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COMMISSION DELEGATED REGULATION (EU) .../...

of 26.10.2023

**supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council
with regard to regulatory technical standards specifying the minimum elements to be
included in a business reorganisation plan and the criteria to be fulfilled for its approval
by the resolution authority**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Articles 37(4) and 38(4) of Regulation (EU) No 2021/23 ('the Regulation') empower the Commission to adopt, following the submission of draft regulatory technical standards by the European Securities and Markets Authority (ESMA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010, a delegated act specifying the minimum elements to be included in a business reorganisation plan in accordance with Article 37 of the Regulation, and the criteria to be fulfilled for its approval by the resolution authority in accordance with Article 38 of the Regulation.

In accordance with Article 10(1) of Regulation (EU) No 1095/2010 establishing the ESMA, the Commission must decide within 3 months of their receipt whether to endorse the draft standards submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the EU's interests so require, in line with the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, the ESMA carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Articles 37(4) and 38(4) of the Regulation. A consultation paper was published on ESMA's website on 22 September 2022, and the consultation closed on 01 December 2022. Moreover, the ESMA invited its securities and markets stakeholder group, set up in accordance with Article 37 of Regulation (EU) No 1095/2010, to provide advice on the draft technical standards. Together with the draft technical standards, the ESMA submitted an explanation of how the outcome of these consultations was taken into account in the development of the final draft technical standards submitted to the Commission.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This delegated act sets out the content of the business reorganisation plan submitted by the Central Counterparty (CCP) within 1 month after the resolution authority applied the write-down and conversion tool in accordance with Article 32 of the Regulation, taking into account:

- the need to restore the long-term viability of the CCP or parts of its business within a reasonable timeframe;
- the need for realistic assumptions as to the economic and financial market conditions under which the CCP will operate;
- the current and potential states of the financial markets to identify the CCP's main vulnerabilities.

This delegated act sets out the procedure for the approval of the business reorganisation plan by the resolution authority:

- If the resolution authority and the competent authority are satisfied that the plan would restore the CCP's long-term viability, the resolution authority must approve the plan.
- If the resolution authority or the competent authority is not satisfied that the measures provided for in the plan would restore the CCP's long-term viability, the

resolution authority will notify the CCP of their concerns and require it to resubmit an amended plan addressing those concerns within 2 weeks of the notification. The resolution authority should submit the revised plan to the competent authority and to the resolution college. The resolution authority and the competent authority should then assess the resubmitted plan and the resolution authority should notify the CCP within 1 week of the reception of that revised plan whether the concerns are appropriately addressed or whether further amendments are needed.

Article 1 sets out the expected description in the business reorganisation plan of the factors or circumstances that caused the CCP to fail or to be likely to fail.

Article 2 sets out the expected description in the business reorganisation plan of the measures to be adopted to restore the CCP's long-term viability.

Article 3 sets out the expected description in the business reorganisation plan of the measures related to the reorganisation and restructuring of the activities of the CCP.

Article 4 sets out the expected description in the business reorganisation plan of the measures related to the changes of the CCP's operational systems and infrastructure.

Article 5 sets out the expected description in the business reorganisation plan of the measures related to a wind up or sale of assets or of business lines.

Article 6 sets out the expected description in the business reorganisation plan of the measures related to the changes to the CCP's risk management.

Article 7 sets out the expected timetable in the business reorganisation plan for the implementation of the measures described therein.

Article 8 sets out the viability performance criteria that the resolution authority takes into account when assessing the business reorganisation plan.

Article 9 sets out the financial performance criteria that the resolution authority takes into account when assessing the business reorganisation plan.

Article 10 sets out the need to prove the awareness and commitment of the board of the CCP and other key internal and external stakeholders to the business reorganisation plan.

Article 11 sets out the need for the business reorganisation plan to rely on credible assumptions.

Article 12 sets out the need for the business reorganisation plan to be appropriate and take due account of the specific characteristics of the CCP and its interdependencies with other stakeholders.

Article 13 sets out the need for the business reorganisation plan to be consistent with previous business plans prepared by the CCP.

Article 14 sets out the details for entry into force.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 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) 2017/1132¹, and in particular Article 37(4), second subparagraph, and Article 38(4), second subparagraph, thereof,

Whereas:

- (1) Restoring the long-term viability of the central counterparty (CCP) following the application of the relevant resolution tools is considered to be achieved where, at the latest by the end of the business reorganisation period, the CCP is capable of fulfilling all the relevant prudential and other regulatory requirements on a forward-looking basis, and has a viable business model that is also sustainable in the long term.
- (2) A business reorganisation plan should take into account the event that led to the resolution authority taking resolution action in accordance with Article 22(1) of Regulation (EU) 2021/23 ('trigger event'). The business reorganisation plan is to include a detailed analysis of the factors and circumstances that led to that event, which are important variables for drawing up the business reorganisation plan and for identifying appropriate business reorganisation measures.
- (3) A business reorganisation plan is to set out the measures envisaged to restore the long-term viability of the CCP. In order to maximise their chance of achieving their objectives, they should be suitable for the CCP's clearing services, should take into account the economic and financial market conditions under which the CCP will operate, should consider any effect on the CCP's relevant stakeholders, and should ensure both the continuity of the CCP's critical functions and compliance with regulatory requirements. For a business reorganisation plan to be considered credible by the resolution authority and the competent authority, it should restore the CCP's long-term viability based on realistic assumptions and explain the reasons why some alternative measures have been discarded from the business reorganisation plan.

¹ OJ L 22, 22.1.2021 p. 1.

- (4) Like business reorganisation, recovery planning aims at improving the performance of an entity facing economic difficulties by identifying and addressing the causes of those difficulties. Therefore, to duly exploit synergies between both types of planning, when considering the restoration of viability and continuity of the CCP's clearing services, the business reorganisation plan should use information contained in the recovery plan, to the extent that such information is relevant for the restoration of the long-term viability of the CCP.
- (5) A business reorganisation plan may include, where relevant, measures to reorganise and restructure the activities of the CCP, changes to the CCP's operational system and infrastructure, or changes to the CCP's risk management. To ensure the relevance of each measure, the business reorganisation plan should include a detailed presentation, taking into account the impact of the proposed measures on the CCP's activities, clearing members and third-party providers, and demonstrating how that measure will restore the long-term viability of the CCP. In particular, to demonstrate that the CCP will remain compliant with the organisational and prudential requirements set out in Title IV of Regulation (EU) 648/2012 of the European Parliament and of the Council², any change to the CCP's risk management should be detailed and assessed in the business reorganisation plan.
- (6) A business reorganisation plan may include measures to sell or wind up some of the CCP's assets or business lines. To ensure their efficiency, such measures should be supported by a detailed description of the business lines or assets considered for sale, how that sale would restore the CCP's long-term viability, and any impact on the CCP's continuity of operations.
- (7) To ensure a credible implementation of the business reorganisation plan, it should include an indicative timetable for the implementation of all the envisaged measures. The timetable should help identify the main milestones of the plan, including communication steps with external stakeholders.
- (8) When assessing whether the business reorganisation plan would restore the CCP's long-term viability, the competent authority and the resolution authority should take into account both viability performance criteria and financial performance criteria, which are complementary to one another. The viability performance criteria should help verify that the business reorganisation plan is consistent with the CCP's internal rules and regulations, and that it will allow the CCP to continue operating without posing significant risks to the financial system, while remaining compliant with all applicable prudential and organisational requirements. The financial performance criteria should help verify that the business reorganisation plan will guarantee the CCP's financial long-term viability, both from an operational and economic viewpoint, post-reorganisation.
- (9) Fluctuations are an inherent part of the economic cycle. Any business reorganisation plan should include analyses of alternative scenarios, with appropriate changes in the key underlying assumptions to include worst-case and best-case assumptions. To ensure the credibility of the business reorganisation plan, the competent authority and the resolution authority should, when assessing the plan, verify that it relies on a set of comprehensive and realistic scenarios, which accurately reflect the CCP's market environment, and its operational and legal constraints.

² 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).

- (10) To ensure a credible implementation of the business reorganisation plan, the competent authority and the resolution authority should, when assessing that plan, ensure that both the senior management and key stakeholders have sufficient knowledge of the business reorganisation plan. As key stakeholders are essential or critical for the CCP in providing clearing services, they should include clearing members and critical service providers including settlement providers, and platform providers.
- (11) To ensure the appropriateness of the business reorganisation plan, the competent authority and the resolution authority should, when assessing the plan, verify that it preserves the critical functions of the CCP, and takes into account the specific characteristics of the CCP, including the nature of its clearing activities, the structure of the clearing market, and the interdependencies with other stakeholders including clearing members, trading venues or critical service providers. While making sure that all required details are included, the resolution authority should also assess that the business reorganisation plan is sufficiently concise and clear to allow it to be implemented swiftly.
- (12) To ensure the consistency of the business reorganisation plan, the competent authority and the resolution authority should, when assessing the plan, compare the business reorganisation plan with the CCPs' earlier business plans, either prepared under their own 'business as usual' assumptions or where required by regulatory or legal obligations.
- (13) The provisions in this Regulation are closely linked to each other, since they deal with the business reorganisation plan that CCPs under resolution are required to submit after the application of the write down and conversion tool. To ensure coherence between those provisions, which should enter into force simultaneously, there is a need for CCPs and for resolution authorities, to have a comprehensive view and compact access to their obligations and rights relating to such business reorganisation plans. It is therefore appropriate to include the relevant regulatory technical standards required by Article 37(4) and Article 38(4) of Regulation (EU) 2021/23 in a single Regulation.
- (14) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.
- (15) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council³,

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

HAS ADOPTED THIS REGULATION:

CHAPTER I

MINIMUM ELEMENTS TO BE INCLUDED IN THE BUSINESS REORGANISATION PLAN

Article 1

Factors or circumstances that caused the CCP to fail or to be likely to fail

1. A detailed analysis of the factors and circumstances that caused the CCP to fail or to be likely to fail as referred to in Article 37(2), point (a), of Regulation (EU) 2021/23, shall include all of the following:
 - (a) a description of the factors and circumstances clearly distinguishing between default events, non-default events and where there is a combination of both;
 - (b) an assessment of the conditions and circumstances referred to in Article 22(1), point (a), and Article 22(3) of Regulation (EU) 2021/23 where such conditions or circumstances directly or indirectly contributed to the CCP being deemed to be failing or likely to fail;
 - (c) a description of the recovery measures and resolution actions taken or applied by the CCP or the resolution authority before the submission of the business reorganisation plan.

Article 2

Description of the measures to be adopted to restore the CCP's long-term viability

1. A description of the measures to be adopted to restore the CCP's long-term viability as referred to in Article 37(2), point (b), of Regulation (EU) 2021/23 shall include all of the following elements:
 - (a) a description on how the measures to be adopted are suited to the strengths and weaknesses of the CCP, in particular in relation to the clearing services provided by the CCP and the economic and financial environment in which the CCP operates;
 - (b) a description on how the measures to be adopted take account of the detailed analysis referred to in Article 1, with a description of the extent to which those measures are derived from the factors and circumstances identified in that analysis;
 - (c) a description on how the measures to be adopted have included any of the measures previously identified in the recovery plan, where such measures remain valid for the CCP's strategy to restore its long-term viability;
 - (d) a description on how the CCP has used the relevant information and assumptions in relation to its envisaged clearing services, envisaged operational viability and capacity taking into account service providers as well as linked entities and other financial market infrastructures (FMIs); including a description of how the CCP has taken into account the estimated effect of the

envisaged measures on market integrity and financial stability, in order to develop each of the measures under the business reorganisation plan and to forecast its performance under each such measure to ensure that the measures to be adopted are suited to the aim of restoring its long-term viability;

- (e) a description on how the measures are linked to the outcome of the analysis of the factors and circumstances that caused the CCP to fail or to be likely to fail, and to the event that caused the resolution plan to be triggered;
- (f) a description on how the measures to be adopted take into account the following:
 - (i) any material effects on clearing members, and their direct and indirect clients, and interdependencies with other linked FMIs and trading venues;
 - (ii) any material effects on the functioning of the CCP, including netting sets and collateral requirements;
 - (iii) the necessity of the continuity of the CCP's legal and technical arrangements;
 - (iv) any envisaged material changes to the recovery plan, to the extent the information is available to the CCP at the business reorganisation planning stage;
 - (v) the necessity to maintain, or restore, the CCP's compliance with the authorisation requirements pursuant to Article 16 and Title IV of Regulation (EU) No 648/2012 and Articles 9, 31, 35, 36, 39 and 70 of Regulation (EU) 2021/23.

For the purposes of the first subparagraph, the level of information in the description of different measures may vary depending on the likelihood that those measures will be adopted under the business reorganisation plan.

2. Any assessments and assumptions made, including the consideration of the viability performance criteria and financial performance criteria set out in Articles 8 and 9, to identify the measures to be adopted under the business reorganisation plan shall be described and compared with the appropriate sector-wide benchmarks for the instruments cleared and shall reflect available macro-economic forecasts for clearing such instruments.
3. The business reorganisation plan shall include an analysis of the assumptions underpinning the best-case and worst-case scenarios, and the measures deriving from those scenarios. Restoration of the CCP's long-term viability shall be possible under all scenarios, although the period for implementation, the measures to be adopted and the financial performance may differ.
4. Where several measures to be adopted to restore the CCP's long-term viability are included in the business reorganisation plan, the description referred to in paragraph 1 shall include the following:
 - (a) a justification of the different measures including a description of the different assumptions applied;
 - (b) a description of how each of the different measures will restore, jointly or independently, the long-term viability of the CCP;

- (c) a description of the hierarchy in the application of the measures.
5. The business reorganisation plan shall include a general description of any alternative measures disregarded in the process of drawing up the business reorganisation plan.

Article 3

The reorganisation and restructuring of the activities of the CCP

Where the measures to be adopted to restore the CCP's long-term viability include a reorganisation and restructuring of the activities of the CCP as referred to in Article 37(3), point (a), of Regulation (EU) 2021/23, the description referred to in Article 2(1) of this Regulation shall also include the following elements:

- (a) a description of the reorganised business and clearing service as they are planned to result from the business reorganisation plan;
- (b) an explanation for the envisaged changes, and their contribution to achieving the objective of reorganising the CCP;
- (c) a description of the impact of the business reorganisation plan on the CCP's critical functions and core business lines, in particular on the ability of the CCP to continue to provide clearing services;
- (d) a description of the extent to which outsourcing arrangements cover part of the CCP's critical functions and core business lines, including whether another entity determines prices, provides systems for the clearing, margin calculations or other essential parts of the CCP's operations, and how such critical functions and core business lines will remain operational;
- (e) a description of how the business reorganisation plan will affect the markets the CCP operates in, and the clearing services provided by the CCP;
- (f) a description of how the adjusted business and clearing service will work where the CCP has entered into arrangements with third parties, including interoperability arrangements and arrangements with service providers, and how the CCP will be able to continue providing its critical functions and services where dependent on such entities;
- (g) a presentation of any changes envisaged to the organisation of the CCP;
- (h) a presentation of the changes to the structure of the CCP's ownership and any changes to the managers' incentive structures;
- (i) where relevant, a presentation of the changes to the CCP's governance, organisation and employees.

Article 4

Changes to the CCP's operational systems and infrastructure

Where the measures to be adopted to restore the CCP's long-term viability include changes to the CCP's operational systems and infrastructure as referred to in Article 37(3), point (b), of Regulation (EU) No 2021/23, the description referred to in Article 2(1) of this Regulation shall include the following elements:

- (a) a presentation of the main operational systems and infrastructure identified that would be impacted by the business reorganisation plan and how they are to be impacted;
- (b) a presentation of any changes envisaged to the organisation of the CCP;
- (c) a presentation of the changes to the structure of the CCP's ownership and any changes to the managers' incentive structures;
- (d) where relevant, a presentation of the changes to the CCP's governance, organisation and employees.

Article 5

The sale of assets or of business lines

1. Where the measures to be adopted to restore the CCP's long-term viability include the sale of assets or of business lines referred to in Article 37(3), point (c), of Regulation (EU) 2021/23, the description referred to in Article 2(1) of this Regulation shall include the following elements:
 - (a) a description of the measures identifying which of the CCP's relevant business lines or assets and relating liabilities, rights and obligations, will be wound up or sold, including:
 - (i) a description of the relevant conditions for the winding up or sale;
 - (ii) the method for the winding up or sale, including the underlying assumptions and any possible expected losses;
 - (iii) the expected timescale;
 - (iv) any financing or services provided by or to the remaining CCP;
 - (b) where part of the business line or asset form part of the CCP's critical functions or core business lines, a description of how, to the extent the information is available to the CCP, such critical functions or core business lines could be separated from other critical or non-critical functions or core business lines in economic, operational and legal terms;
 - (c) where part of the business line or asset form part of the CCP's critical functions or core business lines, a description of, to the extent the information is available to the CCP, any possible material effects of such separation of assets on clearing members and, to the extent that the information is available, their direct and indirect clients, as well as on trading venues and other FMIs and CCPs;
 - (d) where relevant and where possible to identify, a description of any material effects due to the wind up or sale of relevant business lines or assets and positions of the CCP on:
 - (i) netting sets, operations or legal arrangements for clearing members and, to the extent that the information is available, their direct and indirect clients;
 - (ii) the calculation of collateral requirements, in particular variation margins, and how such wind up or sale could materially affect the collateral

requested by clearing members, and, to the extent that the information is available, their direct and indirect clients;

- (iii) the price of allocating and transferring such positions and transactions to another CCP;
 - (iv) an explanation of the process for the portability of positions and related assets of the clearing members and clients of the CCP to another CCP, where envisaged, and a description of how likely such portability is to be successful and the measures to be taken to facilitate it;
 - (v) a description of the following:
 - (i) how the CCP keeps up to date the relevant data on positions in the client omnibus and segregated accounts during the business reorganisation;
 - (ii) how the CCP is able to provide the relevant information rapidly during the reorganisation to ensure that all positions and transactions, including client positions, where identifiable, held at the CCP can be identified and potentially transferred successfully;
 - (e) where service arrangements or other contractual arrangements are provided by group entities, a description of how such group entities will be affected;
 - (f) a description of how the business reorganisation plan takes into account and ensures continuity of the CCP's legal and technical arrangements and how the plan supports the transfer of the CCP's functions, including a description of any agreements entered into with other FMIs or relevant service providers in preparation for the application of the business reorganisation plan.
2. For the parts of the CCP that will not be wound up or sold, the business reorganisation plan shall indicate ways to remedy any shortcomings in their operation or performance that could have an impact on their long-term viability, even if those shortcomings are not directly related to the failure of the CCP.

Article 6

The changes to the CCP's risk management

Where the measures to be adopted to restore the CCP's long-term viability include changes to the CCP's risk management as referred to in Article 37(3), point (d), of Regulation (EU) 2021/23, the description referred to in Article 2(1) of this Regulation shall include a description on:

- (a) how the CCP envisages to comply with its prudential requirements, including by making changes to its default fund methodologies, margin and liquidity risk management frameworks, investment policies, collateral policies and settlement arrangements, and whether any changes are envisaged to the risk management of the CCP;
- (b) how the CCP envisages to comply with its other regulatory requirements, including by making organisational changes, including changes to its organisational structure, business continuity policy and outsourcing arrangements, as well as by making material changes to its management, its conduct of business rules, including the composition of its membership, and its segregation and portability rules;

- (c) how the CCP envisages to comply with its liquidity requirements, including meeting all its payment obligations, in all relevant currencies, as they fall due and the extent to which it is able to have recourse to the liquidity tools set out in its operating rules under the relevant market conditions;
- (d) how the CCP envisages to comply with the requirements to hold pre-funded and committed financial resources available;
- (e) how the CCP envisages to comply with the requirements to have the ability to replenish its pre-funded financial resources.

Article 7

Timetable for the implementation of the measures to be adopted to restore the CCP's long-term viability

1. The timetable for implementing the measures referred to in Article 37(2), point (c), of Regulation (EU) 2021/23 shall cover all of the following aspects:
 - (a) the overall timeline and the timeframes for implementing the measures set out in the business reorganisation plan;
 - (b) a list of the envisaged main actions and steps, with allocated timelines, to be taken by the CCP to implement each measure set out in the business reorganisation plan;
 - (c) the estimated target timeline for implementing the reorganisation measures set out in the business reorganisation plan;
 - (d) a detailed timeline of planned interactions with the resolution authority and the competent authority;
 - (e) a timeline for communicating with the public, taking into account the CCP's internal and external communication strategy about the implementation of the measures set out in the business reorganisation plan;
 - (f) a timeline for communicating with the relevant external stakeholders involved in the implementation of the measures set out in the business reorganisation plan, including clearing members and trade unions;
 - (g) where applicable, a timeline for restoring the CCP's compliance with its authorisation requirements under Regulation (EU) No 648/2012 and with the relevant requirements under Regulation (EU) 2021/23.
2. The CCP shall ensure that the timelines referred to in paragraph 1 are suitable, and enable an effective implementation of the measures set out in the business reorganisation plan.

CHAPTER II

CRITERIA FOR THE APPROVAL OF BUSINESS REORGANISATION PLANS

Article 8

Viability performance criteria

The business reorganisation plan shall fulfil all of the following viability performance criteria:

- (a) the CCP shall be able, in accordance with its internal rules and regulations, to undertake the measures set out in the business reorganisation plan;
- (b) the CCP, by implementing the business reorganisation plan, shall be able, within a reasonable timeframe, to restore the long-term viability and to continue to provide clearing services in accordance with Regulation (EU) No 648/2012 in the following manner:
 - (i) the CCP does not pose a significant risk to the financial system, considering in particular an assessment of the concentration of the pool of clearing participants;
 - (ii) the CCP provides a clearing service which is stable and viable, considering in particular:
 - (1) the estimated flow of transactions that will be submitted for clearing to the CCP;
 - (2) the estimated number of clearing members at the CCP;
 - (3) the CCP's ability to ensure liquidity in the instruments cleared;
 - (4) the material contractual agreements that will be maintained, and the extent to which such contracts contain contractual resilience clauses, resolution-proof clauses and limitations of termination rights in a business reorganisation;
 - (5) the internal agreements that will be maintained during the application of the business reorganisation plan, including descriptions of any arms' length pricing structures and planned continued access to operational assets;
 - (6) the envisaged continuation of services to the CCP following the application of the business reorganisation plan, evidenced by letters of commitment of the service providers and where no such letters have been received, the CCP's assessment that the termination of such service will not be detrimental to the CCP's operational or financial viability;
- (c) the business reorganisation plan shall include a description of the method for determining the value and marketability of the critical functions and assets of the CCP, focusing on aspects that could have an impact on the valuation, including volatility in the market, inaccessibility or uncertainty of the market prices, time constraints and legal aspects;
- (d) the valuations under the business reorganisation plan shall cover both the assets and business lines of the CCP that are to be wound up or sold, and the assets and business lines that are to remain within the CCP;

- (e) any proceeds from the divestment of assets or business lines envisaged by the business reorganisation plan shall be calculated prudently and with reference either to a reliable benchmark or to a valuation, including an expert valuation, a market sounding exercise or the value of similar assets or business lines;
- (f) the CCP, by implementing the business reorganisation plan, shall be able to fulfil all the applicable prudential and other regulatory requirements on a forward-looking basis, in particular:
 - (i) the CCP will no longer be breaching any requirement or will prevent a likely infringement of those requirements from materialising;
 - (ii) the CCP ensures the continuous functioning of its operational processes as referred to in Article 12(7), point (m), of Regulation (EU) 2021/23;
- (g) where the resolution is to be accompanied by the replacement of the management and where such restructuring is to be achieved through the implementation of a business reorganisation plan, the business reorganisation plan shall address a restructuring that includes the replacement of management;
- (h) to the best knowledge of the CCP, the implementation of the measures set out in the business reorganisation shall have no material negative effect on market and financial stability;
- (i) the CCP has not identified issues relating to Union or national competition law that could arise from the implementation of the business reorganisation plan.

Article 9

Financial performance criteria

The business reorganisation plan shall fulfil all of the following financial performance criteria:

- (a) the CCP shall have identified the funding requirements under the business reorganisation plan and secured the sources of such funding, ensuring, in particular, that the parties agreeing to provide committed financial resources, including the parent undertaking, clearing members, shareholders or liquidity providers of the CCP, will be able to transfer the committed amounts to the CCP within the timeframe required in accordance with the terms and conditions agreed by such parties;
- (b) the CCP shall have identified and included in the business reorganisation plan ways to maintain its financial resilience;
- (c) the CCP shall be able to operate and cover all of its financial positions, as demonstrated by a post-reorganisation balance sheet providing details on the new debt and capital structure and on the effects of the write-down and conversion tools based on the valuation carried out pursuant to Article 24(3) and Article 61(1) of Regulation (EU) 2021/23 to the extent that such a valuation has been finalised at the time of the establishment of the business reorganisation plan;
- (d) the CCP shall have identified and mitigated any financial impediments, including where the CCP is party to an ongoing litigation or a dispute which could negatively affect its financial position.

Article 10

Awareness and commitment criteria

The business reorganisation plan shall fulfil all of the following awareness and commitment criteria:

- (a) the senior management and the members of the board of the CCP shall acknowledge in writing that they are aware of and committed to the following:
 - (i) the implementation of the business reorganisation plan;
 - (ii) the appointment of one or more persons responsible for carrying out the business reorganisation plan and the identification of the individuals assigned to senior management roles of such departments;
- (b) the awareness, commitment, cooperation and support of the following key internal and external stakeholders to the business reorganisation plan shall be evidenced in writing:
 - (i) the risk committee;
 - (ii) the clearing members and their direct and indirect clients where possible to identify;
 - (iii) the interoperable CCPs and critical service providers.

Article 11

Credibility of the business reorganisation plan

1. The business reorganisation plan shall apply assumptions that are credible, that range from best-case to worst-case, and that ensure that the reorganisation strategy set out in the business reorganisation plan is realistic, appropriate, and takes into account the opportunities and threats to the CCP in the relevant market.
2. The assumptions in the business reorganisation plan shall be based on the relevant markets where the CCP provides clearing services and the clearing offerings by relevant peer CCPs, and shall be compared with appropriate sector-wide benchmarks relevant for CCPs.
3. All assumptions shall result in plausible scenarios. The changes applied to determine worst-case or best-case assumptions shall focus, in particular, on aspects that are relevant for the CCP under the business reorganisation plan to ensure proportionality and efficiency.
4. The business reorganisation plan shall not, even under the worst-case or best-case scenarios, include resolution tools beyond the scope of the resolution scheme under implementation.

Article 12

Appropriateness of the business reorganisation plan

1. The business reorganisation plan shall be consistent, to the extent possible, with the assessments carried out by the resolution authority and the competent authority in the

period leading up to the establishment of that plan and with the valuations used to determine whether the conditions for resolution set out in Article 22(1) of the Regulation (EU) 2021/23 were met.

2. The business reorganisation plan shall link the measures therein to the outcome of the analysis of the factors and circumstances that caused the CCP to fail or to be likely to fail, and to the event that caused the resolution plan to be triggered, separating between default events, non-default events and a combination of both, depending on the circumstances of the situation.
3. The analysis of the external operating environment included in the business reorganisation plan shall be consistent, to the extent possible, with the analysis of opportunities and threats in the relevant markets, as determined by the resolution authority and competent authority when carrying out their tasks.
4. The business reorganisation plan shall not adversely affect the critical functions or core business lines of the CCP or the functioning of the financial system and overall financial stability.
5. The business reorganisation plan shall be feasible and shall ensure the following:
 - (a) mitigation of any potential implementation impediments, such as labour law or other contractual arrangements;
 - (b) that the planned measures, the timetable for their implementation and the assessment of the performance criteria have taken into account the specific characteristics of the CCP, including business organisation and clearing services, the links with clearing members, and to the extent the information is available, the direct clients and indirect clients of the CCP, trading venues, creditors and critical service providers and any material interdependencies of the CCP with other entities relevant to the CCP or interoperability arrangements with other FMIs;
 - (c) that the situation in the relevant markets where the CCP provides clearing services is taken into account;
 - (d) that the valuation used to calculate any expected proceeds from the selling of assets or business lines envisaged by the business reorganisation plan is prudent, reliable and realistic.

Article 13

Consistency of the business reorganisation plan

1. The CCP shall align the business reorganisation plan with previous business plans that it has prepared, where suitable, or the CCP shall explain in the business reorganisation plan why that plan materially deviates from the previous business plans.
2. The business reorganisation plan shall respect the resolution objectives laid down in Article 21 of the Regulation (EU) 2021/23.

Article 14

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*.

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

Done at Brussels, 26.10.2023

For the Commission
The President
Ursula VON DER LEYEN