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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to adoption of 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, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132

- Draft Statement of the Council's reasons

I. INTRODUCTION

On 28 November 2016, the Commission transmitted to the Council a 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 ("the Regulation"). The proposal's main objective is to establish a framework for the recovery and resolution of Central Counterparties (CCPs), thereby ensuring that both CCPs and national authorities in the EU have the means to act decisively in a case where a CCP faces severe distress or failure.

The European Parliament adopted its first-reading position on the CCP Recovery and Resolution Regulation on 27 March 2019.

The Council's Working Party on Financial Services examined the proposed Regulation in a number of meetings under various Presidencies.

The Permanent Representatives Committee in the Council agreed on 4 December 2019 on a mandate for the Council's negotiations with the European Parliament.

On 23 June 2020, the European Parliament and the Council Presidency reached a final compromise, which permitted the conclusion of the negotiations.

On 2 September 2020, the Committee on Economic and Monetary Affairs (ECON) of the European Parliament approved the outcome of the trilogue negotiations. The Chair of the ECON Committee addressed a letter to the Council Presidency the same day indicating that, should the Council adopt the agreed text (subject to legal-linguistic verification) as its first-reading position, she would recommend to the Parliament's plenary session that the Parliament should in its second reading approve this Council first-reading position.

On 12 October 2020, the Council reached a political agreement on the agreed text prior to its legal-linguistic verification.

Taking into account the above agreement and after legal-linguistic revision, the Council adopted its position at first reading on [xxxx 2020], in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union (TFEU)

II. OBJECTIVE

Financial markets are pivotal for the functioning of modern economies. 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 faces financial distress or is at the point of failure, such an event does not destabilise the entire financial market and damage growth across the wider economy. CCPs are key components of global financial markets, stepping in between participants to act as the buyer to every seller and the seller to every buyer, and playing a central role in processing financial transactions and managing exposures to diverse risks inherent in those transactions.

The integration of European Union financial markets has resulted in CCPs evolving from primarily serving domestic needs and markets to constituting critical nodes in European Union financial markets more widely. Considering that a significant amount of the financial risk of the European Union's 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, both for domestic and cross-border services.

Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, already requires CCPs to observe high prudential, organisational and conduct of business standards. Competent authorities are tasked with the full oversight of the activities of CCPs. 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 CCPs.

However, no system of rules and practices can prevent existing resources from being inadequate in managing the risks incurred by a CCP, including an event of one or more defaults by clearing members, or a combination of a clearing member default(s) and other financial losses. Faced with a scenario of severe distress or impending failure, financial institutions, including CCPs, should in principle remain subject to normal insolvency proceedings. However, as normal corporate insolvency procedures are not suited to ensuring sufficient speed of intervention or to adequately prioritising the continuation of the critical functions of a CCP for the sake of preserving financial stability, it is necessary to create a special resolution framework for CCPs.

The objective of this recovery and resolution framework is to ensure 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 up the remaining activities through normal insolvency proceedings, and to preserve financial stability while avoiding a significant adverse effect on the financial system and its ability to serve the real economy and minimising the cost of a CCP failure to taxpayers. The recovery and resolution framework will further reinforce the preparedness of CCPs and national authorities to mitigate financial stress and will provide national authorities and the European Securities and Markets Authority (ESMA) with further insight into CCPs' preparations for stress scenarios. It will also provide national authorities with powers to prepare for the potential resolution of a CCP and to deal with the declining health of a CCP in a coordinated manner, thus contributing to the smooth functioning of financial markets.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

(a) Scope of the Regulation

The Council's first-reading position lays down rules and procedures relating to the recovery and resolution of central counterparties 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.

(b) Authorities, resolution colleges and procedures

Each Member State will designate one or more resolution authorities that will be empowered to use the resolution tools and exercise the resolution powers as laid down in the Regulation. Member States will designate as resolution authorities national central banks, competent ministries, public administrative authorities or other authorities entrusted with public administrative powers.

Resolution authorities must have the expertise, resources and operational capacity to apply resolution measures and to exercise their powers with the speed and flexibility needed to achieve the resolution objectives. Adequate structural arrangements must be put in place to avoid conflicts of interest between the functions entrusted to the resolution authority pursuant to the Regulation and all other functions entrusted to that authority. In particular, effective operational independence should be ensured between the supervisory and resolution functions. These requirements do not preclude the convergence of reporting lines at the highest level of an organisation that subsumes different functions or authorities, or the sharing of staff with relevant expertise under predefined conditions. Each Member State will also designate a single ministry which is responsible for exercising the functions entrusted to the competent ministry pursuant to this Regulation. To ensure that the Member State competent ministry has the final say when it comes to decisions of the resolution authority that have a direct fiscal impact or systemic implications that are likely to lead to a direct fiscal impact, the resolution authority is obliged to obtain the approval of the competent ministry, unless otherwise laid down in national law.

The resolution authority of the CCP will establish, manage and chair a resolution college to carry out the tasks provided for in the Regulation, and ensure cooperation and coordination with the authorities that are members of the resolution college and, where appropriate, cooperation with third-country competent authorities and resolution authorities. The authorities of Member States whose financial stability could be impacted by the failure of the CCP, including the competent authorities of clients of the CCP's clearing members, should be able to participate in the resolution college based on their assessment of the impact that the CCP's resolution could have on financial stability in their respective Member State.

The authorities of Member States that participate in the resolution college based on such an assessment shall be non-voting members and shall also 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. In order to ensure the consistent and coherent functioning of resolution colleges across the Union, the European Securities and Markets Authority (ESMA) will develop draft regulatory technical standards in order to specify the content of the written arrangements and procedures for the functioning of the resolution colleges.

ESMA will create an ESMA Resolution Committee for the purpose of preparing the decisions entrusted to ESMA under the Regulation, composed of designated resolution authorities, with authorities referred to in points (i) and (v) of Article 4(2) of Regulation (EU) No 1093/2010 participating as observers. ESMA shall ensure structural separation between the ESMA Resolution Committee and its other functions. For the purpose of the Regulation, ESMA should cooperate with the European Insurance and Occupational Pensions Authority (EIOPA) and the European Banking Authority (EBA) within the framework of the Joint Committee of the European Supervisory Authorities.

It is crucial that resolution authorities, competent authorities and ESMA should cooperate between themselves and provide each other in a timely manner with all the information relevant for the exercise of their tasks under the Regulation.

Decision-making by competent authorities, resolution authorities and ESMA shall take account of several general principles laid down in the Regulation, including the need to avoid as far as possible the use of extraordinary public financial support and even then only as a last resort, the need to balance the interests of different stakeholders of the CCP and the need to ensure transparency towards and involvement of the authorities of the Member States where the proposed decision or action could have implications for financial stability or fiscal resources.

(c) Recovery and resolution planning

CCPs will be obliged to draw up and maintain recovery plans providing for measures to be taken in the case of both default and non-default events and combinations of both, 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. This shall include a framework of indicators, based on the risk profile of the CCP, that identify the circumstances under which measures in the recovery plan are to be taken, as well as appropriate arrangements for the regular monitoring of the indicators. The Regulation sets out both the minimum content of CCP recovery plans and the requirements that such recovery plans have to comply with, including the requirement that recovery plans should not assume any access to or receipt of extraordinary public financial support. To ensure proper incentives for prudent risk management, , a CCP must use an additional amount of its pre-funded dedicated own resources following a default or a non-default event. That amount shall not be lower than 10% or higher than 25% of the risk-based capital requirements calculated in accordance with Article 16(2) of Regulation (EU) No 648/2012. To comply with this requirement, a CCP may use the amount of capital it holds, in addition to its minimum capital requirements, to comply with the notification threshold referred to in the delegated act adopted on the basis of Article 16(3) of Regulation (EU) 648/2012. ESMA will develop, in close cooperation with EBA and after consulting the ESCB, draft regulatory technical standards specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used.

CCPs will be obliged to submit their recovery plans to the competent authority, which will in turn transmit each plan to the supervisory college provided for in Regulation (EU) No 648/2012, and to the resolution authority without undue delay. The resolution authority will examine the recovery plan in order to identify any measures which may adversely impact the resolvability of the CCP. Where any such measures are identified, the resolution authority shall bring them to the attention of the competent authority and make recommendations to the competent authority on ways to address them. The competent authority will review the recovery plan and assess the extent to which it satisfies the requirements laid down by the Regulation in a coordination procedure with the supervisory college and with a view to reaching a joint decision.

If a simple majority of the voting members disagree with the competent authority's proposal for a joint decision, the matter may be referred to ESMA for specific issues. ESMA may also, at the request of a competent authority within the supervisory college, assist the supervisory college in reaching a joint decision.

The resolution authority of the CCP will, after consultation with the competent authority and in coordination with the resolution college, draw up a resolution plan for the CCP. The resolution plan will provide for the resolution actions that the resolution authority may take in cases where the CCP meets the conditions for resolution. The resolution plan will also specify the circumstances and different scenarios for using the resolution tools and exercising the resolution powers. It will clearly distinguish, in particular through different scenarios, 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 not assume either extraordinary public financial support, or central bank emergency liquidity assistance, including central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms. The Regulation sets out the minimum content of the resolution plan, and provides a mandate for ESMA to develop draft regulatory technical standards further specifying the contents of the resolution plan.

CCPs will cooperate in the 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. A CCP shall exchange information on a timely manner with its competent authorities in order to facilitate the assessment of the risk profiles of the CCP and the interconnectedness with other financial market infrastructures, other financial institutions and with the financial system in general. Competent authorities shall transmit information to the supervisory college, where they deem such information significant.

The resolution authority shall transmit to the resolution college a draft resolution plan and the resolution college shall reach a joint decision regarding the resolution plan in a coordination procedure. If a simple majority of the voting members disagree with the resolution authority's proposal for a joint decision, the matter may be referred to ESMA. ESMA may also, at the request of a resolution authority, assist the resolution college in reaching a joint decision.

Where a joint decision is taken and any resolution authority or competent ministry considers 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.

The resolution authority, in coordination with the resolution college after consultation with the competent authority, will assess the extent to which a CCP is resolvable. 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 avoiding, to the maximum extent possible, any significant adverse effect on the financial system and the potential for undue disadvantage to affected stakeholders. 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. The Regulation lays down procedures for addressing or removing impediments to resolvability, as well as a specific coordination procedure with the resolution college to address or remove impediments to resolvability, with a view to reaching a joint decision. If a simple majority of the voting members disagree with the resolution authority's proposal for a joint decision, the matter may be referred to ESMA. ESMA may also, at the request of the resolution authority of the CCP, assist the resolution college in reaching a joint decision.

(d) Early intervention

In order to preserve financial stability, it is necessary for competent authorities to be 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, where recovery measures could be detrimental for overall financial stability, to direct the CCP to change those recovery measures. Competent authorities should therefore be granted early intervention powers to avoid or minimise adverse effects on financial stability or on the interests of various stakeholders that could result from implementation of certain measures by the CCP. 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.

Early intervention powers should include the power to restrict or prohibit any remuneration of equity and instruments treated as equity, including dividend payments and buybacks by the CCP, to the fullest extent possible without triggering an event of default. Early intervention powers should also include the power to restrict, prohibit or freeze any payments of variable remuneration as defined by the CCP's remuneration policy, discretionary pension benefits or severance packages to senior management. In the framework of early intervention powers, and in accordance with the relevant provisions under national law, the competent authority should be able to appoint a temporary administrator, either to replace or to temporarily work with the board and senior management of the CCP.

The Regulation also puts specific arrangements in place to recompense clearing members if a CCP in recovery caused by a non-default event applies arrangements and measures to reduce the value of any gains payable by the CCP to non-defaulting clearing members set out in its recovery plan, and as a result does not enter resolution. In this specific case, the competent authority of the CCP may require the CCP to recompense the clearing members for their loss through cash payments or, where appropriate, may require the CCP to issue instruments recognising a claim on the future profits of the CCP. This possibility to recompense non-defaulting clearing members does not apply to their contractually committed losses in the default management or recovery phases. To provide an equivalent safeguard for clients of such clearing members, the Regulation foresees that if the non-defaulting clearing members have passed on the excess losses to their clients, they shall be obliged to pass the payments received by the CCP on to their clients, to the extent that the losses being recompensed arise from client positions.

(e) Resolution

Where a CCP meets the conditions for resolution, the Regulation will put at the disposal of the resolution authority of the CCP a harmonised set of resolution tools and powers. These 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 to write down or convert liabilities of a failing CCP, the power to write down the variation margin (subject to a cap in case of non-default events), the power to enforce any outstanding obligations of third parties in relation to the CCP (including recovery cash calls) as set out in the CCP's operating rules, and position allocations, the power to exercise capped resolution cash calls for both default and non-default events, the power to terminate 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 exercise of resolution tools is to be subject to common conditions, objectives, and general principles as set laid out the Regulation. The CCP and the members of its board and senior management should remain liable, subject to national civil or criminal law, for the failure of the CCP.

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 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 transparency towards and involvement of the authorities of the Member States where the proposed decision or action could have implications for financial stability or fiscal resources. In particular, the resolution authority should notify the resolution college of the planned resolution actions, also indicating whether such actions deviate from the resolution plan.

The prime objectives of resolution should be to ensure the continuity of the CCP's critical functions, to ensure the continuity of links with other FMIs, to avoid significant adverse effects on the financial system in the European Union or in one or more of its Member States, and to protect public funds. The critical functions of a failing CCP should be maintained, although re-structured with changes to the management where appropriate, through the use of resolution tools and, to the largest extent possible, with the use of private funds and without reliance on extraordinary public financial support.

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 (the "no-creditor-worse-off" principle). For the purposes of assessing compliance with the no-creditor-worse-off principle, clear obligations should be laid down concerning the valuation of the assets and liabilities of the CCP as well as the valuation of the treatment that shareholders, clearing members and other creditors would have received if the resolution authority had not taken resolution action. The Regulation acknowledges that recovery and resolution actions can also indirectly affect clients and indirect clients that are not creditors of the CCP, to the extent that costs of recovery and resolution have been passed to those clients and indirect clients under the applicable contractual arrangements. The impact of a CCP recovery and resolution scenario on clients and indirect clients shall therefore be addressed through the same contractual arrangements. The Regulation specifies that, if contractual arrangements allow clearing members to pass on to their clients the negative consequences of the resolution tools, those contractual arrangements shall also include, on an equivalent and proportionate basis, the right of clients to any compensation that clearing members receive from the CCP following a "no-creditor-worse-off claim" - to the extent that the right to such compensation arises from client positions. Such provisions also apply to the contractual arrangements by clients and indirect clients offering indirect clearing services to their clients.

Upon a CCP's entry 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 would better mitigate adverse effects for financial stability or secure the critical functions of the CCP in a timely manner. Where those instruments are not sufficient, resolution authorities shall have the power to write down unsecured debt and liabilities, in accordance with their ranking under applicable national insolvency law, and to use loss allocation tools to the extent necessary without jeopardising broader financial stability. The available recovery tools and 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 into the CCP. The use of extraordinary public financial support to assist in the resolution of failing institutions is to be a last resort, to be limited in time and to comply with the relevant State aid provisions.

Resolution authorities should also ensure that the costs of the resolution of the CCP are kept to a minimum and that creditors of the same class are treated in an equitable manner. The resolution authority should be able to 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 a measure it should not discriminate against any person on the basis of nationality.

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 a 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 to provide the services acquired by virtue of that transfer. The sale of a business tool should enable authorities to sell the CCP or parts of the CCP's business to one or more purchasers without the consent of shareholders. When applying the sale of a 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. 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.

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.

Resolution measures taken by national resolution authorities might require economic assessments and a large margin of discretion. It is therefore important to ensure that the economic assessments made by national resolution authorities are used as a basis by national courts when reviewing those measures, while not preventing national courts from examining whether the evidence relied on by the resolution authority is factually accurate, reliable and consistent, whether that evidence contains all relevant information which should be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn therefrom. Moreover, considering that 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. In order to avoid conflicts of jurisdiction it is also in the interest of an efficient resolution that no normal insolvency proceedings for the failing CCP should be opened or continued whilst the resolution authority is exercising its resolution powers or using the resolution tools, except at the initiative or with the consent of the resolution authority.

(f) Relations with third countries

European Union 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 European Union. 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 circumstances foreseen in this Regulation. Cooperation should also take place with regard to subsidiaries of Union or third-country CCPs and their clearing members and their clients.

(g) Administrative measures and penalties

In order to ensure the consistent application of administrative penalties across Member States for breaches of the Regulation, the Regulation provides for a list of key administrative penalties and other administrative measures that need to be available to the resolution authorities and the competent authorities, for the power to impose those administrative penalties 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 administrative penalties and other administrative measures, and for levels of administrative pecuniary penalties. Administrative penalties 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, and the need for administrative fines to have a deterrent effect. Where appropriate, they should include a discount for cooperation with the resolution authority or the competent authority.

(h) Amendment to Regulation (EU) No 1095/2010

Regulation (EU) No 1095/2010 has been amended to include resolution authorities of CCPs in the definition of “competent authorities”, and to allow a member of the Board of Supervisors of ESMA to be accompanied by a representative from the resolution authority of their Member State, where appropriate.

(i) Amendment to Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365

Regulation (EU) No 648/2012 has been amended to empower the Commission to suspend the clearing obligation following a request from the resolution authority of a CCP under resolution or its competent authority, on the initiative of these authorities or at the request of the competent authority responsible for the supervision of a clearing member of the CCP under resolution, and following a non-binding opinion by ESMA. The decision to suspend the clearing obligation shall be adopted only if it is necessary to preserve financial stability and market confidence. Suspension shall be of a temporary but extendable nature. To ensure the proper implementation of the Financial Stability Board's interest rate benchmark reform, it was also necessary to amend Regulation (EU) No 648/2012 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.

Article 24a(7), point (b) of Regulation (EU) No 648/2012 has been amended to make sure that, where possible, the European Union-wide assessments of the resilience of CCPs to adverse market developments take into account the aggregate effect of CCP recovery and resolution arrangements on financial stability in the European Union. Likewise, the role of the CCP's risk committee, as set out on Article 28 of Regulation (EU) No 648/2012, has been enhanced to further encourage the CCP to manage its risks prudently and improve its resilience. Further amendments were also made to ensure that CCPs shall inform their competent authorities if there is a significant negative development in the risk profile of any of the CCP's clearing members, and to increase transparency between the CCP's clearing members and their clients when it comes to 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.

To strengthen incentives for prudent risk management further, in the case of a significant non-default, the competent authority shall be able to require the CCP to refrain from making dividend distributions, from buying back ordinary shares, or from creating an obligation to pay variable remuneration, discretionary pension benefits or severance packages to senior management.

Finally, resolution authorities of CCPs should also have access to all necessary information in trade repositories. Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365 of the European Parliament and of the Council are therefore also amended accordingly.

(j) Amendments to Directive 2002/47/EC, Directive 2017/1132, Directive 2004/25/EC, Directive 2007/36/EC, Directive 2014/59/EU and Regulation (EU) No 806/2014

In order to implement resolution of CCPs effectively, it is necessary to make sure that the safeguards provided for in Directive 2002/47/EC will not apply to any restriction of the enforcement of a financial collateral arrangement, to the effect of a security financial collateral arrangement, or to any close-out netting or set-off provision provided for in this Regulation.

Directives 2017/1132, 2004/25/EC and 2007/36/EC 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 might hinder effective resolution action and use of resolution tools and powers by resolution authorities. Derogations under Directive 2014/59/EU are therefore also extended to acts taken in accordance with this Regulation.

In order to avoid duplication of requirements, Directive 2014/59/EU and Regulation (EU) No 806/2014 of the European Parliament and of the Council are amended to exclude from their scope those entities that are also authorised in accordance with Regulation (EU) No 648/2012.

(k) Amendment to Regulation (EU) No 600/2014

Article 54(2) of Regulation (EU) No 600/2014 provided for a transitional period during which Article 35 or 36 of that Regulation would not apply to those CCPs or trading venues which applied to their competent authority to benefit from the transitional arrangements in respect of exchange-traded derivatives. The transitional period during which a trading venue or a CCP can be exempted by its national competent authority expired on 3 July 2020. As a consequence of the COVID-19 crisis, the Regulation postpones the application date of the new open access regime for trading venues and CCPs offering trading and clearing services in relation to exchange-traded derivatives by one year until 3 July 2021.

IV. CONCLUSION

The Council's position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament with the support of the Commission.

The Council believes that its position at first reading represents a balanced package and that, if its position is approved by the European Parliament, the CCP Recovery and Resolution Regulation will ensure that both CCPs and national authorities in the EU will have the means to act decisively in cases where a CCP faces severe distress or failure, and that it will contribute to the establishment of the Capital Markets Union.
