to remove impediments to resolvability as referred to in Article 17(3).

The joint decision referred to in point (c) of paragraph 1 shall be adopted within four months of the communication of the alternative measures to the resolution college as referred to in Article 17(4).

The joint decisions referred to in paragraph 1 shall be reasoned and notified in writing by the resolution authority to the CCP.

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

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

The resolution authority shall notify the decision to the CCP and to the other members of the college in writing.

4. Where, by the end of that four-month period, a joint decision has not been reached, any voting member of the college, based on a majority of the voting members has referred to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010 a matter referred to in points (k) or (n) of Article 17(7), the resolution authority of the CCP shall defer its decision and await any decision that ESMA may take in accordance with Article 19(3) of that Regulation. In that case, the resolution authority shall take its decision in accordance with the decision of ESMA.

The four-month time period shall be deemed to be the conciliation phase within the meaning of Regulation (EU) No 1095/2010. ESMA shall take its decision within one month from the referral of the matter to it. The matter shall not be referred to ESMA after the end of the four month time period or after a joint decision has been reached. In the absence of an ESMA decision within one month, the decision of the resolution authority shall apply.

TITLE IV

EARLY INTERVENTION

Article 19

Early intervention measures

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

- (a) require the CCP to update the recovery plan in accordance with Article 9(6), where the circumstances that required early intervention are different from the assumptions set out in the initial recovery plan;
- (b) require the CCP to implement one or more of the arrangements or measures set out in the recovery plan within a specific timeframe. Where the plan is updated pursuant to point (a), those arrangements or measures shall include any updated arrangements or measures;
- (c) require the CCP to identify the causes of the infringement or likely infringement as mentioned in paragraph 1 and draw up an action programme, including suitable measures and timeframes;
- (d) require the CCP to convene a meeting of its shareholders or, if the CCP fails to comply with that requirement, convene the meeting itself. In both cases the competent authority shall set the agenda, including the decisions to be considered for adoption by the shareholders;
- (e) require one or more members of the board or senior management to be removed or replaced where any of those persons is found unfit to perform their duties pursuant to Article 27 of Regulation (EU) No 648/2012;
- (f) require changes to the business strategy of the CCP;
- (g) require changes to the legal or operational structures of the CCP;
- (h) provide the resolution authority with all the information necessary to update the CCP's resolution plan in order to prepare for the possible resolution of the CCP and the valuation of its assets and liabilities in accordance with Article 24, including any information required through on-site inspections;
- (i) require, where necessary and in accordance with paragraph 4, the implementation of the CCP's recovery measures;
- (j) require the CCP to abstain from the implementation of certain recovery measures where the competent authority has determined that the implementation of those measures may have an adverse effect on financial stability in the Union or in one or more of the Member States ;

(k) require the CCP to replenish its financial resources in a timely manner in order to comply or maintain compliance with its capital and prudential requirements.

2. For each of those measures, the competent authority shall set an appropriate deadline and evaluate the effectiveness of those measures once they have been taken.
3. The competent authority may only apply the measures in points (a) to (k) of paragraph 1 after taking account of the impact of those measures in other Member States where the CCP operates or provides services and after informing the relevant competent authorities, in particular where the CCP's operations are critical or important for local financial markets, including the places in which clearing members linked trading venues and FMIs are established.
4. The competent authority may only apply the measure in point (i) of paragraph 1 where that measure is in the public interest and is necessary to achieve any of the following objectives:
 - (a) maintain the financial stability in the Union or in one or more of the Member States;
 - (b) maintain the continuity of the critical functions of the CCP and access to these services on a transparent and non-discriminatory basis;
 - (c) maintain or restore the financial resilience of the CCP.

The competent authority shall not apply the measure in point (i) of paragraph 1 in relation to measures involving the transfer of property, rights or liabilities of another CCP.

5. *[deleted]*

6. Where the conditions referred to in paragraph 1 are met, the competent authority shall notify ESMA and the resolution authority and consult the supervisory college on the envisaged measures provided for in paragraph 1.

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

7. The resolution authority, following the notification of the first subparagraph of paragraph 6, may require the CCP to contact potential purchasers in order to prepare for its resolution, subject to the conditions laid down in Article 41 and the confidentiality provisions laid down in Article 71. Actions taken in this context shall not be deemed to be market soundings for the purposes of Article 11 of Regulation (EU) No 596/2014²⁶.⁸.

ESMA shall by *[PO please insert the date 12 months after the date of entry into force of this Regulation]* issue guidelines in accordance with Article 16 of Regulation (EU) No. 1095/2010 to promote the consistent application of the trigger for the use of the measures referred to in paragraph 1 of this Article.

Article 20

Removal of senior management and board

1. Where there is a significant deterioration in the financial situation of a CCP, or the CCP infringes its legal requirements, including its operating rules, and other measures taken in accordance with Article 19 are not sufficient to reverse that situation, competent authorities may require total or partial removal of the senior management or board of the CCP.

Where the competent authority requires complete or partial removal of the senior management or board of the CCP, it shall notify ESMA, the resolution authority and the supervisory college.

2. The appointment of the new senior management or board shall be done in accordance with Article 27 of Regulation (EU) No 648/2012 and be subject to the approval or consent of the competent authority. Where appropriate, the competent authority may appoint one or more temporary administrators to the CCP.

²⁶ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC

TITLE V RESOLUTION

CHAPTER I Objectives, conditions and general principles

Article 21

Resolution objectives

1. When using the resolution tools and exercising the resolution powers, the resolution authority shall have regard to all the following resolution objectives, which are of equal significance and shall balance them as appropriate to the nature and circumstances of each case:
 - (a) to ensure the continuity of the CCP's critical functions, in particular:
 - (i) the timely settlement of the CCP's obligations to its clearing members;
 - (ii) continuous access to securities or cash accounts provided by the CCP and collateral in the form of financial assets held by the CCP;
 - (b) to ensure the continuity of the links with other FMIs which, if disrupted, would have a material negative impact on financial stability in the Union or in one or more of its Member States as well as the timely completion of payment, clearing, settlement and recording functions;
 - (c) to avoid a significant adverse effect on the financial system in the Union or in one or more of its Member State, in particular by mitigating contagion of financial distress between financial institutions and by maintaining market discipline;

- (d) to protect public funds by minimising reliance on extraordinary public financial support and the potential risk of losses for taxpayers;

When pursuing the above objectives, the resolution authority shall seek to minimise the cost of resolution on all affected stakeholders and avoid destruction of the CCP's value.

2.

Article 22

Conditions for resolution

1. The resolution authority shall take a resolution action in relation to a CCP provided that all of the following conditions are met:

- (a) the CCP is failing or is likely to fail as determined by any of the following:
 - i) the competent authority, after consulting the resolution authority;
 - ii) the resolution authority after consulting the competent authority, where the resolution authority has the necessary tools for reaching that conclusion;
- (b) there is no reasonable prospect that any alternative private sector measures, including the CCP's recovery plan or other contractual arrangements, or supervisory action, including early intervention measures taken, would prevent the failure of the CCP within a reasonable timeframe, having regard to all relevant circumstances;
- (c) a resolution action is necessary in the public interest, pursuant to paragraph 2a.

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.

2. For the purposes of point (a) of paragraph 1, a CCP shall be deemed to be failing or likely to fail where one or more of the following circumstances apply:

- (a) the CCP infringes, or is likely to infringe, its authorisation requirements in a way that would justify the withdrawal of its authorisation pursuant to Article 20 of Regulation (EU) No 648/2012;
- (b) the CCP is unable, or is likely to be unable, to provide a critical function;
- (c) the CCP is unable, or is likely to be unable, to restore its viability through the implementation of its recovery measures;
- (d) the CCP is unable, or is likely to be unable, to pay its debts or other liabilities as they fall due;
- (e) the CCP requires extraordinary public financial support.

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 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.

2a. For the purposes of point (c) of paragraph 1, a resolution action shall be treated as in the public interest if it is necessary for the achievement of the resolution objectives and it is proportionate to one or more resolution objectives referred to in Article 21 and winding up the CCP under normal insolvency procedures would not meet those resolution objectives to the same extent.

3. The resolution authority may also take a resolution action where it considers that the CCP has applied or intends to apply recovery measures which could prevent the CCP's failure but cause significant adverse effects to the financial system of the Union or of one of more of its Member States.
4. 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]*.

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

Article 23

General principles regarding resolution

1. The resolution authority shall take all appropriate measures to use the resolution tools referred to in Article 27 and exercise the resolution powers referred to in Article 48 in accordance with the following principles:
 - (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 in order to achieve the resolution objectives in a timely manner any of the following or both are more appropriate :
 - (i) to refrain from enforcing certain contractual obligations under the CCP's recovery plan or otherwise deviate from it;
 - (ii) to use resolution tools or exercise the resolution powers.
 - (b) the shareholders of the CCP under resolution bear first losses following the enforcement of all obligations and arrangements referred to in point (a) in accordance with that point;

- (c) creditors of the CCP under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings, save as expressly provided otherwise in this Regulation;
 - (d) the CCP's creditors of the same class are treated in an equitable manner;
 - (e) the CCP's shareholders, creditors, clearing members and to the extent the information is available, their clients should not incur greater losses than they would have incurred in the circumstances referred to in Article 60;
 - (f) the board and senior management of the CCP under resolution are replaced, except where the resolution authority considers that the retention of the board and senior management, in whole or in part, is necessary for the achievement of the resolution objectives;
 - (g) resolution authorities inform and consult employee representatives in accordance with their national laws, collective agreements or practice;
 - (ga) resolution tools and powers are exercised without prejudice to provisions on the representation of employees in management bodies as provided for in national laws, collective agreements or practice;
 - (h) where a CCP is part of a group, resolution authorities take account of the impact on other group entities in particular where such group comprises other FMIs and on the group as a whole.
- 1a. Resolution authorities may take a resolution action in deviation from points (d) and (e) of paragraph 1 where it is justified in the public interest to achieve the resolution objectives and is proportionate to the risk addressed. However, where that deviation results in a clearing member and to the extent the information is available a client, a creditor or a shareholder incurring greater loss than it would have incurred in the circumstances referred to in Article 60, the entitlement to payment of the difference under Article 62 shall apply.
2. The board and senior management of a CCP under resolution shall provide the resolution authority with all necessary assistance for the achievement of the resolution objectives.

CHAPTER II

Valuation

Article 24

Objectives of valuation

1. Resolution authorities shall ensure that any resolution action is taken on the basis of a valuation ensuring a fair, prudent and realistic assessment of the assets, liabilities, rights and obligations of the CCP.
2. Before the resolution authority places a CCP under resolution, it shall ensure that a first valuation is carried out to determine whether the conditions for resolution under Article 22(1) are met.
3. After the resolution authority has decided to place a CCP under resolution, it shall ensure that a second valuation is carried out to:
 - (a) inform the decision on the appropriate resolution action to be taken;
 - (b) ensure that any losses on the assets and rights of the CCP are fully recognised at the moment the resolution tools are used;
 - (c) inform the decision on the extent of the cancellation or dilution of instruments of ownership and the decision on the value and number of instruments of ownership issued or transferred as a result of the exercise of resolution powers;
 - (d) inform the decision on the extent of the write down or conversion of any unsecured liabilities, including debt instruments;
 - (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 ;
 - (f) where the bridge CCP tool is used, inform the decision on the assets, liabilities, rights and obligations or instruments of ownership that may be transferred to the bridge CCP and the decision on the value of any consideration that may be paid to the CCP under resolution or, where relevant, to the holders of the instruments of ownership;

- (g) where the sale of business tool is used, inform the decision on the assets, liabilities, rights and obligations or instruments of ownership that may be transferred to the third party purchaser and to inform the resolution authority's understanding of what constitutes commercial terms for the purposes of Article 40.

For the purposes of point (d), the valuation shall take into account any losses that would be absorbed by the enforcement of any outstanding obligations of the clearing members or other third parties owed to the CCP and the level of conversion to be applied to debt instruments.

- 4. The valuations referred to in paragraphs 2 and 3 may be subject to an appeal in accordance with Article 72 only together with the decision to use a resolution tool or to exercise a resolution power.

Article 25

Requirements for valuation

- 1. The resolution authority shall ensure that the valuations referred to in Article 24 are carried out:
 - (a) by a person independent from any public authority and from the CCP;
 - (b) by the resolution authority, where those valuations cannot be carried out by a person as referred to in point (a).
- 2. The valuations referred to in Article 24 shall be considered definitive where they are carried out by the person referred to in point (a) of paragraph 1 and all the requirements laid down in this Article are fulfilled.

3. Without prejudice to the Union State aid framework, where applicable, a definitive valuation shall be based on prudent assumptions and shall not assume any potential provision of extraordinary public financial support, any central bank emergency liquidity assistance or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to the CCP from the point in time at which resolution action is taken. The valuation shall also take account of the potential recovery of any reasonable expenses incurred by the CCP under resolution in accordance with Article 27(9).
4. A definitive valuation shall be supplemented by the following information held by the CCP:
 - (a) an updated balance sheet and a report on the financial position of the CCP, including the remaining available prefunded resources and outstanding financial commitments;
 - (b) the records of cleared contracts as referred to in Article 29 of Regulation (EU) No 648/2012;
 - (c) any information on the market and accounting values of its assets, liabilities and positions, including relevant claims and outstanding obligations owed or due to the CCP.
5. A definitive valuation shall indicate the subdivision of the creditors in classes in accordance with their priority levels under the applicable insolvency law. It shall also include an estimate of the treatment that each class of shareholders and creditors would have been expected to receive in application of the principle specified in point (e) of Article 23.

The estimate referred to in the first subparagraph shall not prejudice the valuation referred to in Article 61.
6. ESMA, taking into account any regulatory technical standards drafted in accordance with Article 36(14) and (15) of Directive 2014/59/EU, shall develop draft regulatory technical standards to specify:
 - (a) the circumstances in which a person is deemed to be independent from both the resolution authority and from the CCP for the purposes of paragraph 1 of this Article;

- (b) the methodology for assessing the value of the assets and liabilities of the CCP;
- (c) the separation of the valuations under Articles 24 and 61.

ESMA shall submit those draft regulatory technical standards to the Commission by [*PO: insert date: within 12 months of the entry into force of this Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 26

Provisional valuation

1. The valuations referred to in Article 24 that do not meet the requirements laid down in Article 25(2) shall be considered to be provisional valuations.

Provisional valuations shall include a buffer for additional losses and an appropriate justification for that buffer.

2. Where resolution authorities take resolution action on the basis of a provisional valuation, they shall ensure that a definitive valuation is carried out as soon as practicable.

The resolution authority shall ensure that the definitive valuation referred to in the first subparagraph:

- (a) allows for full recognition of any losses of the CCP in its books;
- (b) informs a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 3.

3. Where the definitive valuation's estimate of the net asset value of the CCP is higher than the provisional valuation's estimate of the net asset value of the CCP, the resolution authority may:

- (a) increase the value of the claims of affected creditors which have been written down or restructured;

(b) require a bridge CCP to make a further payment of consideration in respect of the assets, liabilities, rights and obligations to the CCP under resolution or, as the case may be, in respect of the instruments of ownership to the owners of those instruments.

4. ESMA, taking into account any regulatory technical standards drafted in accordance with Article 36(15) of Directive 2014/59/EU, shall develop draft regulatory technical standards to specify, for the purposes of paragraph 1 of this Article, the methodology for calculating the buffer for additional losses to be included in provisional valuations.

ESMA shall submit those draft regulatory technical standards to the Commission by [*PO: insert date: within 12 months of the entry into force of this Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER III

Resolution tools

SECTION 1

GENERAL PRINCIPLES

Article 27

General provisions on resolution tools

1. Resolution authorities shall take resolution actions referred to in Article 21 by using any of the following resolution tools individually or in any combination:
 - (a) the position and loss allocation tools;
 - (b) the write-down and conversion tool;

- (c) the sale of business tool;
 - (d) the bridge CCP tool;
2. In the event of a systemic crisis, a Member State may as a last resort 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 where credible arrangements for the timely and comprehensive recovery of the funds are provided for in accordance with paragraph 9.
3. Prior to the use of the tools referred to in paragraph 1, the resolution authority shall enforce:
- (a) any existing and outstanding rights of the CCP, including any contractual obligations by clearing members to meet cash calls, to provide additional resources to the CCP, or to take on positions of defaulting clearing members, whether through an auction or other agreed means in the CCP's operating rules;
 - (b) any existing and outstanding contractual obligation committing parties other than clearing members to any forms of financial support.

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.

4. By way of derogation from paragraph 3, the resolution authority may refrain from enforcing the relevant existing and outstanding obligations either partially or in full to avoid significant adverse effects on the financial system or widespread contagion, or where the use of the tools referred to in paragraph 1 is more appropriate in order to achieve the resolution objectives in a timely manner.
- 4a. In case the resolution authority refrains partially or fully from enforcing existing and outstanding obligations according to the second subparagraph of paragraph 3 or paragraph 4, the resolution authority may enforce the remaining obligations within 18 months after the CCP is considered to be failing or likely to fail in accordance with Article 22, under the condition that the reasons for refraining from enforcing these rights do no longer exist. The resolution authority shall notify the clearing member and other party three to six months before enforcing that obligation. The proceeds from the enforced remaining obligations shall be used to recover the use of public funds.

The resolution authority shall, after consultation with the competent authorities and resolution authorities of the affected clearing members and any other parties committed by existing and outstanding obligations, determine whether the reasons for refraining from enforcing the existing and outstanding obligations have ceased to exist and whether to enforce remaining obligations. Where the resolution authority deviates from the views expressed by the authorities consulted, it shall provide duly justified reasons for doing so in writing.

The requirement to meet the remaining obligations in the circumstances referred to in this paragraph shall be included in the CCP's rules and other contractual arrangements.

5. The resolution authority may require the CCP to compensate non-defaulting clearing members for their losses stemming from the application of loss allocation tools, where the losses are in excess of those that the non-defaulting clearing member would have borne under their obligations under the CCP's operating rules.

The compensation referred to in the first subparagraph may take the form of instruments of ownership, debt instruments or instruments recognising a claim on the CCP's future profits.

The amount of instruments issued to each affected non-defaulting clearing member shall be proportionate to its excess loss. It shall take account of any outstanding contractual obligations of the clearing members toward the CCP and be deducted from any entitlement to the payment of the difference referred to in Article 62..

The amount of instruments shall be based on the valuation conducted in accordance with Article 24(3).

6. Where one of the government stabilisation tools is used, the resolution authority shall exercise the power to write down and convert any instruments of ownership and debt instruments or other unsecured liabilities before or together with the use of the government stabilisation tool.

Where the use of a resolution tool other than the write-down and conversion tool results in financial losses being borne by clearing members, the resolution authority shall exercise the power to write down and convert any instruments of ownership and debt instruments or other unsecured liabilities in a sequence that minimises deviations from Article 60.

7. Where only the resolution tools referred to in point (c) and (d) of paragraph 1 are used, and only part of the assets, rights, obligations or liabilities of the CCP under resolution are transferred in accordance with Articles 40 and 42, the residual part of that CCP shall be wound up in accordance with normal insolvency proceedings.

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.
9. Member States shall recover over an appropriate period of time any public funds used as government financial stabilisation tool referred to in Section 7 of this Chapter and resolution authorities shall recover any reasonable expenses incurred by them in connection with the use of the resolution tools or powers in, including but not limited to any of the following ways:
- (a) from the CCP under resolution, as a preferred creditor, including any of its claims against defaulting clearing members or other creditors;
 - (b) from any consideration paid by the purchaser to the CCP where the sale of business tool has been used as a preferred creditor prior to the application of Article 40(3a);
 - (c) from any proceeds generated as a result of the termination of the bridge CCP, as a preferred creditor prior to the application of Article 42(4a);
 - (d) from any proceeds generated by the use of the public equity support tool referred to in Article 46 and the temporary public ownership tool referred to in Article 47, including the proceeds generated from their sale.
10. When using the resolution tools, resolution authorities shall ensure, on the basis of a valuation that complies with Article 25, the restoration of a matched book, 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.

Resolution authorities shall ensure the replenishment of the prefunded resources and the recapitalisation of the CCP or the bridge CCP to an extent sufficient to restore the ability of the CCP or the bridge CCP to comply with the conditions for authorisation and to continue to carry out the critical functions of the CCP or the bridge CCP considering the operating rules of the CCP.

Resolution authorities may use the tool referred to in Articles 30 and 31 to recapitalise the CCP.

SECTION 2

POSITION ALLOCATION AND LOSS ALLOCATION TOOLS

Article 28

Objective and scope of the position and loss allocation tools

1. Resolution authorities shall use the position allocation tool in accordance with Article 29 and the loss allocation tools in accordance with Articles 30 and 31.
2. The tools referred to in paragraph 1 shall be used in respect of all contracts relating to clearing services and the collateral related to those services posted to the CCP.
3. Resolution authorities shall use the position allocation tool referred to in Article 29 in order to rematch the book of the CCP or bridge CCP where relevant.

Resolution authorities shall use the loss allocation tools referred to in Articles 30 and 31 for any of the following purposes:

- (a) to cover the losses of the CCP assessed in accordance with Article 25;
- (b) to restore the ability of the CCP to meet payment obligations as they fall due;
- (c) *[deleted]*
- (d) to achieve the outcome referred to in points (a) and (b) in relation to a bridge CCP;
- (e) to support the transfer of the CCP's business by way of the sale of business tool to a solvent third party.

The loss allocation tool referred to in Article 30 shall only be used by the resolution authorities in relation to losses arising from the default of one or more clearing members.

4. Resolution authorities shall not use the loss allocation tools referred to in Articles 30 and 31 with regard to the entities referred to in Articles 1(4) and 1(5) of Regulation (EU) No 648/2012.

Article 29

Termination of contracts – partial or full

1. The resolution authority may terminate some or all of the following contracts of the CCP in resolution :
 - (a) the contracts with the clearing member in default. The resolution authority may only terminate those contracts of the defaulting clearing member 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;
 - (b) the contracts of the affected clearing service or asset class;
 - (c) the other contracts of the CCP in resolution.
2. [*deleted*]
3. The resolution authority shall give notice to all relevant clearing members of the date on which any contract referred to in paragraph 1 is terminated.
4. Prior to the termination of any of the contracts referred to in paragraph 1, the resolution authority shall take the following steps:
 - (a) require the CCP under resolution to value each contract and update the account balances of each clearing member;
 - (b) determine the net amount payable by or to each clearing member, taking account of any due but unpaid variation margin, including variation margin due as a result of the contract valuations referred to in point (a);

- (c) notify each clearing member of the determined net amounts and require the CCP to pay or collect them accordingly.
- (4a) The valuation referred in paragraph 4 point (a) should be based, as far as possible, on a fair market price determined on the basis of the CCP's own rules and arrangements or other appropriate price discovery method used by the resolution authority.
5. Where a non-defaulting clearing member is unable to pay the net amount determined in accordance with paragraph 4, the resolution authority may require, having regard to Article 21, the CCP to place the non-defaulting clearing member in default and use its initial margin and default fund contribution in accordance with Article 45 of Regulation (EU) No 648/2012.
6. Where the resolution authority has terminated one or more contracts of the types referred to in points (a), (b) and (c) of paragraph 1, it may temporarily prevent the CCP from clearing any new contract of the same type as the one terminated.

The resolution authority may allow the CCP to resume the clearing of those types of contracts only where the following conditions are met:

- (a) the CCP complies with the requirements of Regulation (EU) No 648/2012;
- (b) the resolution authority issues and publishes a notice to that effect using the means referred to in Article 70(3).

Article 30

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

1. The resolution authority may reduce the amount 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 a payment that has the same economic effect.
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 clearing members should communicate the use of such tool to their clients as promptly as possible. The total net gains to be reduced for each clearing member shall be proportional to the net gains due from the CCP.
3. The reduction in the value of gains payable shall take effect and shall be immediately binding on the CCP and affected clearing members from the moment at which the resolution authority takes the resolution action.
4. A non-defaulting clearing member shall not have any claim in any subsequent proceedings against the CCP, or its successor entity, arising from the reduction in payment obligations referred to in paragraph 1. Nevertheless, the resolution authority shall be able to apply a write-up mechanism in accordance with the second subparagraph of Article 33(5),
5. Where a resolution authority reduces only in part the value of gains payable, the residual outstanding payable amount shall still be owed to the non-defaulting clearing member.

Article 31
Resolution cash call

1. 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. This obligation to make a contribution in cash shall also be included in the CCP's rules and other contractual arrangements as a cash call reserved to the resolution authority in resolution.

Where the CCP operates multiple default funds, the amount of the contribution in cash referred to in the first subparagraph shall refer to the clearing member's contribution to the default fund of the affected clearing service or asset class.

The resolution authority may exercise the resolution cash call regardless of whether all contractual obligations requiring cash contributions from non-defaulting clearing members have been exhausted.

The resolution authority shall determine the amount of each non-defaulting clearing member's cash contribution in proportion to the clearing member's contribution to the default fund up to the limit referred in the first subparagraph.

The resolution authority may require the CCP to reimburse the clearing members the possible excess amount of a cash call where the level of the cash call based on a provisional valuation is found to exceed required amounts as assessed in the definitive valuation referred to in Article 26(2).

2. If a non-defaulting clearing member does not pay the required amount, the resolution authority may require the CCP to place that clearing member in default and use the clearing member's initial margin and default fund contribution in accordance with Article 45 of Regulation (EU) No 648/2012 up to the required amount.

SECTION 3

WRITE DOWN AND CONVERSION OF INSTRUMENTS OF OWNERSHIP AND DEBT INSTRUMENTS OR OTHER UNSECURED LIABILITIES

Article 32

Requirement to write down and convert instruments of ownership and debt instruments or other unsecured liabilities

1. 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.
2. Based on the valuation carried out in accordance with Article 24(3), the resolution authority shall determine the following:
 - (a) the amount by which the instruments of ownership and debt instruments or other unsecured liabilities must be written down taking into account any losses that are to be absorbed by the enforcement of any outstanding obligations of the clearing members or other third parties owed to the CCP;
 - (b) the amount by which debt instruments or other unsecured liabilities must be converted into instruments of ownership in order to restore the capital requirements of the CCP or the bridge CCP.

Article 33

Provisions governing the write-down or conversion of instruments of ownership and debt instruments or other unsecured liabilities

1. The resolution authority shall use the write-down and conversion tool in accordance with the priority of claims applicable under normal insolvency proceedings.
2. Prior to reducing or converting the principal amount of debt instruments or other unsecured liabilities, the resolution authority shall reduce the nominal amount of instruments of ownership in proportion to the losses and up to their full value, where necessary.

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

3. The resolution authority shall reduce, convert, or both, the principal amount of debt instruments or other unsecured liabilities to the extent required to achieve the resolution objectives, and up to the full value of those instruments or liabilities, where necessary.
4. The resolution authority shall not use the write-down and conversion tools in respect of the following liabilities:
 - (a) liabilities to employees, in relation to accrued salary, pension benefits or other fixed remuneration, except for any variable component of remuneration that is not regulated by a collective bargaining agreement;
 - (b) liabilities to commercial or trade creditors arising from the provision to the CCP of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;
 - (c) liabilities to tax and social security authorities, provided that those liabilities are preferred liabilities under the applicable insolvency law;
 - (d) liabilities owed to systems or operators of systems designated according to Directive 98/26/EC or to their participants and arising from the participation in such systems.
 - (e) initial margins.
5. Where the nominal amount of an instrument of ownership or the principal amount of a debt instrument or other unsecured liabilities is reduced, the following conditions shall apply:
 - (a) that reduction shall be permanent;
 - (b) the holder of the instrument shall have no claim in connection with that reduction, except for any liability already accrued, any liability for damages that may arise as a result of an appeal challenging the legality of that reduction and any claim based on

instruments of ownership issued or transferred pursuant to paragraph 6 or any claim for payment in accordance with Article 60;

- (c) where that reduction is only partial, the agreement that created the original liability shall continue to apply in respect of the residual amount subject to any necessary amendments of the terms of that agreement due to the reduction.

Point (a) shall not prevent resolution authorities from applying a write-up mechanism to reimburse holders of debt instruments or other unsecured liabilities and then holders of instruments of ownership, where the level of write-down based on the provisional valuation is found to exceed required amounts when assessed against the definitive valuation referred to in Article 26(2).

- 6. Where converting debt instruments or other unsecured liabilities pursuant to paragraph 3, the resolution authority may require the CCP to issue or to transfer instruments of ownership to the holders of the debt instruments or other unsecured liabilities.
- 7. The resolution authority shall only convert debt instruments or other unsecured liabilities pursuant to paragraph 3 where the following conditions are met:
 - (a) *[deleted]*;
 - (b) the instruments of ownership are issued prior to any issuance of instruments of ownership by the CCP for the purposes of provision of own funds by the State or a government entity;
 - (c) the conversion rate represents appropriate compensation to the affected debt holders for any loss incurred by virtue of the exercise of the write down and conversion powers, in line with their treatment under normal insolvency proceedings.

Following any conversion of debt instruments or other unsecured liabilities to instruments of ownership, the latter shall be subscribed or transferred without delay after the conversion.

- 8. For the purposes of paragraph 7, the resolution authority shall ensure, in the context of drawing up and maintaining the CCP's resolution plan and as part of the powers to remove impediments to the resolvability of the CCP, that the CCP is at all times able to issue the necessary number of instruments of ownership.

Article 34

Effect of write-down and conversion

The resolution authority shall complete or require the completion of all the administrative and procedural tasks necessary to give effect to the use of the write-down and conversion tool, including:

- (a) the amendment of all relevant registers;
- (b) the delisting or removal from trading of instruments of ownership or debt instruments;
- (c) the listing or admission to trading of new instruments of ownership;
- (d) the relisting or readmission of any debt instruments which have been written down, without the requirement for the issuing of a prospectus in accordance with Directive 2003/71/EC of the European Parliament and of the Council²⁷.

Article 35

Removal of procedural obstacles for write-down and conversion

Where Article 32(1) is applied, the competent authority shall require the CCP, to maintain at all times a sufficient amount of instruments of ownership to ensure that the CCP may issue sufficient new instruments of ownership and that the issuance of or conversion into instruments of ownership could be carried out effectively.

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.

²⁷ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

Article 36

Submission of a business reorganisation plan

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

Where necessary for achieving the resolution objectives, the resolution authority may extend the period referred to in the first subparagraph up to a maximum of two months.

2. Where a restructuring plan is required to be notified within the Union State aid framework, the submission of the business reorganisation plan shall be without prejudice to the deadline laid down by the Union State aid framework for the submission of that restructuring plan.
3. The resolution authority shall submit the business reorganisation plan, and any revision thereof in accordance with Article 38, to the competent authority and to the resolution college.

Article 37

Content of the business reorganisation plan

1. The business reorganisation plan referred to in Article 36 shall set out measures aiming to restore the long-term viability of the CCP or parts of its business within a reasonable timeframe. Those measures shall be based on realistic assumptions as to the economic and financial market conditions under which the CCP will operate.

The business reorganisation plan shall take account of the current and potential states of the financial markets and reflect best-case and worst-case assumptions, including a combination of events to identify the CCP's main vulnerabilities. Assumptions shall be compared with appropriate sector-wide benchmarks.

2. The business reorganisation plan shall include at least the following elements:
 - (a) a detailed analysis of the factors and circumstances that caused the CCP to fail or to be likely to fail;

- (b) a description of the measures to be adopted to restore the CCP's long-term viability;
 - (c) a timetable for the implementation of those measures.
3. Measures aiming to restore the long-term viability of a CCP may include:
- (a) the reorganisation and restructuring of the activities of the CCP;
 - (b) changes to the CCP's operational systems and infrastructure;
 - (c) changes to the CCP's risk management.

Article 38

Assessment and adoption of the business reorganisation plan

1. Within one month of the submission of the business reorganisation plan by the CCP pursuant to Article 36(1), the resolution authority and the competent authority shall assess whether the measures provided for in that plan would reliably restore the long-term viability of the CCP.

Where the resolution authority and the competent authority are satisfied that the plan would restore the CCP's long-term viability, the resolution authority shall approve the plan.

2. Where the resolution authority and the competent authority are not satisfied that the measures provided for in the plan would restore the CCP's long-term viability, the resolution authority shall notify the CCP of their concerns and require it to resubmit an amended plan addressing those concerns within two weeks of the notification.
3. The resolution authority and the competent authority shall assess the resubmitted plan and shall notify the CCP within one week of the reception of that plan whether the concerns are appropriately addressed or whether further amendments are required.

Article 39

Implementation and monitoring of the business reorganisation plan

1. The CCP shall implement the business reorganisation plan and shall submit a report to the resolution authority and the competent authority as requested and, at least, every six months on its progress in implementing the plan.
2. The resolution authority, in agreement with the competent authority, may require the CCP to revise the plan where necessary to achieve the aim referred to in 37(1).

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

SECTION 4

THE SALE OF BUSINESS TOOL

Article 40

The sale of business tool

1. The resolution authority may transfer the following to a purchaser that is not a bridge CCP:
 - (a) instruments of ownership issued by a CCP under resolution;
 - (b) any assets, rights, obligations or liabilities of a CCP under resolution.

The transfer referred to in the first subparagraph shall take place without obtaining the consent of the shareholders of the CCP or any third party other than the purchaser and without complying with any procedural requirements under company or securities law other than those provided for in Article 41.

2. A transfer made pursuant to paragraph 1 shall be made on commercial terms, having regard to the circumstances, and in accordance with the Union State aid framework.

For the purposes of the first subparagraph, the resolution authority shall take all reasonable steps to obtain commercial terms that conform to the valuation conducted under Article 24(3).

3. Subject to Article 27(9), any consideration paid by the purchaser shall benefit:
 - (a) the owners of the instruments of ownership where the sale of business has been effected by transferring instruments of ownership issued by the CCP from the holders of those instruments to the purchaser;
 - (b) the CCP, where the sale of business has been effected by transferring some or all of the assets or liabilities of the CCP to the purchaser;
 - (c) any non-defaulting clearing members that have suffered losses in application of the resolution tools in resolution.
- 3a. The allocation of any consideration paid by the purchaser in accordance with paragraph 3 shall be carried out as follows:
 - (a) upon the occurrence of an event covered by the CCP's default waterfall as set out in Articles 43 and 45 of Regulation (EU) No 648/2012, in a reversal of the order in which the losses have been imposed by the CCP's default waterfall;
 - (b) upon the occurrence of an event not covered by the CCP's default waterfall as set out in Articles 43 and 45 of Regulation (EU) No 648/2012, in a reversal of the order in which the losses were allocated in accordance with any applicable rules of the CCP and then the priority of claims under normal insolvency proceedings.
4. The resolution authority may exercise the transfer power referred to in paragraph 1 more than once in order to make supplemental transfers of instruments of ownership issued by the CCP or, as the case may be, the CCP's assets, rights, obligations, or liabilities.
5. The resolution authority may, with the consent of the purchaser, transfer the assets, rights, obligations or liabilities that had been transferred to the purchaser back to the CCP, or the instruments of ownership back to their original owners.

Where the resolution authority uses the transfer power referred to in the first subparagraph, the CCP or original owners shall take back any such assets, rights, obligations or liabilities, or instruments of ownership.

6. Any transfer made pursuant to paragraph 1 shall take place irrespective of whether the purchaser is authorised to provide the services and carry out the activities resulting from the acquisition.

Where the purchaser is not authorised to provide the services and carry out the activities resulting from the acquisition, the resolution authority, in consultation with the competent authority, shall conduct an appropriate due diligence of the purchaser and ensure that the purchaser has the professional and technical capacity to perform the functions of the purchased CCP and that it applies for authorisation as soon as practicable and, at the latest, within one month of the use of the sale of business tool. The competent authority shall ensure that any such application for authorisation is considered in an expedited manner.

7. Where the transfer of instruments of ownership referred to in paragraph 1 results in the acquisition of or increase in a qualifying holding referred to in Article 31(2) of Regulation (EU) No 648/2012, the competent authority shall carry out the assessment referred to in that Article within a period of time that neither delays the application of the sale of business tool nor prevents the resolution action from achieving the relevant resolution objectives.

8. Where the competent authority has not completed the assessment referred to in paragraph 7 by the date on which the transfer of instruments of ownership takes effect, the following shall apply:
- (a) the transfer of instruments of ownership shall have immediate legal effect from the date on which they are transferred;
 - (b) during the assessment period and during any divestment period provided for in point (f), the purchaser's voting rights attached to those instruments of ownership shall be suspended and vested solely in the resolution authority, which shall have no obligation to exercise them and shall not be liable for exercising or refraining from exercising them, except in cases of intent or gross negligence;
 - (c) during the assessment period and during any divestment period provided for in point (f), any penalties envisaged in Article 22(3) of Regulation (EU) No 648/2012 or measures for infringing the requirements for acquisitions or disposals of qualifying holdings envisaged in Article 30 of Regulation (EU) No 648/2012 shall not apply to that transfer;
 - (d) the competent authority shall notify the resolution authority and the purchaser in writing of the result of its assessment in accordance with Article 32 of Regulation (EU) No 648/2012 promptly after completing its assessment;
 - (e) where the competent authority does not oppose the transfer, the voting rights attached to those instruments of ownership shall be deemed to be fully vested in the purchaser as from the notification referred to in point (d);
 - (f) where the competent authority opposes the transfer of instruments of ownership, point (b) shall continue to apply and the resolution authority may, having taken into account market conditions, establish a divestment period within which the purchaser shall divest such instruments of ownership.

9. For the purposes of exercising its right to provide services in accordance with Regulation (EU) No 648/2012, the purchaser shall be considered to be a continuation of the CCP under resolution, and may continue to exercise any such right that was exercised by the CCP under resolution in respect of the assets, rights, obligations or liabilities transferred.
10. The purchaser referred to in paragraph 1 shall not be prevented from exercising the CCP's rights of membership and accessing the payment and settlement systems and other linked FMIs and trading venues provided that the purchaser meets the criteria for membership or participation in those systems or infrastructures or trading venues.

Notwithstanding the first subparagraph, the purchaser shall not be denied access to payment and settlement systems and other linked FMIs and trading venues on the ground that the purchaser does not possess a rating from a credit rating agency, or that that rating is below the rating levels required to be granted access to those systems or infrastructures or trading venues.

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

11. *[deleted]*
12. Unless otherwise provided for in this Regulation, shareholders, creditors, clearing members and clients of the CCP under resolution and other third parties whose assets, rights, obligations or liabilities are not transferred shall have no rights over, or in relation to, the assets, rights, obligations or liabilities transferred.

Article 41

Sale of business tool: procedural requirements

1. Where using the sale of business tool in relation to a CCP, the resolution authority shall advertise the availability, or make arrangements for the marketing, of the assets, rights, obligations, liabilities, or the instruments of ownership intended to be transferred. Pools of rights, assets, obligations and liabilities may be marketed separately.
2. Without prejudice to the Union State aid framework, where applicable, the marketing referred to in paragraph 1 shall be carried out in accordance with the following criteria:
 - (a) it shall be as transparent as possible and shall not materially misrepresent the assets, rights, obligations, liabilities, or instruments of ownership of the CCP, having regard to the circumstances and in particular the need to maintain financial stability;
 - (b) it shall not unduly favour or discriminate between potential purchasers;
 - (c) it shall be free from any conflict of interest;
 - (d) it shall take account of the need to effect a rapid resolution action;
 - (e) it shall aim at maximising, as far as possible, the sale price for the instruments of ownership, assets, rights, obligations or liabilities involved.

The criteria referred to in the first subparagraph shall not prevent the resolution authority from soliciting particular potential purchasers.

3. By way of derogation from paragraph 1, the resolution authority may apply the sale of business tool without complying with the requirement to market, or may market the assets, rights, obligations, liabilities or the instruments of ownership without complying with the criteria referred to in paragraph 2 where compliance with those criteria would be likely to undermine one or more of the resolution objectives, including by creating a material threat to financial stability.

SECTION 5
THE BRIDGE CCP TOOL

Article 42
Bridge CCP tool

1. The resolution authority may transfer to a bridge CCP the following:
 - (a) the instruments of ownership issued by a CCP under resolution;
 - (b) any assets, rights, obligations or liabilities of the CCP under resolution.

The transfer referred to in the first subparagraph may take place without obtaining the consent of the shareholders of the CCP under resolution or any third party other than the bridge CCP and without complying with any procedural requirements under company or securities law other than those provided for in Article 43.
2. The bridge CCP shall be a legal person that meets all of the following requirements:
 - (a) it is controlled by the resolution authority and it is wholly or partially owned by one or more public authorities which may include the resolution authority;
 - (b) it is created or used for the purpose of receiving and holding some or all of the instruments of ownership issued by a CCP under resolution or some or all of the assets, rights, obligations and liabilities of the CCP with a view to maintaining the critical functions of the CCP and subsequently selling the CCP.
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.
4. Subject to Article 27(9) any consideration paid by the bridge CCP shall benefit:
 - (a) the owners of the instruments of ownership, where the transfer to the bridge CCP has been effected by transferring instruments of ownership issued by the CCP under resolution from the holders of those instruments to the bridge CCP;

- (b) the CCP under resolution, where the transfer to the bridge CCP has been effected by transferring some or all of the assets or liabilities of that CCP to the bridge CCP;
 - (c) any non-defaulting clearing members that have suffered losses in application of the resolution tools in resolution.
- 4a. The allocation of any consideration paid by the bridge CCP in accordance with paragraph 4 shall be carried out in accordance with:
- (a) upon the occurrence of an event covered by the CCPs waterfall as set out in Articles 43 and 45 of Regulation (EU) No 648/2012, in a reversal of the order in which losses have been imposed by the CCPs default waterfall;
 - (b) upon the occurrence of an event not covered by the CCPs default waterfall as set out in Articles 43 and 45 of Regulation (EU) No 648/2012, in a reversal of the order in which losses were allocated in accordance with any applicable rules of the CCP and then the priority of claims under normal insolvency proceedings.
5. The resolution authority may exercise the transfer power referred to in paragraph 1 more than once in order to make supplemental transfers of instruments of ownership issued by a CCP or of its assets, rights, obligations or liabilities.
6. The resolution authority may transfer the rights, obligations, assets or liabilities that had been transferred to the bridge CCP back to the CCP under resolution, or the instruments of ownership back to their original owners where that transfer is expressly provided for in the instrument by which the transfer referred to in paragraph 1 is made.

Where the resolution authority uses the transfer power referred to in the first subparagraph, the CCP under resolution or original owners shall be obliged to take back any such assets, rights, obligations or liabilities, or instruments of ownership, provided that the conditions in the first subparagraph of this paragraph or in paragraph 7 are met.

7. Where the specific instruments of ownership, assets, rights, obligations or liabilities do not fall within the classes of, or meet the conditions for transfer of, instruments of ownership, assets, rights, obligations or liabilities specified in the instrument by which the transfer was made, the resolution authority may transfer them from the bridge CCP back to the CCP under resolution or the original owners.
8. A transfer referred to in paragraphs 6 and 7 may be made at any time, and shall comply with any other conditions stated in the instrument by which the transfer was made for the relevant purpose.
9. The resolution authority may transfer instruments of ownership or assets, rights, obligations or liabilities from the bridge CCP to a third party.
10. For the purposes of exercising its right to provide services in accordance with Regulation (EU) No 648/2012, a bridge CCP shall be considered to be a continuation of the CCP under resolution and may continue to exercise any such right that was exercised by the CCP under resolution in respect of the assets, rights, obligations or liabilities transferred. For any other purposes, resolution authorities may require that a bridge CCP be considered to be a continuation of the CCP under resolution, and be able to continue to exercise any right that was exercised by the CCP under resolution in respect of the assets, rights, obligations or liabilities transferred.
11. The bridge CCP shall not be prevented from exercising the rights of membership and accessing payment and settlement systems and other linked FMIs and trading venues, provided that it meets the criteria for membership and participation in those systems or FMIs or trading venues.

Notwithstanding the first subparagraph, the bridge CCP shall not be denied access to payment and settlement systems and other FMIs and trading venues on the ground that the bridge CCP does not possess a rating from a credit rating agency, or that that rating is below the rating levels required to be granted access to those systems or infrastructures or trading venues.

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

12. *[deleted]*
13. Shareholders or creditors of the CCP under resolution and other third parties whose assets, rights, obligations or liabilities are not transferred to the bridge CCP, shall have no claims over or in relation to the assets, rights, obligations or liabilities transferred to the bridge CCP, or against its board or senior management.
14. The bridge CCP shall have no duty or responsibility to shareholders or creditors of the CCP under resolution, and the board or senior management of the bridge CCP shall have no liability to those shareholders or creditors for acts and omissions in the discharge of their duties, unless the act or omission is due to gross negligence or serious misconduct in accordance with applicable national law.

Article 43

Bridge CCP: procedural requirements

1. The bridge CCP shall comply with all of the following requirements:
 - (a) the bridge CCP shall seek the approval of the resolution authority for all of the following:
 - (i) the rules of incorporation of the bridge CCP;

- (ii) the members of the bridge CCP's board, where those members are not directly appointed by the resolution authority;
 - (iii) the responsibilities and remuneration of the members of the bridge CCP's board, where the remuneration and the responsibilities are not determined by the resolution authority;
 - (iv) the strategy and risk profile of the bridge CCP;
- (b) the bridge CCP shall be authorised to provide the services or carry out the activities resulting from the transfer referred to in Article 42(1) in accordance with Regulation (EU) No 648/2012.

Notwithstanding point (b) of the first subparagraph and where necessary to meet the resolution objectives, the bridge CCP may be established and authorised without complying with Regulation (EU) No 648/2012 for a short period of time at the beginning of its operation. To that end, the resolution authority shall submit a request in that sense to the competent authority. If the competent authority decides to grant such an authorisation, 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. During this period, the bridge CCP shall be considered as a qualifying CCP as defined in point (88) Article 4(1) for the purposes of Regulation (EU) No 575/2013.

2. Subject to any restrictions imposed in accordance with Union or national competition rules, the management of the bridge CCP shall operate the bridge CCP with the objective of maintaining continuity of the bridge CCP's critical functions and selling the bridge CCP or any of its assets, rights, obligations and liabilities to one or more private sector purchasers. That sale shall take place when market conditions are appropriate, and within the period specified in paragraphs 5 and, where applicable, 6 of this Article.
3. The resolution authority shall take a decision that the bridge CCP is no longer a bridge CCP within the meaning of Article 42(2) in any of the following cases:
 - (a) the resolution objectives are fulfilled;
 - (b) the bridge CCP merges with another entity;
 - (c) the bridge CCP ceases to meet the requirements laid down in Article 42(2);
 - (d) the bridge CCP or substantially all of its assets, rights, obligations or liabilities have been sold in accordance with paragraphs 2 and 4;
 - (e) the period specified in paragraph 5 or, where applicable, paragraph 6 expires;
 - (f) the contracts cleared by the bridge CCP have been settled, have expired or have been closed out and the CCP's rights and obligations relating to those contracts are thereby completely discharged.
4. 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.

The resolution authority shall carry out the sale referred to in the first subparagraph on commercial terms and shall not unduly favour or discriminate between potential purchasers.
5. The resolution authority shall terminate the operation of a bridge CCP two years after the date on which the last transfer from the CCP under resolution is made.

Where the resolution authority terminates the operation of a bridge CCP, it shall request the competent authority to withdraw the bridge CCP's authorisation.

6. The resolution authority may extend the period referred to in paragraph 5 for one or more additional one-year periods where the extension is necessary to achieve the outcomes referred to in points (a) to (d) of paragraph 3.

The decision to extend the period referred to in paragraph 5 shall be reasoned and shall contain a detailed assessment of the bridge CCP's situation in relation to relevant market conditions and market outlook.

7. Where a bridge CCP is terminated in the circumstances referred to in point (d) or (e) of paragraph 3, the bridge CCP shall be wound up under normal insolvency proceedings.

Unless otherwise provided for in this Regulation, any proceeds generated as a result of the termination of the bridge CCP shall benefit its shareholders.

Where a bridge CCP is used for the purpose of transferring assets and liabilities of more than one CCP under resolution, the proceeds referred to in the second subparagraph shall be attributed by reference to the assets and liabilities transferred from each of the CCPs under resolution.

SECTION 6

ADDITIONAL FINANCING ARRANGEMENTS

Article 44

Alternative funding means

The resolution authority may enter into contracts to borrow or obtain other forms of financial support, where necessary to meet temporary liquidity needs to ensure the effective use of the resolution tools.

SECTION 7

GOVERNMENT STABILISATION TOOLS

Article 45

Government financial stabilisation tools

1. In the very extraordinary situation of a systemic crisis, Member States 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 referred to in Article 21, in particular to avoid a significant adverse effect on the financial system in the Union or in one or more of its Member States;
 - (b) the financial support is used only as a last resort in accordance with paragraph 3 after having assessed and exploited all resolution tools to the maximum extent practicable whilst maintaining financial stability;
 - (ba) the financial support is limited in time;
 - (c) the financial support complies with the Union State aid framework;
 - (d) Funds can be recouped in accordance with Article 27(9) to the extent not retrieved in full through the sale to private purchasers in accordance with Article 46(3).
 - (e) (deleted)

The use of government stabilisation tools shall be carried out in accordance with national law either under the leadership of the competent ministry or government in close cooperation with the resolution authority or under the leadership of the resolution authority.

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 one of the following conditions is 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 remaining 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 remaining 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 remaining 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.

Article 46

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.

Article 47

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.
3. The period of temporary public ownership referred to in paragraph 1 shall be limited in time in compliance with state-aid rules. In determining the timing of the sale of the CCP, the financial situation and relevant market conditions shall be taken into account.

CHAPTER IV

Resolution powers

Article 48

General powers

1. The resolution authority shall have all the powers necessary to use the resolution tools effectively, including all the following powers:
 - (a) to require any person to provide the resolution authority with any information it requires to decide upon and prepare a resolution action, including updates and additional information to that provided in the resolution plan or required through on-site inspections;
 - (b) to take control of a CCP under resolution and exercise all the rights and powers conferred upon holders of instruments of ownership and the CCP's board including the rights and powers under the operating rules of the CCP;

- (c) to transfer instruments of ownership issued by a CCP under resolution;
- (d) to transfer to another entity, with its consent, the CCP's rights, assets, obligations or liabilities;
- (e) to reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of debt instruments or other unsecured liabilities of a CCP under resolution;
- (f) to convert debt instruments or other unsecured liabilities of a CCP under resolution into instruments of ownership of that CCP or of a bridge CCP to which assets, rights, obligations or liabilities of the CCP under resolution have been transferred;
- (g) to cancel debt instruments issued by a CCP under resolution;
- (h) to reduce, including to reduce to zero, the nominal amount of instruments of ownership of a CCP under resolution and to cancel such instruments of ownership;
- (i) to require a CCP under resolution to issue new instruments of ownership, including preference shares and contingent convertible instruments;
- (j) with regards to debt instruments and other liabilities of the CCP, to amend or alter their maturity, amend the amount of interest payable, or amend the date on which interest becomes payable, including by suspending payment for a temporary period;
- (k) to close out and terminate contracts;
- (l) to remove or replace the board and senior management of a CCP under resolution;
- (m) to require the competent authority to assess the buyer of a qualifying holding in a timely manner by way of derogation from the time-limits laid down in Article 31 of Regulation (EU) No 648/2012;
- (n) to reduce, including to reduce to zero, the amount of variation margin due to a clearing member of a CCP under resolution;
- (o) to transfer open positions and any related assets, including relevant title transfer and security financial collateral arrangements, set-off arrangements, and netting arrangements, from the account of a defaulting clearing member to a non-defaulting

clearing member in a manner consistent with Article 48 of Regulation (EU) No 648/2012;

- (p) to enforce any existing and outstanding contractual obligations of the clearing members of the CCP under resolution or, where necessary to achieve the resolution objectives, refrain from enforcing such contractual obligations or otherwise deviate from the CCP's operating rules;
- (q) to enforce any existing and outstanding obligations of the parent undertaking of the CCP under resolution including to provide the CCP with financial support by way of guarantees or credit lines;
- (r) to require clearing members to provide further contributions in cash subject to the limit referred to in Article 31.

Resolution authorities may exercise the powers referred to in the first subparagraph individually or in any combination.

2. Unless otherwise provided for in this Regulation and the Union State aid framework, the resolution authority shall not be subject to any of the following requirements where it exercises the powers referred to in paragraph 1:
 - (a) requirement to obtain approval or consent from any public or private person;
 - (b) requirements relating to the transfer of financial instruments, rights, obligations, assets or liabilities of a CCP under resolution or a bridge CCP;
 - (c) requirement to notify any public or private person;
 - (d) requirement to publish any notice or prospectus;
 - (e) requirement to file or register any document with any other authority.

Article 49

Ancillary powers

1. Where a power referred to in Article 48(1) is exercised, the resolution authority may also exercise any of the following ancillary powers:

- (a) subject to Article 65, provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, obligations, assets or liabilities transferred;
- (b) remove rights to acquire further instruments of ownership;
- (c) require the relevant authority to discontinue or suspend the admission to trading on a regulated market, or the official listing, of any financial instruments issued by the CCP pursuant to Directive 2001/34/EC of the European Parliament and of the Council²⁸;
- (d) provide for the purchaser or bridge CCP, pursuant to Articles 40 and 42 respectively, to be treated as if it were the CCP under resolution, for the purposes of any rights or obligations of, or actions taken by, the CCP under resolution, including any rights or obligations relating to participation in a market infrastructure;
- (e) require the CCP under resolution or the purchaser or bridge CCP, where relevant, to provide the other with information and assistance;
- (f) provide for a clearing member that is a recipient of any positions allocated to it by way of the powers in points (o) and (p) of Article 48(1) to assume any rights or obligations in relation to those positions;
- (g) cancel or modify the terms of a contract to which the CCP under resolution is a party or substitute the purchaser or bridge CCP, in place of the CCP under resolution, as a party;
- (h) modify or amend the operating rules of the CCP under resolution, including as regards its terms of access to clearing pursuant to Article 4(3) of Regulation (EU) No 648/2012;
- (i) transfer the membership of a clearing member from the CCP under resolution to a purchaser of the CCP or a bridge CCP.

²⁸ Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1).

Any right of compensation provided for in this Regulation shall not be considered to be a liability or an encumbrance for the purposes of point (a) of the first subparagraph.

2. The resolution authority may provide for continuity arrangements necessary to ensure that the resolution action is effective and that the business transferred may be operated by the purchaser or bridge CCP. Those continuity arrangements may include:
 - (a) the continuity of contracts entered into by the CCP under resolution, in order for the purchaser or bridge CCP to assume the rights and liabilities of the CCP under resolution relating to any financial instrument, right, obligation, asset or liability that has been transferred and to replace the CCP under resolution, expressly or implicitly, in all relevant contractual documents;
 - (b) the replacement of the CCP under resolution by the purchaser or bridge CCP in any legal proceedings relating to any financial instrument, right, obligation, asset or liability that has been transferred.
3. The powers provided for in point (d) of paragraph 1 and point (b) of paragraph 2 shall not affect:
 - (a) the right of an employee of the CCP to terminate a contract of employment;
 - (b) subject to Articles 55, 56 and 57, the exercise of contractual rights of a party to a contract, including the right to terminate, where provided for in the terms of the contract, due to an act or omission by the CCP prior to the transfer, or by the purchaser or bridge CCP after the transfer.

Article 50

Special management

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

resolution authority. The resolution authority may limit the actions of the special manager or require prior consent for certain acts.

The resolution authority shall make public the appointment referred to in paragraph 1 and the terms and conditions attached to that appointment.

3. The special manager shall be appointed for no more than one year. The resolution authority may renew that period where necessary to achieve the resolution objectives.
4. The special manager shall take all the measures necessary to promote the resolution objectives and implement resolution actions taken by the resolution authority. In case of inconsistency or conflict, that statutory duty shall override any other duty of management in accordance with the statutes of the CCP or national law.
5. The special manager shall draw up reports for the appointing resolution authority at regular intervals set by the resolution authority and at the beginning and the end of the mandate. Those reports shall describe in detail the financial situation of the CCP and state the reasons for the measures taken.
6. The resolution authority may remove the special manager at any time. It shall in any case remove the special manager in the following cases:
 - (a) where the special manager is failing to perform its duties in accordance with the terms and conditions set out by the resolution authority;
 - (b) where the objectives of resolution would be better achieved by removing or replacing that special manager;
 - (c) where the conditions for the appointment are no longer fulfilled.

Article 51

Power to require the provision of services and facilities

1. The resolution authority may require a CCP under resolution, or any entity 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.

The first subparagraph shall apply regardless of whether an entity in the same group as the CCP or one of the CCP's clearing members has entered into normal insolvency proceedings or is itself under resolution.

2. The resolution authority may enforce obligations imposed, pursuant to paragraph 1, by resolution authorities in other Member States where those powers are exercised in relation to entities belonging to the same group as the CCP under resolution, or in relation to the clearing members of that CCP.
3. The services and facilities referred to in paragraph 1 shall not include any form of financial support.
4. The services and facilities provided pursuant to paragraph 1 shall be provided:
 - (a) on the same commercial terms on which they were provided to the CCP immediately before the resolution action was taken, where an agreement for those purposes exists;
 - (b) on reasonable commercial terms, where there is no agreement for those purposes or where that agreement has expired.

Article 52

Power to enforce resolution actions or crisis prevention measures by other Member States

1. Where instruments of ownership, assets, rights, obligations or liabilities of a CCP under resolution are located in, or governed by the law of a Member State other than the Member State of the resolution authority, any transfer or resolution action in respect of those instruments, assets, rights, obligations or liabilities shall have effect in accordance with the law of that other Member State.
2. The resolution authority of a Member State shall be provided with all necessary assistance by the authorities of other relevant Member States to ensure that any instruments of ownership, assets, rights, obligations or liabilities are transferred to the purchaser or bridge CCP or any other resolution action becomes effective in accordance with the applicable national law.

3. Shareholders, creditors and third parties that are affected by the transfer of instruments of ownership, assets, rights, obligations or liabilities referred to in paragraph 1 shall not be entitled to prevent, challenge, or set aside that transfer under the law of the Member State where the assets are located or that governs the transfer of the instruments of ownership, assets, rights, obligations or liabilities.
4. Where the resolution authority of a Member State uses the resolution tools referred to in Articles 28 or 32, and the contracts, liabilities, instruments of ownership or debt instruments of the CCP under resolution include instruments, contracts or liabilities that are governed by the law of another Member State, or liabilities owed to creditors and contracts in respect of clearing members and their clients located in that other Member State, the relevant authorities in that other Member State shall ensure that any action resulting from those resolution tools takes effect.

For the purposes of the first subparagraph, shareholders, creditors and clearing members and their clients affected by those resolution tools shall only be entitled to challenge the reduction of the principal or payable amount of the instrument or liability or its conversion or restructuring, as the case may be, under the law of the Member State of the resolution authority.

5. The following rights and safeguards shall be determined in accordance with the law of the Member State of the resolution authority:
 - (a) the right for shareholders, creditors and third parties to appeal pursuant to Article 72 against the transfer of instruments of ownership, assets, rights, obligations or liabilities referred to in paragraph 1 of this Article;
 - (b) the right for affected creditors to appeal pursuant to Article 72 against the reduction of the principal or payable amount or the conversion or restructuring of an instrument, liability or contract covered by paragraph 4 of this Article;
 - (c) the safeguards for partial transfers, as referred to in Chapter V, in relation to assets, rights, obligations or liabilities referred to in paragraph 1 of this Article.

Article 53

*Power in respect of assets, contracts, rights, liabilities, obligations
and instruments of ownership of persons located in or governed by the law of third countries*

1. Where a resolution action concerns assets or contracts of persons located in a third country or instruments of ownership, rights, obligations or liabilities governed by the law of a third country, the resolution authority may require that:
 - (a) the CCP under resolution and the recipient of those assets, contracts, instruments of ownership, rights, obligations or liabilities take all necessary steps to ensure that the action becomes effective;
 - (b) the CCP under resolution holds the instruments of ownership, assets or rights or discharges the liabilities or obligations on behalf of the recipient until the action becomes effective;
 - (c) the reasonable expenses of the recipient properly incurred in carrying out any action required under points (a) and (b) of this paragraph are reimbursed in any of the ways referred to in Article 27(9).

2. For the purposes of paragraph 1, the resolution authority shall require the CCP to ensure the inclusion of a provision in its contracts and other agreements with clearing members and holders of instruments of ownership and debt instruments or other liabilities located in or governed by the law of third countries by which they agree to be bound by any action in respect of their assets, contracts, rights, obligations and liabilities taken by the resolution authority, including the application of Articles 28, 32, 55, 56 and 57. The resolution authority may require the CCP to provide it with a reasoned legal opinion by an independent legal expert confirming the legal enforceability and effectiveness of such provisions.

3. Where the resolution action referred to in paragraph 1 does not become effective, that action shall be void in relation to the instruments of ownership, assets, rights, obligations or liabilities concerned.

Article 54

Exclusion of certain contractual terms in early intervention and resolution

1. A crisis prevention measure or a resolution action taken in accordance with this Regulation, or any event directly linked to the application of that action, shall not be deemed an enforcement or insolvency event or event of default within the meaning of Directive 2002/47/EC and Directive 98/26/EC and Regulation (EU) No. 575/2013 provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed.

For the purposes of the first subparagraph, third-country resolution proceedings recognised pursuant to Article 75, or otherwise where the resolution authority so decides, shall be considered a resolution action taken in accordance with this Regulation.

2. A crisis prevention measure or a resolution action referred to in paragraph 1 shall not be used to:
- (a) exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by any entity of the group to which the CCP belongs which includes cross-default provisions or obligations which are guaranteed or otherwise supported by any group entity;
 - (b) obtain possession, exercise control or enforce any security over any property of the CCP concerned or any group entity in relation to a contract which includes cross-default provisions;
 - (c) affect any contractual rights of the CCP concerned or any group entity in relation to a contract which includes cross-default provisions.

Article 55

Power to suspend certain obligations

1. The resolution authority may suspend any payment or delivery obligations of both counterparties to any contract entered into by a CCP under resolution from the publication of the notice of suspension in accordance with Article 70 until the end of the working day which follows that publication.

For the purposes of the first subparagraph, the end of the working day shall mean midnight in the Member State of the resolution authority.

2. Where a payment or delivery obligation would have been due during the suspension period, the payment or delivery obligation shall be due immediately upon expiry of the suspension period.
3. The resolution authority shall not exercise the power referred to in paragraph 1 to payment and delivery obligations owed to systems or operators of systems designated for the purposes of Directive 98/26/EC, or to the participants of such systems and arising from the participation in such systems, other CCPs and central banks.

Article 56

Power to restrict the enforcement of security interests

1. The resolution authority may prevent secured creditors of a CCP under resolution from enforcing security interests in relation to any assets of that CCP under resolution from the publication of the notice of the restriction in accordance with Article 70 until the end of the working day which follows that publication.

For the purposes of the first subparagraph, the end of the working day shall mean midnight in the Member State of the resolution authority.

2. The resolution authority shall not exercise the power referred to in paragraph 1 in relation to any security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC, or to their participants and arising from the participation in such systems, other CCPs and central banks over assets pledged or provided by way of margin or collateral by the CCP under resolution.

Article 57

Power to temporarily suspend termination rights

1. The resolution authority may suspend the termination rights of any party to a contract with a CCP under resolution from the publication of the notice of the termination in accordance with Article 70 until the end of the working day which follows that publication, provided that the payment and delivery obligations and the provision of collateral continue to be performed.

For the purposes of the first subparagraph, the end of the working day shall mean midnight in the Member State of the resolution.

2. The resolution authority shall not exercise the power referred to in paragraph 1 in relation to systems or operators of systems designated for the purposes of Directive 98/26/EC, or to their participants and arising from the participation in such systems, other CCPs and central banks.
3. A party to a contract may exercise a termination right under that contract before the end of the period referred to in paragraph 1 where that party receives notice from the resolution authority that the rights and liabilities covered by the contract shall not be:
 - (a) transferred to another entity;
 - (b) subject to write-down, conversion, or the use of a resolution tool to allocate losses or positions.
4. Where the notice referred to in paragraph 3 has not been given, termination rights may be exercised on the expiry of the period of suspension, subject to Article 54, as follows:
 - (a)

where the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only if the recipient entity causes the enforcement event to occur or continue;

- (b) where the rights and liabilities covered by the contract remain with the CCP and the resolution authority has used a resolution tool to allocate losses or positions to that contract, a counterparty may exercise termination rights in accordance with the terms of that contract on the expiry of a suspension under paragraph 1.

Article 58

Power to exercise control over the CCP

1. The resolution authority may exercise control over the CCP under resolution to:
 - (a) manage the activities and services of the CCP, exercising the powers of its shareholders and board and, where necessary, to consult the risk committee;
 - (b) manage and dispose of the assets and property of the CCP under resolution.

The control referred to in the first subparagraph may be exercised directly by the resolution authority or indirectly by a special manager appointed by the resolution authority in accordance with Article 50(1).

2. Where the resolution authority exercises control over the CCP, the resolution authority shall not be deemed to be a shadow director or de facto director under national law.

Article 59

Exercise of powers by the resolution authorities

Subject to Article 72, resolution authorities shall take resolution actions through executive order in accordance with national administrative competences and procedures.

CHAPTER V

Safeguards

Article 60

No Creditor Worse Off principle

Where the resolution authority uses one or more resolution tools, it shall ensure that shareholders, clearing members and other creditors, 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 the CCP had instead been wound up under normal insolvency proceedings, following the full application of the applicable contractual obligations and other arrangements in its operating rules.

Article 61

Valuation for the application of the No Creditor Worse Off principle

1. For the purposes of assessing compliance with the no creditor worse off principle as laid down in Article 60, the resolution authority shall ensure that a valuation is carried out by an independent person as soon as possible after the resolution action has been effected.
2. The valuation referred to in paragraph 1 shall include:
 - (a) the treatment that shareholders, clearing members and other creditors 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 the CCP had been wound up under normal insolvency proceedings, following the full application of the applicable contractual obligations and other arrangements in its operating rules ;
 - (b) the actual treatment that shareholders, clearing members and other creditors, have received in the resolution of the CCP.
 - (c) whether there is any difference between the treatment referred to in point (a) and the treatment referred to in point (b).

3. For the purposes of calculating the treatments referred to in paragraph 2(a), the valuation referred to in paragraph 1 shall:
- (a) disregard any provision of extraordinary public financial support to the CCP under resolution or central bank emergency liquidity assistance or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest terms;
 - (b) be based on the losses that would have been realistically incurred by clearing members and other creditors, if the CCP had been put into liquidation. (c) take into account a commercially reasonable estimate of the direct replacement costs, including any additional margin requirements, incurred by the clearing members to reopen within an appropriate period their comparable net positions in the market by considering effective market conditions, including market depth and ability of the market to transact the relevant volume of such net positions within that period.
 - (d) be based on the CCP's own pricing methodology unless such methodology for price determination does not reflect the effective market conditions.

The length of the period referred to in point (c) of the first subparagraph shall reflect the implications of the applicable insolvency law and the characteristics of the relevant net positions.

4. The valuation referred to in paragraph 1 shall be distinct from the valuation carried out under Article 24(3).

5. ESMA, taking into account any regulatory technical standards developed in accordance with Article 49(5) and 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 the calculation of the losses following liquidation resulting from the costs referred to in point (c) of the first subparagraph of paragraph (3) if the CCP had been put into liquidation .

ESMA shall submit those draft regulatory standards to the Commission by [*PO please insert the date 12 months from entry into force of the Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 62

Safeguard for shareholders, clearing members and other creditors

Where, in accordance with the valuation carried out under Article 61, any shareholder, clearing member or other creditor 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 the CCP had been wound up under normal insolvency proceedings, following the full application of the applicable contractual obligations or other arrangements in its operating rules, that shareholder, clearing member or other creditor shall be entitled to the payment of the difference.

Article 63

Safeguard for counterparties in partial transfers

The protections provided for in Articles 64, 65 and 66 shall apply in the following circumstances:

- (a) where the resolution authority transfers some but not all of the assets, rights, obligations or liabilities of a CCP under resolution to another entity or, in the exercise of a resolution tool, from a bridge CCP to a purchaser;

- (b) where the resolution authority exercises the powers referred to in point (g) of Article 49(1).

Article 64

Protection for financial collateral, set off and netting agreements

The resolution authority shall ensure that the use of a resolution tool, other than the position allocation tool referred to in Article 29, does not result in transferring some, but not all, of the rights and liabilities under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between a CCP under resolution and other parties to the arrangements, or in modifying or terminating the rights and liabilities under those arrangements through the use of ancillary powers.

The arrangements referred to in the first subparagraph shall include any arrangement to which the parties are entitled to set-off or net those rights and liabilities.

Article 65

Protection for security arrangements

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:

- (a) the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;
- (b) the transfer of a secured liability unless the benefit of the security is also transferred
- (c) the transfer of the benefit of the security unless the secured liability is also transferred;
- (d) the modification or termination of a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

Article 66

Protection for structured finance arrangements and covered bonds

The resolution authority shall ensure that the use of a resolution tool does not result in any of the following with respect to structured finance arrangements, including covered bonds:

- (a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement to which the CCP under resolution is a party;
- (b) the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement to which the CCP under resolution is a party.

For the purposes of the first subparagraph, structured finance arrangements shall include securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

Article 67

Partial transfers: protection of trading, clearing and settlement systems

1. The resolution authority shall ensure that the use of a resolution tool does not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the resolution authority:
 - (a) transfers some but not all of the assets, rights, obligations or liabilities of a CCP under resolution to another entity ;
 - (b) cancels or amends the terms of a contract to which the CCP under resolution is a party or to substitute a purchaser or bridge CCP as a party.
2. For the purposes of paragraph 1, the resolution authority shall ensure that the use of a resolution tools does not result in any of the following outcomes:
 - (a) revoking a transfer order in accordance with Article 5 of Directive 98/26/EC;

- (b) affecting the enforceability of transfer orders and netting as required by Articles 3 and 5 of Directive 98/26/EC;
- (c) affecting the use of funds, securities or credit facilities as required by Article 4 of Directive 98/26/EC;
- (d) affecting the protection of collateral security as required by Article 9 of Directive 98/26/EC.

CHAPTER VI

Procedural obligations

Article 68

Notification requirements

1. The CCP shall notify the competent authority where it considers that it is failing or likely to fail as referred to in Article 22(2).
2. The competent authority shall inform the resolution authority of any notifications received under paragraph 1, and of any recovery or other measures in accordance with Title IV that the competent authority requires the CCP to take.

The competent authority shall inform the resolution authority of any emergency situation referred to in Article 24 of Regulation (EU) No 648/2012 relating to a CCP and of any notification received in accordance with Article 48 of that Regulation.

3. Where a competent authority or resolution authority determines that the conditions referred to in points (a) and (b) of Article 22(1) or Article 22 (3) are met in relation to a CCP, it shall notify without delay the following bodies:
 - (a) the competent authority or resolution authority for that CCP;
 - (b) the competent authority for the parent undertaking of the CCP;
 - (c) the central bank;

- (d) the competent ministry;
- (e) the ESRB and the designated national macro-prudential authority;
- (f) the supervisory college and resolution college.

Article 69

Decision of the resolution authority

1. After a notification from the competent authority pursuant to Article 68(3), the resolution authority shall determine whether any resolution action is needed.
2. The decision whether or not to take resolution action in relation to a CCP shall contain information on the following:
 - (a) the resolution authority's assessment of whether the CCP meets the conditions for resolution;
 - (b) any action that the resolution authority intends to take, including the decision to apply for winding up, the appointment of an administrator or any other measure under applicable normal insolvency proceedings or, subject to point (e) of Article 27(1), under national law.

Article 70

Procedural obligations of resolution authorities

1. The resolution authority shall notify the resolution college of the resolution actions it intends to take. The notification to the resolution college shall also indicate whether the resolution actions deviate from the resolution plan.

As soon as practicable after taking a resolution action, the resolution authority shall notify all of the following:

- (a) the CCP under resolution;
- (b) the resolution college;

- (c) the designated national macroprudential authority and the ESRB;
- (d) the Commission, the European Central Bank, and EIOPA;
- (e) the operators of the systems covered by Directive 98/26/EC in which the CCP under resolution participates.

2. The notification referred to in the second subparagraph of paragraph 1 shall include a copy of any order or instrument by which the relevant action is taken and indicate the date from which the resolution action is effective.

The notification to the resolution college pursuant to second subparagraph of paragraph 1 shall provide reasons for any deviation from the resolution plan.

3. A copy of the order or instrument by which the resolution action is taken, or a notice summarising the effects of the resolution action and, if applicable, the terms and period of suspension or restriction referred to in Articles 55, 56 and 57, shall be published at all of the following:

- (a) the website of the resolution authority;
- (b) the website of the competent authority, if different from the resolution authority, and the website of ESMA;
- (c) the website of the CCP under resolution;
- (d) where the instruments of ownership or debt instruments of the CCP under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning the CCP under resolution in accordance with Article 21(1) of Directive 2004/109/EC of the European Parliament and of the Council²⁹.

²⁹ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

4. Where the instruments of ownership or debt instruments are not admitted to trading on a regulated market, the resolution authority shall ensure that the documents providing proof of the order referred to in paragraph 3 are sent to the holders of the instruments of ownership and creditors of the CCP under resolution that are known through the registers or databases of the CCP under resolution which are available to the resolution authority.

Article 71
Confidentiality

1. The requirements of professional secrecy shall be binding in respect of the following persons:
- (a) resolution authorities;
 - (b) competent authorities, ESMA and EBA;
 - (c) competent ministries;
 - (d) special managers or temporary administrators appointed under this Regulation;
 - (e) potential acquirers that are contacted by the competent authorities or solicited by the resolution authorities, irrespective of whether that contact or solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;
 - (f) auditors, accountants, legal and professional advisors, valuers and other experts directly or indirectly engaged by the resolution authorities, competent authorities, competent ministries or by the potential acquirers referred to in point (e);
 - (g) central banks and other authorities involved in the resolution process;
 - (h) a bridge CCP;
 - (i) *[deleted]*
 - (j) the senior management and members of the board of the CCP, and employees of the bodies or entities referred to in points (a) to (k) before, during and after their appointment;

(k) all other members of the resolution college not referred to in points (a), (b), (c) and (g);

(l) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in points (a) to (k).

2. With a view to ensuring that the confidentiality requirements laid down in paragraphs 1 and 3 are complied with, the persons referred to in points (a), (b), (c), (g), (h) and (k) of paragraph 1 shall ensure that there are internal rules in place, including rules to secure secrecy of information between persons directly involved in the resolution process.

3. The persons referred to in paragraph 1 shall be prohibited from disclosing confidential information received during the course of their professional activities or from a competent authority or resolution authority in connection with their functions under this Regulation, to any person or authority unless it is in the exercise of their functions under this Regulation or in summary or aggregate form such that individual CCPs cannot be identified or with the express and prior consent of the authority or the CCP which provided the information.

Before disclosing any type of information, the persons referred to in paragraph 1 shall assess the effects that the disclosure may have on the public interest as regards financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on investigations and on audits.

The procedure for checking the effects of disclosing information shall include a specific assessment of the effects of any disclosure of the contents and details of recovery and resolution plans as referred to in Articles 9 and 13 and the result of any assessment carried out under Articles 10 and 16.

Any person or entity referred to in paragraph 1 shall be subject to civil liability in the event of an infringement of this Article, in accordance with national law.

4. By way of derogation from paragraph 3, the persons referred to in paragraph 1 may exchange confidential information with any of the following provided that the recipient is subject to requirements of confidentiality for the purposes of that exchange:

(a) any other person where necessary for the purposes of planning or carrying out a resolution action;

- (b) parliamentary enquiry committees in their Member State, courts of auditors in their Member State and other entities in charge of enquiries in their Member State;
- (c) national authorities responsible for overseeing payment systems, the authorities responsible for normal insolvency proceedings, the authorities entrusted with the public duty of supervising other financial sector entities, the authorities responsible for the supervision of financial markets and insurance undertakings and inspectors acting on their behalf, the authorities responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, the authorities responsible for protecting the stability of the financial system, and persons responsible for carrying out statutory audits.

5. This Article shall not prevent:

- (a) employees and experts of the bodies or entities referred to in points (a) to (g) and in point (k) of paragraph 1 from sharing information among themselves within each body or entity;
- (b) resolution authorities and competent authorities, including their employees and experts, from sharing information with each other and with other Union resolution authorities, other Union competent authorities, competent ministries, central banks, authorities responsible for normal insolvency proceedings, authorities responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, persons charged with carrying out statutory audits of accounts, EBA, ESMA, or, subject to Article 78, third-country authorities that carry out equivalent functions to resolution authorities, or, subject to strict confidentiality requirements, to a potential acquirer for the purposes of planning or carrying out a resolution action.

6. This Article shall be without prejudice to national law concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases .

CHAPTER VII

Right of appeal and exclusion of other actions

Article 72

Ex-ante judicial approval and rights of appeal

1. A decision to take a crisis prevention measure or resolution action may be subject to ex-ante judicial approval where provided in national law, where the procedure relating to that approval and the court's consideration are expeditious.
2. All persons affected by a decision to take a crisis prevention measure or a decision to exercise any power, other than a resolution action, shall have the right of appeal against that decision.
3. All persons affected by a decision to take a resolution action shall have the right of appeal against that decision.
4. The right of appeal referred to in paragraph 3 shall be subject to the following conditions:
 - (aa) the lodging of an appeal shall not entail any automatic suspension of the effects of the challenged decision;
 - (a) the decision of the resolution authority shall be immediately enforceable and it shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest;
 - (b) the procedure relating to the appeal shall be expeditious;
 - (c) (deleted)

5. Where necessary to protect the interests of third parties acting in good faith who have acquired instruments of ownership, assets, rights, obligations or liabilities of a CCP under resolution by virtue of a resolution action, the annulment of a decision of a resolution authority shall not affect any subsequent administrative acts or transactions concluded by the resolution authority concerned which were based on the annulled decision.

For the purposes of the first subparagraph, the remedies available to the applicant where a decision of the resolution authority is annulled shall be limited to compensation for the loss suffered as a result of that decision.

Article 73

Restrictions on other proceedings

1. Normal insolvency proceedings shall not be commenced in relation to a CCP except at the initiative of the resolution authority or with its consent in accordance with paragraph 3.
2. Competent authorities and resolution authorities shall be notified without delay of any application for the opening of normal insolvency proceedings in relation to a CCP, irrespective of whether the CCP is under resolution or a decision has been made public in accordance with Article 70(3).
3. The authorities responsible for normal insolvency proceedings may only commence those proceedings after the resolution authority has notified them of its decision not to take any resolution action in relation to the CCP or where no notification has been received within seven days of the notification referred to in paragraph 2.

Where necessary for the effective use of the resolution tools and powers, resolution authorities may request the court to apply a stay on any judicial action or proceeding in which a CCP under resolution is or may become a party for an appropriate period of time in accordance with the resolution objectives.

TITLE VI

RELATIONS WITH THIRD COUNTRIES

Article 74

Agreements with third countries

1. In accordance with Article 218 TFEU, the Commission may submit to the Council recommendations for the negotiation of agreements with one or more third countries regarding the means of cooperation between the resolution authorities and the relevant third country authorities in connection with recovery and resolution planning in relation to CCPs and third country CCPs, with regard to the following situations:
 - (a) where a third country CCP provides services or has subsidiaries in one or more Member States;
 - (b) where a CCP established in a Member State provides services or has one or more subsidiaries in a third country.
2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure the establishment of processes and arrangements for cooperation in carrying out the tasks and exercising the powers indicated in Article 77, including the exchange of information necessary for those purposes.

Article 75

Recognition and enforcement of third-country resolution proceedings

1. This Article shall apply in respect of third-country resolution proceedings unless and until an international agreement as referred to in Article 74(1) enters into force with the relevant third country. It shall also apply following the entry into force of an international agreement as referred to in Article 74(1) with the relevant third country to the extent that recognition and enforcement of third-country resolution proceedings is not governed by that agreement.

2. Relevant national authorities shall recognise third-country resolution proceedings relating to a third-country CCP in any of the following cases:

- (a) the third-country CCP provides services in or has subsidiaries established in one or more Member States;
- (b) the third-country CCP has assets, rights, obligations or liabilities located in one or more Member States or are governed by the law of those Member States.

Relevant national authorities shall ensure the enforcement of the recognised third-country resolution proceedings in accordance with their national law.

3. The relevant national authorities shall at least have the power to do the following:

- (a) exercise the resolution powers in relation to the following:
 - (i) assets of a third-country CCP that are located in their Member State or governed by the law of their Member State;
 - (ii) rights or liabilities of a third-country CCP that are booked in their Member State or governed by the law of their Member State, or where claims in relation to such rights and liabilities are enforceable in their Member State;
- (b) perfect, including to require another person to take action to perfect, a transfer of instruments of ownership in a subsidiary established in the designating Member State;
- (c) exercise the powers in Article 55, 56 and 57 in relation to the rights of any party to a contract with an entity referred to in paragraph 2 of this Article, where such powers are necessary in order to enforce third-country resolution proceedings;

(d) render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, of entities referred to in paragraph 2 and other group entities, where such a right arises from resolution action taken in respect of the third-country CCP, whether by the third-country resolution authority itself or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

4. The recognition and enforcement of third-country resolution proceedings shall be without prejudice to any normal insolvency proceedings under national law applicable.

Article 76

Right to refuse recognition or enforcement of third-country resolution proceedings

By way of derogation from Article 75(2), the relevant national authorities may refuse to recognise or to enforce third-country resolution proceedings in any of the following cases:

- (a) the third-country resolution proceedings would have adverse effects on financial stability in their Member State;
- (b) creditors, clearing members and clients located in their Member State would not receive the same treatment as third-country creditors, clearing members and clients with similar legal rights under the third-country home resolution proceedings;
- (c) recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for their Member State;
- (d) the recognition or enforcement would be contrary to national law.

Article 77

Cooperation with third-country authorities

1. This Article shall apply in respect of cooperation with a third country unless and until an international agreement as referred to in Article 74(1) enters into force with the relevant third country. It shall also apply following the entry into force of an international agreement provided for in Article 74(1) with the relevant third country to the extent that the subject matter of this Article is not governed by that agreement.
2. Competent authorities or resolution authorities, where appropriate, shall conclude cooperation arrangements with the following relevant third-country authorities, taking into account existing cooperation arrangements established pursuant to Article 25(7) of Regulation (EU) No 648/2012:
 - (a) where a third country CCP provides services or has subsidiaries in one or more Member States, the relevant authorities of the third country where the CCP is established;
 - (b) where a CCP provides services in or has one or more third-country subsidiaries, the relevant authorities of the third countries where those services are provided or where the subsidiaries are established.
3. The cooperation arrangements referred to in paragraph 2 shall establish processes and arrangements between the participating authorities for sharing the necessary information for and cooperating in carrying out the following tasks and exercising the following powers in relation to CCPs referred to in points (a) and (b) of paragraph 2 or groups including such CCPs:
 - (a) drawing up resolution plans in accordance with Article 13 and similar requirements under the law of the relevant third countries;
 - (b) the assessment of the resolvability of such institutions and groups, in accordance with Article 16 and similar requirements under the law of the relevant third countries;
 - (c) the application of powers to address or remove impediments to resolvability pursuant to Article 17 and any similar powers under the law of the relevant third countries;

- (d) the application of early intervention measures pursuant to Article 19 and similar powers under the law of the relevant third countries;
 - (e) the use of resolution tools and exercise of resolution powers and similar powers conferred upon the relevant third-country authorities.
4. Cooperation arrangements concluded between resolution authorities and competent authorities of Member States and third countries pursuant to paragraph 2 may include provisions on the following matters:
- (a) the exchange of information necessary for the preparation and maintenance of resolution plans;
 - (b) consultation and cooperation in drawing up resolution plans, including principles for the exercise of powers under Article 75 and similar powers under the law of the relevant third countries;
 - (c) the exchange of information necessary for the use of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;
 - (d) early warning to or consultation of parties to the cooperation arrangement before taking any significant action under this Regulation or relevant third-country law affecting the CCP or group to which the arrangement relates;
 - (e) the coordination of public communication in the case of joint resolution actions;
 - (f) procedures and arrangements for the exchange of information and cooperation under points (a) to (e), including, where appropriate, through the establishment and operation of crisis management groups.

In order to ensure the common, uniform and consistent application of paragraph 3, ESMA shall issue guidelines on the types and content of the provisions referred to in paragraph 4 by [*PO please insert the date 18 months from entry into force of the Regulation*].

5. Resolution authorities and competent authorities shall notify ESMA of any cooperation agreements that they have concluded in accordance with this Article.

Article 78

Exchange of confidential information

1. Resolution authorities, competent authorities, competent ministries and, where applicable, other relevant national authorities shall exchange confidential information, including recovery plans, with relevant third-country authorities only if the following conditions are met:
 - (a) those third-country authorities are subject to requirements and standards of professional secrecy at least considered to be equivalent, in the opinion of all the authorities concerned, to those imposed by Article 71;
 - (b) the information is necessary for the performance by the relevant third-country authorities of their functions under national law that are comparable to those under this Regulation and is not used for any other purposes.
2. In so far as the exchange of information relates to personal data, the handling and transmission of such personal data to third-country authorities shall be governed by the applicable Union and national data protection law.
3. Where confidential information originates in another Member State, resolution authorities, competent authorities and competent ministries shall not disclose that information to relevant third-country authorities unless the following conditions are met:
 - (a) the relevant authority of the Member State where the information originated agrees to that disclosure;
 - (b)

the information is disclosed only for the purposes permitted by the authority referred to in point (a).

4. For the purposes of this Article, information is deemed to be confidential if it is subject to confidentiality requirements under Union law.

TITLE VIa

ADMINISTRATIVE MEASURES AND SANCTIONS

Article 78a

Administrative sanctions and other administrative measures

1. Without prejudice to any criminal sanctions, Member States shall, in accordance with national law, lay down rules on administrative sanctions 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.

Member States may decide not to lay down rules for administrative sanctions for infringements which are subject to national criminal law. Where they so decide, Member States shall communicate to the Commission and to ESMA the relevant criminal law provisions. The administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive.

By [*PO please insert the date 24 months from the entry into force of this Regulation*], Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission and to ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendments thereto.

2. Member States shall ensure that, where obligations referred to in the first paragraph apply to CCPs, clearing members within the meaning of this Regulation, in the event of an infringement, administrative sanctions or other administrative measures can be applied, subject to the conditions laid down in national law, to the senior management and to other natural persons who under national law are responsible for the infringement.
3. The power to impose administrative sanctions or other administrative measures shall be granted to resolution authorities or, where different and depending on the type of infringement, to competent authorities. Resolution authorities and competent authorities shall be provided necessary powers for gathering information and conduct investigations necessary for the exercise of their respective functions. In the exercise of their powers to impose sanctions, resolution authorities and competent authorities shall cooperate closely to ensure that administrative sanctions 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 administrative sanctions or other administrative measures 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.

Article 78b

Specific provisions

1. Member States shall ensure that their laws, regulations and administrative provisions provide for administrative sanctions 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 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 sanctions and other administrative measures that can be applied include at least the following:
 - (a) a public statement which indicates the natural person, 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 a CCP;

- (d) in the case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual 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 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 pecuniary sanctions 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 this regulation*];
- (f) administrative pecuniary sanctions of up to twice the amount of the benefit derived from the infringement where that benefit can be determined.

Article 78c

Publication of administrative sanctions or other administrative measures

1. Resolution authorities or competent authorities shall publish on their official website at least any administrative sanctions or administrative measures imposed by them for infringements of this Regulation where such sanctions or measures 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 administrative sanction or other administrative measure including information on the type and nature of the infringement and the identity of the natural or legal person on whom the administrative sanction or other administrative measure is imposed.

Where Member States permit publication of administrative sanctions or other administrative measures 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 administrative sanctions or other administrative measures 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 administrative sanction or other administrative measure 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 or proceedings;
 - (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 please insert the date 18 months from the entry into force of this Regulation*], ESMA shall submit a report to the Commission on the publication of administrative sanctions and other administrative measures by Member States on an anonymous basis as provided for under paragraph 2 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 administrative sanctions or other administrative measures under national law for Member States for publication of administrative sanctions and other administrative measures.

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 sanctions imposed by them under Article 78a and of the status of that appeal and outcome thereof.
2. ESMA shall maintain a central database of administrative sanctions 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 administrative sanctions 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 administrative sanctions and each competent authority's publication of administrative sanctions under Article 78a and indicate the period for which each Member State publishes penalties.

Article 78e

Effective application of administrative sanctions or other administrative measures and exercise of powers to impose administrative sanctions or administrative measures by competent authorities and resolution authorities

Member States shall ensure that when determining the type of administrative sanctions or other administrative measures, 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.

TITLE VII
AMENDMENTS TO REGULATIONS (EU) NO 1095/2010,
(EU) NO 648/2012, AND (EU) 2015/2365 AND DIRECTIVES
2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC,
2011/35/EU, (EU) 2017/1132 AND 2014/59/EU

Article 79
Amendments to Regulation (EU) No 1095/2010

Regulation (EU) No 1095/2010 is amended as follows:

(1) in Article 4, in paragraph 3, the following point (iv) is added:

'(iv) with regard to Regulation (EU) No [on CCP recovery and resolution], a resolution authority as defined in point 3 of Article 2(1) of Regulation (EU) No [on CCP recovery and resolution].';

(2) in Article 40, in paragraph 5, the following subparagraph is added:

'For the purpose of acting within the scope of Regulation (EU) [on CCP recovery and resolution], the member of the Board of Supervisors referred to in point (b) of paragraph 1 may, where appropriate, be accompanied by a representative from the resolution authority in each Member State, who shall be non-voting.'

Article 80
Amendments to Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

(1) The following Article 6b is inserted:

'Article 6b

Suspension of clearing obligation in resolution

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, the competent authority designated in accordance with Article 22 or a competent authority responsible for the supervision of a

clearing member of the CCP in resolution may request that the Commission suspend the clearing obligation referred to in Article 4(1) for specific classes of OTC derivatives where the following conditions are met:

- (a) the CCP in resolution is authorised to clear the specific classes of OTC derivatives subject to the clearing obligation for which the suspension is requested;
- (b) the suspension of the clearing obligation for those specific classes of OTC derivatives is necessary to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the Union in connection with the resolution of the CCP, and that suspension is proportionate to those aims.

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 met

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.

- 2. ESMA shall, within 24 hours of notification of the request from the authority referred to in the first subparagraph of paragraph 1, and, if deemed necessary, after consulting the ESRB, issue an opinion on the intended suspension taking into account the necessity to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the Union, the resolution objectives laid down in Article 21 of Regulation (EU) [on CCP recovery and resolution] and the criteria set out in paragraphs 4 and 5 of Article 5 of this Regulation.
- 2a. Where the suspension of the clearing obligation is considered by ESMA to be a material change in the criteria for the trading obligation to take effect referred to in Article 23(5) of Regulation (EU) No 600/2014, ESMA may request the Commission to suspend the trading obligation laid down in Article 28(1) and (2)

of that Regulation for the same specific classes of OTC derivatives that are subject to the clearing obligation.

ESMA shall notify its reasoned request to the authority referred to in the first subparagraph of paragraph 1 and the ESRB at the same time the request is notified to the Commission.

3. The requests referred to in paragraphs 1 and 2a and the opinion referred to in paragraph 2 shall not be made public.
4. The Commission shall, without undue delay after receipt of the opinion referred to in paragraph 2 either suspend the clearing obligation for the specific classes of OTC derivatives by way of an implementing act, or reject the requested suspension .

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 an implementing act, 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 stability or the orderly functioning of financial markets in the Union.

Where the Commission rejects the requested suspension, it shall provide reasons therefor in writing to the requesting authority referred to in the first subparagraph of paragraph 1 and to ESMA. The Commission shall immediately inform the European Parliament and the Council thereof and forward them the reasons provided to the requesting authority referred to in the first subparagraph of paragraph 1 and to ESMA. Such information shall not be made public.

The implementing act referred to in the first subparagraph of this paragraph shall be adopted in accordance with the procedure referred to in Article 86(3).

- 4a. Where requested by ESMA in accordance with paragraph 2a, the implementing act suspending the clearing obligation may also suspend the trading obligation laid down in Article 28(1) and (2) of Regulation (EU) No 600/2014 for the same specific classes of OTC derivatives that are subject to the suspension of the clearing obligation.
5. The suspension of the clearing obligation and, where applicable, the trading obligation shall be communicated to the requesting authority referred to in the first subparagraph of paragraph 1 and, where applicable, paragraph 2a and to ESMA and shall be published in the Official Journal of the European Union, on the Commission's website and in the public register referred to in Article 6.
6. The suspension of the clearing obligation pursuant to paragraph 4 shall be valid for an initial period of no more than three months from the date of application of that suspension.

The suspension of the trading obligation referred to in paragraph 4a shall be valid for the same initial period.

7. Where the grounds for the suspension continue to apply, the Commission may by way of an implementing act, extend the suspension referred to in paragraph 4 for additional periods of no more than three months, with the total period of the suspension of no more than 12 months. Any extensions of the suspension shall be published in accordance with paragraph 5.

The implementing act referred to in the first subparagraph of this paragraph shall be adopted in accordance with the procedure referred to in Article 86(3).

- 7a. Any of the authorities referred to in the first subparagraph of paragraph 1 shall, in sufficient time before the end of the initial suspension period referred to in paragraph 4 or the extension period referred to in paragraph 7, issue a request to the Commission to extend the suspension of the clearing obligation.

The request shall be accompanied by evidence that the conditions laid down in points (a) and (b) of the first subparagraph of paragraph 1 continue to be met.

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.

The request referred to in the first subparagraph of this paragraph shall not be made public.

ESMA shall without undue delay after the receipt of the notification of the request and, if deemed necessary, after consulting the ESRB, issue an opinion to the Commission on whether the grounds for the suspension continue to apply taking into account the necessity to avoid or address a serious threat to financial stability or the orderly functioning of financial markets in the Union, the resolution objectives laid down in Article 21 of Regulation (EU) [on CCP recovery and resolution] and the criteria set out in paragraphs 4 and 5 of Article 5 of this Regulation. ESMA shall send a copy of that opinion to the European Parliament and to the Council. That opinion shall not be made public.

The implementing act extending the suspension of the clearing obligation may also extend the period of the suspension of the trading obligation referred to in paragraph 4a.

The extension of the suspension of the trading obligation shall be valid for the same period as the extension of the suspension of the clearing obligation.”;

(1a) The following Article 13a is inserted:

‘Article 13a

Replacement of interest rate benchmarks in legacy trades

1. Counterparties referred to in Article 11(3) may continue to apply the risk-management procedures that they have in place at the date of application of this Regulation in respect of non-centrally cleared OTC derivative contracts entered into or novated before the date on which the obligation to have risk-management procedures pursuant to Article 11(3) takes effect where, after the entry into force

of this Regulation, those contracts are novated for the sole purpose of replacing the interest rate benchmark they are referring to or of introducing fallback provisions in relation to that benchmark.

2. Transactions entered into or novated before the date on which the clearing obligation takes effect pursuant to Article 4 and which, after the entry into force of this Regulation, are subsequently novated for the sole purpose of replacing the interest rate benchmark they are referring to or of introducing fallback provisions in relation to that benchmark, shall not, for that reason, become subject to the clearing obligation referred to in Article 4.'

(2) In Article 28, paragraph 3 is replaced by the following:

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

(3) In Article 28, paragraph 5 is replaced by the following:

- '5. A CCP shall promptly inform the competent authority and the risk committee of any decision in which the board decides not to follow the advice of the risk committee and explain such decision. The risk committee or any member of the risk committee may inform the competent authority of any areas in which it considers that the advice of the risk committee has not been followed.';

(4) in Article 38, the following paragraph 6 is added:

'The clearing members of the CCP shall inform their existing and potential clients of the potential losses or other costs that they may bear as a result of the application of default management procedures and loss and position allocation

arrangements under the CCP's operating rules, including the type of compensation they may receive, taking into account Article 48(7). Clients shall be provided with sufficient information to ensure that they understand the worst-case losses or other costs they could face should the CCP undertake recovery measures.');

(4a) in Article 48, in paragraph 3, the following subparagraph is added:

'The CCP shall inform the competent authority of any significant negative development of the risk profile of its clearing members determined in the context of the CCP's assessment referred to in Article 37(2) or any other assessment with similar conclusion, including any development of the risk they bring to the CCP, which the CCP considers to have the potential of triggering a default procedure. ';

(5) in Article 81, in paragraph 3, the following point (q) is added:

'(q) the resolution authorities designated under Article 3 of Regulation (EU) No [on CCP recovery and resolution].';

(6) in Article 86, the following paragraph 3 is added:

'Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.'

Article 81

Amendment to Regulation (EU) 2015/2365

In Article 12, in paragraph 2, the following point (n) is added:

'(n) the resolution authorities designated under Article 3 of Regulation (EU) [on CCP recovery and resolution].'

Article 81a

Amendments to Directive 2002/47/EC

Directive 2002/47/EC is amended as follows:

- (1) In Article 1, paragraph 6 is replaced by the following:
- '6. Articles 4 to 7 of this Directive shall not apply to any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, any close out netting or set-off provision that is imposed by virtue of Title IV, Chapter V or VI of Directive 2014/59/EU of the European Parliament and of the Council, or of Title V, Chapter III, Section III, or Chapter IV of Regulation (EU) No [CCP recovery and resolution] or to any such restriction that is imposed by virtue of similar powers in the law of a Member State to facilitate the orderly resolution of any entity referred to in point (c)(iv) or (d) of paragraph 2 of this Article which is subject to safeguards at least equivalent to those set out in Title IV, Chapter VII of Directive 2014/59/EU or in Title V, Chapter V of Regulation (EU) No [CCP recovery and resolution].';

(2) article 9a is replaced by the following:

'Article 9a

Directives 2008/48/EC, Directive 2014/59/EU and Regulation (EU) No [CCP recovery and resolution]

This Directive shall be without prejudice to Directives 2008/48/EC, Directive 2014/59/EU and Regulation (EU) No [on CCP recovery and resolution].'

Article 81b

Amendment to Directive 2004/25/EC

In Article 4, paragraph 5, third subparagraph is replaced by the following:

'Member States shall ensure that Article 5(1) of this Directive does not apply in the case of use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council or in Title V of Regulation (EU) No [CCP recovery and resolution].'

Article 81c

Amendment to Directive 2005/56/EC

In Article 3, paragraph 4 is replaced by the following:

'4. Member States shall ensure that this Directive does not apply to the company or companies that are the subject of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council or in Title V of Regulation (EU) No [CCP recovery and resolution].'

Article 81d

Amendments to Directive 2007/36/EC

Directive 2007/36/EC is amended as follows:

(1) In Article 1, paragraph 4 is replaced by the following:

'4. Member States shall ensure that this Directive does not apply in the case of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council or in Title V of Regulation (EU) No [CCP recovery and resolution].';

(2) in Article 5, paragraph 5 is replaced by the following:

'5. Member States shall ensure that for the purposes of Directive 2014/59/EU and Regulation (EU) No [CCP recovery and resolution] the general meeting may, by a majority of two-thirds of the votes validly cast, issue a convocation to a general meeting, or modify the statutes to prescribe that a convocation to a general meeting is issued, at shorter notice than as laid down in paragraph 1 of this Article, to decide on a capital increase, provided that that meeting does not take place within ten calendar days of the convocation, that the conditions of Article 27 or 29 of Directive 2014/59/EU or of Article 19 of Regulation (EU) No [CCP recovery and resolution] are met, and that the capital increase is necessary to avoid the conditions for resolution laid down in Articles 32 and 33 of Directive 2014/59/EU or in Article 22 of Regulation (EU) No [CCP recovery and resolution].'

Article 81e

Amendment to Directive 2011/35/EU

In Article 1, paragraph 4 is replaced by the following:

'4. Member States shall ensure that this Directive does not apply to the company or companies which are the subject of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council or in Title V of Regulation (EU) No [CCP recovery and resolution].'

Article 81f

Amendment to Directive (EU) 2017/1132

In Article 84, paragraph 3 is replaced by the following:

- '3. Member States shall ensure that Article 49, Article 58(1), Article 68(1), (2) and (3), the first subparagraph of Article 70(2), Articles 72 to 75, and Articles 79, 80 and 81 of this Directive do not apply in the case of use of the resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council or in Title V of Regulation (EU) No [CCP recovery and resolution].'

Article 81h

Amendment to Directive 2014/59/EU

In Article 1, the following paragraph (3) is added:

- '3. This Directive shall not apply to those central counterparties in respect of which, pursuant to Article 14(5) of Regulation (EU) No 648/2012, Member States apply certain requirements for authorisation under Directive 2013/36/EU.'

Article 81i

Amendment to Regulation (EU) 806/2014

In Article 2, the following paragraph 2 is added:

- '2. This Regulation shall not apply to those central counterparties in respect of which, pursuant to Article 14(5) of Regulation (EU) No 648/2012, Member States apply certain requirements for authorisation under Directive 2013/36/EU.'

TITLE VIII FINAL PROVISIONS

Article 82 Review

By [*PO please insert a date 5 years after the date of entry into force of this Regulation*], the Commission shall review the implementation of this Regulation and shall submit a report thereon to the European Parliament and to the Council. It shall assess at least the following:

- (a) the appropriateness and sufficiency of financial resources available to the resolution authority to cover non-default losses;
- (b) The amount of own resources of the CCP to be used in recovery and in resolution and the means for its use.
- (c) whether the resolution tools available to the resolution authority are adequate.

Where appropriate, that report shall be accompanied by proposals for revision of this Regulation.

By 31 December 2021, the Commission shall review the application of Article 27(6). The Commission shall assess in particular the need for any further amendments with regard to the use of the write down and conversion tool in the event of resolution of CCPs in combination with other resolution tools that result in financial losses being borne by clearing members. The Commission shall submit a report thereon to the European Parliament and to the Council accompanied where appropriate by proposals for revision of this Regulation.

Article 83 Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [*PO please insert the date 24 months from entry into force of this Regulation*].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*

ANNEX

SECTION A REQUIREMENTS FOR RECOVERY PLANS

1. The recovery plan shall:
 - (1) address comprehensively and effectively the risks identified under scenarios that could severely affect the financial soundness or operational viability of the CCP; in the case of default losses, ensure the re-establishment of a matched book and the full allocation of uncovered losses; in the case of non-default losses, ensure adequate loss absorbing arrangements; enable the replenishment of the CCP's financial resources, and not assume any access to or receipt of extraordinary public financial support;
 - (2) consider the interests of all stakeholders including clients that are likely to be affected by that plan and seek to minimise the negative impact on these stakeholders and the financial system generally;
 - (3) ensure that clearing members do not have unlimited exposures toward the CCP and stakeholders' potential losses and liquidity shortfalls are transparent, measurable, manageable and controllable.

The CCP shall develop adequate mechanisms to involve linked FMIs and stakeholders which would bear losses, incur costs or contribute to cover liquidity shortfalls in the event that the recovery plan was implemented in the process of drawing up of that plan.

2. The recovery plan shall include the following items:
 - (1) a summary of the key elements of the plan and a summary of overall recovery capacity;
 - (2) a summary of the material changes to the CCP since the most recently filed recovery plan;
 - (3) a communication and disclosure plan outlining how the CCP intends to keep its competent authority informed of the recovery situation and manage any potentially negative market reactions;

- (4) a comprehensive range of capital, loss allocation, position allocation and liquidity actions required to maintain or restore the viability and financial soundness of the CCP including to restore its matched book and capital, and replenish pre-funded resources and maintain access to sufficient sources of liquidity which are necessary for the CCP to maintain its viability as a going concern and to continue providing its critical services in accordance with Article 1(2) of Commission Delegated Regulation (EU) No 152/2013 and Articles 32(2) and 32(3) of Commission Delegated Regulation (EU) No 153/2013. Loss allocation actions may include cash calls and a reduction in the value of gains payable by the CCP to non-defaulting clearing members, where defined in the operating rules of the CCP, and shall not use the initial margins posted by non-defaulting clearing members to allocate losses in accordance with Article 45(4) of Regulation (EU) No 648/2012;
- (4b) an assessment of:
- (i) the financial and operational impact of the implementation of recovery options on solvency, liquidity, funding positions, profitability and operations;
 - (ii) the external impact and systemic consequences of the implementation and recovery options on critical functions, shareholders, customers, investors, counterparties and, where applicable, the rest of the group;
 - (iii) the feasibility of the implementation of recovery options with a detailed analysis of risks, impediments and solutions for the impediments;
 - (iv) the continuity of operations (especially IT and human resources) and access to other financial infrastructures in case of implementing recovery options.
- (5) appropriate conditions and procedures to ensure the timely implementation of recovery actions, including an estimation of the timeframe for implementing each material aspect of the plan;
- (6) a detailed description of any material impediment to the effective and timely implementation of the plan, including consideration of the impact on clearing members and clients including in cases where clearing members are likely to take measures in accordance with their recovery plans as referred to in Articles 5 and 7 of Directive 2014/59/EU, and where appropriate on the rest of the group;

- (6a) an assessment of the appropriateness of the recovery options (so that the CCP can choose the set of recovery options which is the most appropriate for each relevant recovery plan scenario, including the sequence in which the envisaged actions should be applied) based on the following criteria:
- (i) Comprehensive. The set of options should comprehensively address how the FMI would continue to provide critical functions in all relevant scenarios.
 - (ii) Effective. Each option should be reliable, timely and have a strong legal basis.
 - (iii) Transparent, measurable, manageable and controlable. The options should be transparent and designed to allow those who would bear losses and liquidity shortfalls to measure, manage and control their potential losses and liquidity shortfalls.
 - (iv) Create appropriate incentives. The tools should create appropriate incentives for the CCP's owners, clearing members and their clients and the financial system more broadly.
 - (v) Minimise negative impact. The tools should be designed to minimise the negative impact on clearing members and their clients and the financial system more broadly;

- (7) an identification of critical functions and of the related core services, operations and business lines;
- (8) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the CCP;
- (9) a detailed description of how recovery planning is integrated into the corporate governance structure of the CCP, how it forms part of the operating rules of the CCP agreed to by clearing members, as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for drawing up and implementing the plan;
- (10) arrangements and measures incentivising non-defaulting clearing members to bid competitively in auctions of a defaulted members' positions;
- (11) arrangements and measures to ensure that the CCP has adequate access to contingency funding sources, including potential liquidity sources, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;
- (12) arrangements and measures:
 - (i) to reduce risk;
 - (ii) to restructure contracts, rights, assets and liabilities;
 - (iii) to restructure business lines;
 - (iv) necessary to maintain continuous access to financial markets infrastructures;
 - (v) necessary to maintain the continuous functioning of the CCP's operational processes, including infrastructure and IT services;
- (13) preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;
- (14) in case other management actions or strategies to restore financial soundness are envisaged in the plan, the anticipated financial effect of those actions or strategies;

- (15) preparatory measures that the CCP has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the CCP, restoring its matched book and replenishment of its pre-funded resources as well as its enforceability across borders;
- (16) a framework of quantitative and qualitative indicators which identifies the points at which appropriate actions referred to in the plan may be taken.
- (17) where applicable, an analysis of how and when the CCP may apply, in the conditions addressed in the plan, for the use of central bank facilities and identify those assets that would be expected to qualify as collateral under the terms of the central bank facility;
- (18) taking into account the provisions of Article 49(1) of Regulation (EU) 648/2012, a range of extreme scenarios of stress relevant to the CCP's specific conditions, including system-wide events and events specific to the legal entity and any group to which it belongs and specific stress to the individual clearing members of the CCP or, where appropriate, a linked FMI;
- (19) taking into account the provisions of Article 34 and Article 49(1) of Regulation (EU) 648/2012, scenarios caused both by the stress or default of one or more of its members and by other reasons including losses from the CCP's investment activities or from operational problems (including severe external threats to a CCP's operations due to an external disruption, shock or cyber-related incident).

SECTION B
INFORMATION THAT RESOLUTION AUTHORITIES MAY REQUEST CCPs
TO PROVIDE FOR THE PURPOSES OF DRAWING UP AND
MAINTAINING RESOLUTION PLANS

For the purposes of drawing up and maintaining resolution plans, resolution authorities may request institutions to provide at least the following information:

- (1) a detailed description of the CCP's organisational structure including a list of all legal persons;
- (2) identification of the direct holders and the percentage of voting and non-voting rights of each legal person;
- (3) the location, jurisdiction of incorporation, licensing and key management associated with each legal person;
- (4) a mapping of the CCP's critical functions, operations, services and core business lines including balance sheet details of such operations, services and business lines, by reference to legal persons;
- (5) a detailed description of the components of the CCP's and all its legal entities' business activities, separating, at a minimum by types of services and respective amounts of cleared volumes, open interest, initial margin, variation margin flows, default funds and any associated assessment rights or other recovery actions pertaining to such business lines;
- (6) details of capital and debt instruments issued by the CCP and its legal entities;
- (7) an identification of from whom the CCP has received collateral and in what form (title transfer or security interest), and to whom it has pledged collateral and in what form and the person that holds the collateral, and in both cases the jurisdiction in which the collateral is located;
- (8) a description of the off balance sheet exposures of the CCP and its legal entities, including a mapping to its critical operations and core business lines;

- (9) the material hedges of the CCP including a mapping to legal persons;
- (10) identification of the relative exposures and importance of clearing members of the CCP as well as an analysis of the impact of the failure of major clearing members on the CCP;
- (11) each system on which the CCP conducts a material number or value amount of trades including a mapping to the CCP's legal persons, critical operations and core business lines;
- (12) each payment, clearing or settlement system of which the CCP is directly or indirectly a member, including a mapping to the CCP's legal persons, critical operations and core business lines;
- (13) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the CCP including a mapping to the CCP's legal persons, critical operations and core business lines;
- (14) an identification of the owners of the systems identified in point (13), service level agreements related thereto, and any software and systems or licenses, including a mapping to their legal entities, critical operations and core business lines;
- (15) an identification and mapping of the legal persons and the interconnections and interdependencies among the different legal persons such as:
 - common or shared personnel, facilities and systems;
 - capital, funding or liquidity arrangements;
 - existing or contingent credit exposures;
 - cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;
 - risks transfers and back-to-back trading arrangements; service level agreements;
- (16) the competent and resolution authority for each legal person, if different to those designated under Article 22 of Regulation (EU) No 648/2012 and under Article 3 of this Regulation;

- (17) the member of the board responsible for providing the information necessary to draw up the resolution plan of the CCP as well as those responsible, if different, for the different legal persons, critical operations and core business lines;
- (18) a description of the arrangements that the CCP has in place to ensure that, in the event of resolution, the resolution authority will have all the necessary information, as determined by the resolution authority, for applying the resolution tools and powers;
- (19) all the agreements entered into by the CCP and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the use of resolution tool;
- (20) a description of possible liquidity sources for supporting resolution;
- (21) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

SECTION C
MATTERS THAT THE RESOLUTION AUTHORITY IS TO CONSIDER
WHEN ASSESSING THE RESOLVABILITY OF A CCP

When assessing the resolvability of a CCP, the resolution authority shall consider the following:

- (1) the extent to which the CCP is able to map core business lines and critical operations to legal persons;
- (2) the extent to which legal and corporate structures are aligned with core business lines and critical operations;
- (2a) the extent to which the legal structure of the CCP inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;
- (3) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;
- (3a) the existence and robustness of service level agreements;
- (4) the extent to which the service agreements that the CCP maintains are fully enforceable in the event of resolution of the CCP;
- (5) the extent to which the governance structure of the CCP is adequate for managing and ensuring compliance with the CCP's internal policies with respect to its service level agreements;
- (6) the extent to which the CCP has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;
- (7) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;

- (8) the adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;
- (9) the capacity of the management information systems to provide the information essential for the effective resolution of the CCP at all times even under rapidly changing conditions;
- (10) the extent to which the CCP has tested its management information systems under stress scenarios as defined by the resolution authority;
- (11) the extent to which the CCP can ensure the continuity of its management information systems both for the affected CCP and the new CCP in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;
- (12) the extent to which any intra-group guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust, where the CCP benefits or is exposed to such guarantees;
- (13) the extent to which any intra-group transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust, where the CCP engages in such transactions;
- (14) the extent to which the use of any intra-group guarantees or transactions increases contagion across the group;
- (15) *[deleted]*
- (16) the extent to which the resolution of the CCP could have a negative impact on another part of its group, in particular where such group comprises other FMIs, where applicable;
- (17) *[deleted]*
- (18) whether third-country authorities have the resolution tools necessary to support resolution actions by Union resolution authorities, and the scope for coordinated action between Union and third-country authorities;
- (19) the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the CCP's structure;

- (20) any specific requirements needed to issue new instruments of ownership as referred to in Article 33(1);
 - (21) the arrangements and means through which resolution could be hampered in the cases of CCP that have clearing members or collateral arrangements established in different jurisdictions;
 - (22) the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on clearing members and their clients, other counterparties and employees and possible actions that third-country authorities may take;
 - (23) the extent to which the impact of the CCP's resolution on the financial system and on financial market's confidence can be adequately evaluated;
 - (24) the extent to which the resolution of the CCP could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;
 - (25) the extent to which contagion to other CCPs or to the financial markets could be contained through the application of the resolution tools and powers;
 - (26) the extent to which the resolution of the CCP could have a significant effect on the operation of payment and settlement systems.
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