



European Securities and
Markets Authority

Final Report

Draft RTS further specifying the factors that shall be considered by the competent authority and the supervisory college when assessing the CCP recovery plan (Article 10(12) of CCPRRR)

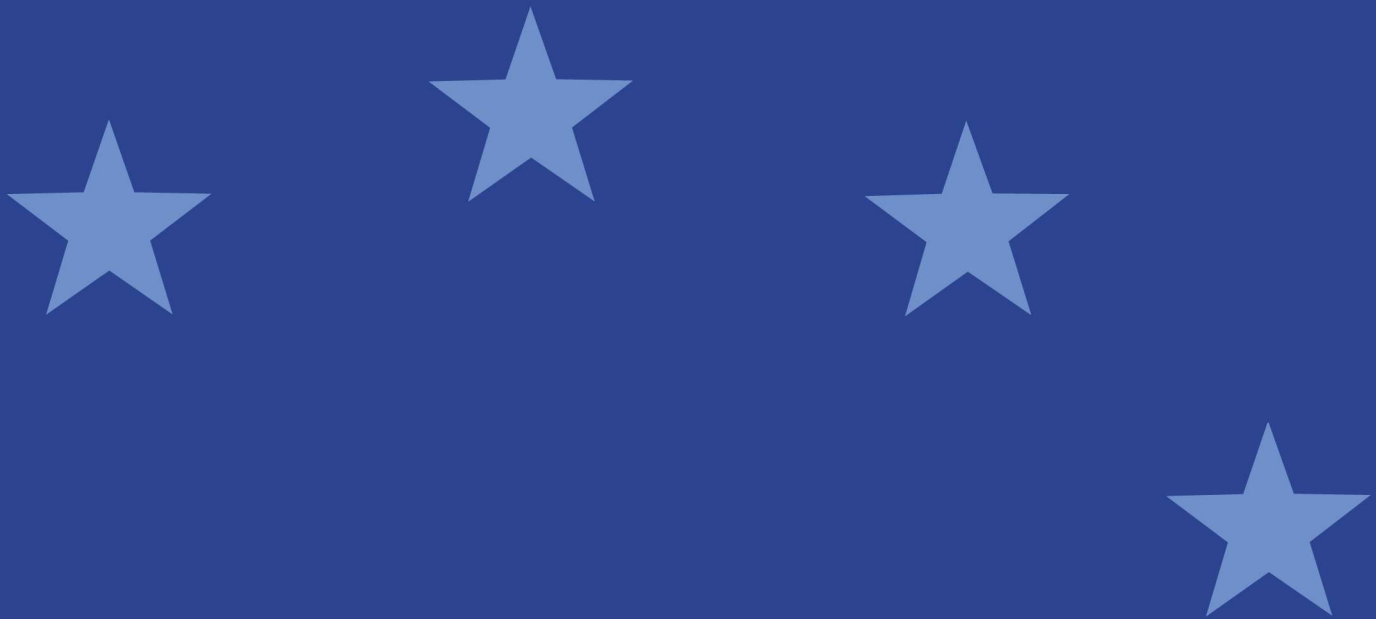


Table of Contents

| | | |
|-------|---|----|
| 1 | Executive Summary | 2 |
| 2 | Legislative References, Abbreviations and Definitions | 4 |
| 3 | Background and Mandate | 6 |
| 4 | Factors to assess in CCP's recovery plans..... | 7 |
| 4.1 | Introduction | 7 |
| 4.1.1 | Summary of consultation responses..... | 7 |
| 4.1.2 | ESMA's feedback..... | 8 |
| 4.2 | Article 10(3)(a) of CCPRRR — the CCP specific factors..... | 9 |
| 4.2.1 | Summary of the consultation responses..... | 12 |
| 4.2.2 | ESMA's feedback..... | 15 |
| 4.3 | Article 10(3)(b) of CCPRRR - Overall impact on relevant entities | 17 |
| 4.3.1 | Summary of the consultation responses..... | 19 |
| 4.3.2 | ESMA's feedback..... | 21 |
| 4.4 | Article 10(3)(c) of CCPRRR – Incentives..... | 22 |
| 4.4.1 | Summary of the consultation responses..... | 23 |
| 4.4.2 | ESMA's feedback..... | 25 |
| | Annex I: Legislative mandate to develop the RTS | 27 |
| | Annex II: Cost and Benefit analysis | 28 |
| 4.4.3 | Summary of consultation responses..... | 31 |
| 4.4.4 | ESMA's feedback..... | 31 |
| | Annex III: Advice of the Securities and Markets Stakeholder Group | 32 |
| | Annex IV: Draft RTS..... | 33 |

1 Executive Summary

Reasons for publication

Article 9(1) of Regulation (EU) 2021/23 ('CCPRRR') sets out an obligation for central counterparties (CCPs) to draw up and maintain a recovery plan 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, without any extraordinary public financial support, 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 ('EMIR').

Article 10(2) of CCPRRR then sets out an obligation for the CCP's competent authority to review the recovery plan and assess the extent to which it satisfies the requirements set out in Article 9 of CCPRRR, in coordination with the supervisory college and in accordance with the procedure set out in Article 11 of CCPRRR.

Article 10(3) of CCPRRR requires the competent authority and the supervisory college, when assessing the recovery plan, to take into consideration several factors and Article 10(12) of CCPRRR mandates ESMA, in cooperation with the ESCB and the ESRB, to develop draft regulatory technical standards (RTS) further specifying the factors referred to in points (a), (b) and (c) of Article 10(3) of CCPRRR.

ESMA published the Consultation Paper with its draft RTS under Article 10(12) of CCPRRR on 12 July 2021. The consultation ended on 20 September 2021. ESMA also held a public hearing on the Consultation Paper (along with other consultation papers issued by ESMA under CCPRRR) on 14 September 2021. This Final Report provides the draft RTS on further specifying the factors referred to in points (a), (b) and (c) of Article 10(3) of CCPRRR. The Final Report (and the accompanying draft RTS) takes into account the feedback provided by the respondents to the consultation.

In accordance with Article 9(12) of CCPRRR, ESMA has cooperated with the ESCB and the ESRB in finalising this draft RTS. ESMA also sought advice from the Securities and Markets Stakeholder Group.

Contents

Sections 2 and 3 set out the definitions, background and mandate for the RTS. Section 4 outlines the elements further specifying the factors to be taken into consideration by competent authorities and supervisory colleges when assessing CCP recovery plans and the responses received and how ESMA envisages to amend the draft RTS to accommodate, where possible, the comments received.



Annex I set out the legislative mandate for developing the RTS. Annex II provides for a high-level cost-benefit analysis for the RTS, and Annex IV contains the proposed draft regulatory technical standards.

Next Steps

ESMA will submit the Final Report and draft regulatory technical standards to the European Commission. The Commission has three months to decide whether to adopt the regulatory technical standards (in the form of a Commission Delegated Regulation). Following the adoption, the regulatory technical standards are then subject to non-objection by the European Parliament and the Council.

2 Legislative References, Abbreviations and Definitions

The following legislative references are used in this Final Report:

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|-------------------------------|--|
| EBA RTS | Commission Delegated Regulation (EU) 2016/1075 of 23 March 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 ¹ |
| EMIR | Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories ² |
| ESMA Regulation | 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 ³ |
| Delegated Regulation 152/2013 | Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 on capital requirements for central counterparties ⁴ |
| Delegated Regulation 153/2013 | Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 on requirements for central counterparties ⁵ |

The following abbreviations are used in this Final Report:

| | |
|-----|----------------------|
| CCP | Central Counterparty |
|-----|----------------------|

¹ OJ L 184, 8.7.2016, p. 1–71

² OJ L 201, 27.7.2012, p.1

³ OJ L 331, 15.12.2010, p. 84

⁴ OJ L 52, 23.2.2013, p. 37

⁵ OJ L 52, 23.2.2013, p. 41



| | |
|--------------|---|
| <i>CP</i> | Consultation Paper |
| <i>EC</i> | European Commission |
| <i>EEA</i> | European Economic Area |
| <i>ESFS</i> | European System of Financial Supervision |
| <i>ESCB</i> | European System of Central Banks |
| <i>ESMA</i> | European Securities and Markets Authority |
| <i>ESRB</i> | European Systemic Risk Board |
| <i>EU</i> | European Union |
| <i>FMI</i> s | Financial Market Infrastructures |
| <i>RTS</i> | Regulatory Technical Standards |

Unless otherwise specified, the terms used in this Final Report have the same meaning as in CCPRRR, EMIR, Delegated Regulation 152/2013 and Delegated Regulation 153/2013.

3 Background and Mandate

1. CCPRRR was published in the Official Journal on 22 January 2021 and entered into force on 12 February 2021⁶. CCPRRR establishes a minimum standard as regards the content and information to be included in recovery plans to ensure that all CCPs have sufficiently detailed recovery plans should they face financial distress.
2. The CCP shall, in accordance with Article 9(1) of CCPRRR, draw up and maintain a recovery plan 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, without any extraordinary public financial support, and allow them to continue to provide critical functions following a significant deterioration of their financial situation. Article 9(3) of CCPRRR further stipulates that recovery plans shall be drawn up in accordance with Section A of the Annex of CCPRRR and take into account all relevant interdependencies within the group to which the CCP belongs.
3. The CCP shall submit its recovery plan to the competent authority which should, without undue delay, transmit the plan to the supervisory college, established under EMIR, for a complete assessment, to be carried out by joint decision of the supervisory college.
4. The competent authority and the supervisory college of a CCP should in accordance with Article 10(2) of CCPRRR review the recovery plan and assess the extent to which it satisfies the requirements set out in Article 9 of CCPRRR. The assessment should include whether the plan is comprehensive and whether it could restore the viability of the CCP, in a timely manner, including under scenarios of severe financial markets distress⁷. The review shall use the factors referred to in points (a), (b) and (c) of paragraph 3 of Article 10 of CCPRRR and which are to be further specified in an RTS.
5. ESMA is mandated under Article 10(12) of CCPRRR, in cooperation with the ESCB and the ESRB, to develop a draft RTS further specifying the factors referred to in points (a), (b) and (c) of Article 10(3) of CCPRRR. The draft RTS is to be submitted to the European Commission by 12 February 2022.
6. On 12 July 2021, ESMA launched a public consultation on the draft RTS with the deadline for consultation responses on 20 September 2021. The public consultation aimed at receiving stakeholders' feedback on a list of questions and on the draft RTS. This Final Report, and the accompanying draft RTS, takes into account the feedback provided by the respondents to the consultation.
7. ESMA has established cooperation arrangements with ESCB and ESRB and have cooperated throughout the process of establishing this Final Report (and the previous

⁶ 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) 2017/1132 (Text with EEA relevance) (OJ L 22, 22.1.2021, p. 1–102) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.022.01.0001.01.ENG&toc=OJ%3AL%3A2021%3A022%3AFULL

⁷ Articles 9, 10 and 11 of CCPRRR and Recital 21.

consultation paper) with both ESCB and ESRB. ESMA has also sought advice from the Securities and Markets Stakeholder Group.

8. This Final Report (and the accompanying draft RTS) introduces a number of relevant elements to further specify the factors, that the competent authorities and supervisory colleges shall take into consideration when assessing the adequacy of CCPs' recovery plan.

4 Factors to assess in CCP's recovery plans

4.1 Introduction

9. The CCPs shall draw up and maintain a recovery plan reflecting the requirements set out in Article 9 of CCPRRR and in Section A of the Annex of CCPRRR and 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 the CCP to continue to provide critical functions following a significant deterioration of its financial situation or a risk of breaching its capital and prudential requirements under EMIR. Recovery plans shall take into account all relevant interdependencies within the group to which the CCP belongs.
10. The competent authority and the supervisory college shall, when assessing the recovery plan, take into consideration the factors listed in points (a), (b) and (c) of Article 10(3) of CCPRRR. ESMA has carefully considered those factors that shall be used to measure the recovery plan against and how to further specify them.

4.1.1 Summary of consultation responses

11. One respondent notes that they generally agree with the proposal on the factors that shall be considered by the competent authority and the supervisory college when assessing the CCP recovery plan and that this proposal is very detailed and should provide sufficient guidance to the competent authority for assessing recovery plans.
12. Some respondents note that they generally agree with ESMA's RTS specifying the factors that need to be considered by the competent authority and supervisory college, they however note that some of the factors to be considered relate to CCP business as usual (BAU) requirements under EMIR. As such, they argue that those factors often can lead to duplicative requirements for the conception and approval of recovery plan scenarios (i.e., CCPs either comply with these BAU requirements or their recovery plans are not approved) which might lead to additional sets of impact to be included in the recovery plans going beyond Level 1 requirements.
13. Another respondent notes that ESMA proposes a long and detailed list of elements that the competent authority and supervisory college should analyse to assess a CCP's recovery plan and while this list results from the guidance in Level 1 legislation, they believe

it is overly granular and the goal of meeting the Level 1 guidance could be achieved with a lower number of elements to be considered.

14. One respondent points out that in their understanding the assessment of a CCP recovery plan is to be conducted by the competent authority and the supervisory college. However, the respondent fears some of the requirements in the draft RTS on public information to be made available, which may subject the CCP recovery plans to a form of public evaluation or imply the disclosure of business sensitive information. In order to avoid such outcome, the respondent would recommend the information requested and used for the assessment remain confidential and for the exclusive use of the assessing authority.
15. One respondent notes that *if* recovery plans are inappropriately structured, they could destabilize individual market participants and/or the financial system during a crisis scenario, by propagating stress through the market. Such respondent notes that it is critical that competent authorities review the CCP recovery plans with this is in mind.
16. One respondent notes that as ESMA has been consulting on those draft RTS until 20 September 2021, it is envisaged the final RTS to be published more at the end of Q4/2021 and as the CCP Recovery & Resolution will come into effect in February 2022 this will leave limited amount of time for adapting to potential changes. The respondent notes that ESMA and the competent authorities should find a reasonable and practicable approach on how CCPs should deal with potential last minute RTS.

4.1.2 ESMA's feedback

17. It is noted that some of the factors relate to CCP BAU requirements under EMIR and that the CCPs either comply with these BAU requirements or their recovery plans are not approved, and that this could lead to requirements going beyond Level 1 requirements. ESMA notes that the requirements on recovery plans sit under CCPRRR and whilst ESMA agrees that the RTS should not create obligations above and beyond the mandate set out in CCPRRR, the RTS shall further specify the factors used in the assessment of the recovery plans.
18. On the aspect of granularity, ESMA has considered this request but has not identified many aspects where the elements are not adding value in the assessment also noting that the suggested granularity contributes to the uniform application of the RTS and helps avoiding deviations in the assessment and application of the factors. Further details on how some of the factors are recalibrated may be found in relation to each section below.
19. There was a concern raised that the requirements in the draft RTS on information to be made publicly available and a request to insert in the RTS a requirement that the information requested and used for the assessment should remain confidential and for the exclusive use of the assessing authority. ESMA notes that Article 73 of CCPRRR regulates confidentiality and that there are several references to how information should be included and shared, for example see references to the CCPs operating rules. ESMA also notes that Recitals (32) and (69) of CCPRRR clearly explain the aim of safeguarding sensitive information under recovery plans. Hence relying on existing confidentiality requirements

under CCPRRR and ESMA Regulation, ESMA does not consider necessary to make any changes to the RTS.

Recital 32 “Given the sensitivity of the information contained in the recovery and resolution plans, those plans should be subject to appropriate confidentiality provisions.”

“Recital 69: 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.”

4.2 Article 10(3)(a) of CCPRRR — the CCP specific factors

20. Article 10(3)(a) of CCPRRR requires the competent authority and the supervisory college, when assessing the recovery plan, to take into consideration 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, including in terms of financial, operational and cyber risks.

21. Therefore, with regard to these factors, referred to in point (a) of Article 10(3) of CCPRRR, ESMA proposed, in the CP, that the competent authority and the supervisory college take into consideration at least the following elements further specifying the factors, to assess the adequacy and suitability of the recovery plan.

Overall suitability assessment

To assess the *overall suitability* of the recovery plan, the following elements (as specified in Article 2 of the draft RTS) should, at least, be considered:

- a) the CCP’s communication and disclosure plan;
- b) overall timing of the different elements of the recovery plan;
- c) the recovery plans’ impact on other services by the CCP; and
- d) the involvement of linked FMIs and stakeholders in the process of drawing-up of recovery plans.

Assessment of recovery plan scenarios and indicators

To assess the adequacy of the recovery plan in respect of the *recovery plan scenarios and indicators*, the following elements (as specified in Article 3 of the draft RTS) should, at least, be considered:

- a) that the recovery plan duly incorporates the recovery plan scenarios and recovery indicators; and

- b) that the recovery plan scenarios and indicators are suitable bearing in mind the CCP's features and risk profile including taking into account the CCP's specific clearing services, structure and organisational set-up.

The CCP's capital structure and financial viability

To assess the adequacy of the recovery plan with respect to the *CCP's capital structure* and overall financial viability of the CCP, the following elements (as specified in Article 4 of the draft RTS) should, at least, be considered:

- a) the capital structure (including the additional amount of pre-funded dedicated own resources required under Article 9(14) in accordance with Article 9(15) of CCPRRR) and the recovery measures designed to ensure a timely recapitalisation of the CCP, any measures aimed to restore the CCP's matched book and capital and that the recovery plan identifies appropriate arrangements to address both funding (solvency) gaps and temporary liquidity gaps;
- b) the identity of the liquidity providers and if liquidity structures may give rise to concentrated liquidity exposures and whether the recovery plan clearly distinguishes between different funding arrangements;
- c) the margin model and margin processes within the CCP; and
- d) the use of standing central bank facilities and how those assets would be expected to qualify as collateral under the terms of the central bank facility.

CCP's default waterfall

To assess the adequacy of the recovery plan with respect to the *CCP's default waterfall* within the context of the recovery plan the following elements (as specified in Article 5 of the draft RTS) should, at least, be considered:

- a) the various default waterfalls and different paths of loss propagation; and
- b) the relevant legal risks in ensuring the enforceability of the waterfall.

The level of complexity of the organisational structure

To assess the adequacy of the recovery plan with respect to *the level of complexity of the organisational structure* the following elements (as specified in Article 6 of the draft RTS) should, at least, be considered:

- a) the ownership and corporate structure of the CCP, for example if the ownership structure may affect the recovery plan;
- b) the links of the CCP to any same-group entities;

- c) the complexity of the CCP's internal organisation may affect the application of the recovery plan;
- d) the procedures and action plans, including procedures for decision processes;
- e) that, where required, the recovery plan is effectively included under the operating rules of the CCP to ensure its efficiency; and
- f) how the recovery plan is to be tested.

The substitutability of the CCP's activities

To assess the adequacy of the recovery plan with respect to *the substitutability of the CCP's activities* the following elements (as specified in Article 7 of the draft RTS) should, at least, be considered:

- a) if there are other CCPs authorised or recognised under Articles 14 and 25 of EMIR to provide some or all of the clearing services provided by the CCP; and
- b) the possibility of portability of transactions or the transfer of non-critical activities, partially or in full, to another service provider.

The risk profile of the CCP

By performing centralised activities, a CCP concentrates risks including legal, credit, liquidity, general business, custody, investment and operational risks that contribute to the definition of the risk profile of the CCP. To assess the risk profile of the CCP (primarily at the level of the CCP, but also for different business lines or clearing services, where such a risk assessment is justified) ESMA proposes to consider all risks, including business risks, financial risks, legal risks and operational risks, such as fraud, criminal activity, IT and cyber-risks, etc.

To assess the adequacy of the recovery plan with respect to *the overall risk profile of the CCP* the following elements (as specified in Article 8 of the draft RTS) should, at least, be considered:

- a) the different types of risk, and plausible combinations thereof, including and depending on the CCP, operational, cyber, legal, credit, liquidity, general business, custody, settlement, investment, market, systemic, and environmental and climate risks;
- b) the nature, size and complexity of the CCP's business and how it has been reflected upon in the proposed measures by the CCP including for example the type of financial instruments cleared or to be cleared by the CCP, the average values cleared by the CCP, the specificities of the different services provided by the CCP and the Member States where the CCP provides, or intends to provide, services and any other cross-border activities of a CCP;

- c) independence in the application of the recovery plan and if the recovery plan is consistent with the corporate governance structure of the CCP and with the CCP's decision processes and internal governance;
- d) that the legal risks have been assessed in the recovery plan, mainly to ensure all measures, arrangements and agreements are legal, valid and enforceable.

The business model of the CCP

To assess adequacy of the recovery plan with respect to *the business model of the CCP* the following elements (as specified in Article 9 of the draft RTS) should, at least, be considered:

- a) that the critical functions of the CCP are properly identified;
- b) that the preparatory arrangements to facilitate the sale of assets or business lines as envisaged in the recovery plan are suitable for the CCP, for example that the processes for determining the value and marketability of the core business lines, operations and assets of the CCP are suitably, robust and operational and the assessment of the potential impact of such a sale on the operations of the CCP is reflecting the specific operations of the CCP; and
- c) where the CCP clears several products, that the CCP has considered the potential impediments to separate the products and the effect of the recovery plan on potential netting efficiencies.

4.2.1 Summary of the consultation responses

22. There is an overall support for Articles 2 to 9 of the proposed RTS and this conclusion is based on comment(s) but also due to the fact that ESMA has not received comments questioning a certain proposed approach. There are however a few specific aspects and comments raised in the consultation responses and they are listed below.

4.2.1.1 Proposed Article 2 - Overall suitability assessment

23. One respondent notes that they agree that the CCP's communication and disclosure plan is of key importance. Only if CCP clearing participants (both clearing members and their clients) know what recovery actions the CCP will likely take, clearing participants will be able to take actions that are consistent with the recovery plan. Otherwise, clearing participants will identify worst scenarios and manage on the basis of these worst-case scenarios, which could be detrimental to the CCP recovery efforts. There is support from one respondent that linked FMIs and stakeholders including clearing participants should be involved in the process of drawing-up of recovery plans.

24. One respondent would appreciate a clarification on whether this criterion implies that the CCP's recovery plan should be made public.

25. One respondent questions if the criterion implies that, in addition to the overall recovery timing, a specific timing estimation should be included for the different elements of the recovery plan and challenge this on the basis that this would seem rather granular and potentially constraining in a stress situation as the recovery of a CCP may be. The respondent asks ESMA to clarify that no specific timing estimation that would lead to a mechanic trigger is needed.

26. One respondent notes that as the recovery plan should be focused on the recovery of the core CCP functions it may therefore be unnecessary that it looks at other services as these risks being too marginal. The respondent suggests to either delete this provision in the RTS or to qualify it that CCPs should consider the impact on 'critical' rather than 'material' ancillary services.

4.2.1.2 Proposed Article 3 - Assessment of recovery plan scenarios and indicators

27. One respondent raises a question whether the criterion included under Article 3.d may be too restrictive as it requires the CCP to identify suitable times at which appropriate actions referred to in the plan should be taken.

4.2.1.3 Proposed Articles 4/5 - The CCP's capital structure and financial viability and CCP's default waterfall

28. One respondent recommends that the CCPs' own-funds contribution to the default waterfall should be a meaningful amount and available to cover default and non-default losses. This is critical to align incentives, particularly in the case of for-profit CCPs. Such respondent notes that the recovery plan should specify that the CCP is responsible for covering non-default losses, such as those arising from financial, operational or cyber risks and that the CCP recovery plans should specifically ensure that CCPs have the resources to cover such losses through their own funds. Allocating such losses to clearing members or clients creates a misalignment of incentives which could undermine strong risk management. The respondent also agrees with ESMA's comment on the need for the CCP to have measures in place to ensure a timely recapitalization of the CCP.

4.2.1.4 Proposed Article 6 - The level of complexity of the organisational structure

29. One respondent questions the parameter "The complexity of the CCP's internal organisation may affect the application of the recovery plan" if a respective complex internal organization is a prerequisite in order to develop and execute recovery plans. The respondent asks for specification on the measurement and a definition of a complex organization.

30. One respondent agrees that a CCP's ownership structure somehow affects recovery as a solvent owner with a strong interest in the clearing activities of a CCP (for instance a linked exchange) will be more likely to provide additional resources during the recovery phase. However, the respondent notes that there is no clear and binding obligation on the CCP owner to follow such an approach.

31. One respondent notes that with respect to the links of the CCP to any same-group entities, as most CCPs are belonging to bigger exchange groups, they therefore have links to different group entities and questions the assessment of such a parameter. In addition, the respondent notes that due to CCPs unique profile, most CCP organisations are rather complex.
32. With respect to the procedures for decisions processes, one respondent asks whether it is better to have high flexibility for fast decision making or to have more documentation processes in place.

4.2.1.5 Proposed Article 7 - The substitutability of the CCP's activities

33. These criteria are generally supported, however noting that some CCPs may offer a service that may not be offered by other CCPs authorised in the EU, but that ESMA's proposal seems to be broad enough to propose that recognised non-EU CCPs can also be considered as substitutes.

34. However, three aspects are noted by the respondents:

- Some respondents agree that CCPs are able to assess these elements to a certain extent, but they would like to note that CCPs can only do so based on the limited amount of information that other CCPs make publicly available and would request ESMA to clarify that, for what concerns Article 7(a) and (b) of the proposed RTS, to be explicitly restricted to information that could reasonably be known by the CCP in question and that the provisions only refer to (public) information that the CCP in question has access or to information that could reasonably be known by the CCP in question.
- One respondent agrees that the availability of other CCPs that provide some or all of the clearing services provided by the relevant CCP could be helpful to potentially facilitating options for clearing participants as to where new business is cleared, there is virtually no viable solution for the transfer of existing transactions hence the substitutability of a CCP should therefore not be relied on to support a recovery phase.
- One respondent notes that whilst it is of course possible for a CCP to verify against the ESMA register whether other CCPs are authorised or recognised under EMIR to provide equivalent services, the mere fact of being authorised or recognised and being involved in the clearing of equivalent products does not mean that another CCP necessarily has the technical and operational capacity to actually take on additional clearing business, and the CCPs cannot judge whether other CCPs could take on some or all of the clearing services of the CCP in question.

4.2.1.6 Proposed Article 8 - The risk profile of the CCP

35. One respondent kindly questions the need to include 'the special features of the different services provided by the CCP' (in Article 8(c)(4) of the proposed RTS) as it is not fully clear to such respondent what these special features refer to. In line with the ESMA consultation

papers on recovery plan scenarios and indicators, the respondent understands that the recovery plan should only focus on the relevant risk types for each CCP. They would therefore refrain from obliging CCPs to consider a certain list of risk types and suggest considering the relevant risk factors for that CCP.

4.2.1.7 Proposed Article 9 - The business model of the CCP

36. One respondent notes that the sale of assets or business lines might be useful for slow-burning recovery scenarios (slow degradation of the business, regulatory fines, lawsuits), but that the vast majority of recovery scenarios (for instance defaults, investment losses or cyber events) will occur in a timeframe much shorter than sales of assets or business lines to be facilitated.

4.2.2 ESMA's feedback

37. ESMA has generally sympathy for the comments raised and has recalibrated the RTS to accommodate where justified.

38. On Article 2 of the RTS, ESMA confirms that CCPRRR regulates the management of the recovery plan and its close links with the operation rules of the CCP. The RTS is not changing the fundamental status of the recovery plan as set out under the CCPRRR hence the reference to information sharing is for the assessment to consider how and what has been shared in accordance with CCPRRR with clearing members and what (and how) the CCP has in mind to share and communicate in a situation where the recovery tools are used. The RTS is hence not creating an obligation to share information above or in addition to the rules under CCPRRR.

39. On Article 2(b) of the RTS there is a comment on the estimation of overall timing for the different elements of the recovery plan, ESMA confirms that the specified timing allocations does not entail a requirement for this to be linked to mechanic triggers, but the aim is to ensure preparedness with the aim to pre-assess the steps and the time required under the plan with the aim to ensure its workability and effectiveness.

40. On Article 2(c) of the RTS, there is a reference to other services. ESMA disagrees they should be assumed to be "too marginal" but agrees that the intention is to focus on material or critical other services and ESMA would therefore agree to qualify this assessment to the other services that are material or significant.

41. On Article 3 of the RTS, ESMA agrees with the comments and has replaced the reference to "time" with the "circumstances" at which measures in the recovery plan are to be taken to align the wording with CCPRRR.

42. ESMA notes that Articles 2 and 3 of the RTS were originally introduced to apply generally in relation to the factors under Article 10(3)(a) to (c) of CCPRRR. This drafting may however result in uncertainty as to which factor the elements are further specifying, hence ESMA has moved the content under Article 2 and Article 3 into either existing Articles or created new Articles in the RTS in relation to one of the factors (a) and (b) with the aim to make

the links of the elements clearer in relation to the factors they further specify. ESMA has in addition partly deleted some elements in Article 2 and 3 to ensure proportionality and legal certainty.

43. The element deleted from Article 2 of the RTS were referring to the suitability of the plan, the timeframes for implementation and when and how the CCP had envisaged the plan to be tested at times as general statement in relation to the suitability of the plan and generally flows from the regulation and could therefore be argued as not proportionate to be also included in the RTS. The remainder of the Article 2 has been moved into other articles of the RTS and one new article, Article 8 of the RTS.
44. The elements deleted under Article 3 of the RTS were referring to the two Guidelines issued under Articles 9(5) and 9(12) of CCPRRR and the reason being that by referring to Guidelines under an RTS could raise legal uncertainty as to the legal status of the Guidelines. The remainder of the Article 3 has been moved into other articles of the RTS and one new article, Article 6 of the RTS.
45. On Articles 4 and 5 of the RTS the comments on CCPs' own-funds contribution are made in relation to non-default losses. ESMA notes that the CCPs own funds and distribution of funds in default and non-default is regulated under CCPRRR and the aim of the RTS is to provide factors for the assessment of the requirements for the recovery plan and not to introduce new provisions as this is not envisaged under this mandate.
46. On Article 6 of the RTS there is a comment if and how a complex internal organization is a prerequisite to develop and execute recovery plans and the respondent asks for specification on the measurement and a definition of a complex organization. ESMA notes that under Article 9(3) of CCPRRR the assessment of the recovery plan shall take into consideration *the level of complexity of the organisational structure*. The RTS provides the factors to be considered in this assessment, hence the factors focus on "if" and "how" such aspects are reflected in the plan and the potential consequences of them, hence not qualifying any organisation or ownership structure as complex or not, merely how those aspects are reflected and catered for in the plan. ESMA notes the question on the procedures for decisions processes but concludes that this question is not relevant for the factors but an aspect the assessment will consider, to ensure the recovery plan is suitable for the CCP.
47. On Article 7 of the RTS there are comments noting that CCPs are able to assess these substitutability elements to a certain extent, but they would like to note that CCPs can only do so based on the limited amount of information that other CCPs make publicly available, hence ESMA agrees with those observations and has adjusted Article 7 to cater for this limitation.
48. On Article 8 of the RTS the need to refer to 'the special features of the different services provided by the CCP' is asked. ESMA agrees that the wording is not entirely clear and would agree this aspect is of limited value to further identify the specifics of a CCP in light of risks assessments as covered elsewhere in further details and bearing in mind the list is an open-ended list, ESMA agrees to delete this to ensure proportionality.

49. ESMA refers to the revised Articles 1 to 7 and new Article 8 of the draft RTS.

4.3 Article 10(3)(b) of CCPRRR - Overall impact on relevant entities

50. Article 10(3)(b) of CCPRRR requires the competent authority and the supervisory college, when assessing the recovery plan, to take into consideration the overall impact that the implementation of the recovery plan would have on:

- a) clearing members, and to the extent the information is available, their clients and indirect clients, including where they have been designated as O-SIIs;
- b) any linked FMIs;
- c) financial markets, including trading venues, served by the CCP; and
- d) the financial system of any Member State and the Union as a whole.

51. With regard to these factors, referred to in point (b) of Article 10(3) of CCPRRR, ESMA proposed, in the CP, that the competent authority and the supervisory college would take into consideration the impact of the CCP recovery plan through at least the elements outlined in the sections below to assess the adequacy of the recovery plan.

General links of the CCP

To assess the adequacy of the recovery plan with respect to *the links of the CCP* the following elements (as specified in Article 10 of the draft RTS) should, at least, be considered:

- a) the number and importance of different links with entities such as liquidity providers, settlement banks, platforms, custodians, investment agents, banks or service providers and the significance or materiality of each link; and
- b) outsourcing arrangements that cover part of the CCP's core business.

Overall impact of the recovery plan on the CCP's clearing members, and to the extent the information is available, their clients and indirect clients

To assess the adequacy of the recovery plan with respect to the *impact of its implementation on the CCP's clearing members*, and to the extent the information is available, their clients (direct and indirect), the following elements (as specified in Article 11 of the draft RTS) should, at least, be considered:

- a) the complexity of the CCP's clearing membership;
- b) overall impacts, such as possible disruption of the clearing services including potential impact on access to clearing and costs of clearing services on the CCP's clearing members; and

- c) knowledge of the recovery plan by clearing members and clients (direct and indirect) and that any material liability together with any potential schedule of calls for resources are also known and agreed on by the clearing members and where relevant by the clients (direct and indirect).

Overall impact of the recovery plan on any linked FMIs

To assess the adequacy of the recovery plan with respect to the *impact of its implementation on any linked FMIs* the following elements (as specified in Article 12 of the draft RTS) should, at least, be considered:

- a) the potential impact of applying the recovery measures on any interoperable CCP and on any other FMI linked to the CCP; and
- b) any interoperability or cross-margining agreements with other CCPs and the scope of such arrangements.

Overall impact on financial markets, including trading venues, served by the CCP

To assess the adequacy of the recovery plan with respect to the impact of its implementation *on financial markets, including trading venues, served by the CCP* the following elements (as specified in Article 13 of the draft RTS) should, at least, be considered:

- a) the potential impact of applying the recovery measures on trading venues as well as any other sources of trading connected to the CCP; and
- b) whether the impact of the recovery plan represents a threat to the stability of such entities, directly or indirectly to the extent possible to assess.

Overall impact on the financial system of any Member State and the Union as a whole (Article 14 of the RTS)

To assess the adequacy of the recovery plan with respect to the *impact of its implementation on financial system of any Member State and the Union as a whole* the following elements (as specified in Article 14 of the draft RTS) should, at least, be considered:

- a) the potential impact on the financial system of any Member State and the Union as a whole resulting from one or several entities or the CCP itself being impacted by the recovery plan;
- b) how the results from ESMA's cross-CCP stress-testing exercises are considered and reflected upon in the recovery plan and that any discoveries or concerns are mitigated (to the extent possible) in the recovery plan; and
- c) whether liquidity providers give rise to concentrated liquidity exposures due to the multiple roles they may play for several CCPs.

4.3.1 Summary of the consultation responses

52. There is an overall support for Articles 10 to 14 of the proposed RTS and this conclusion is to some extent based on supporting comment(s) and also takes into account the fact that ESMA has not received comments questioning a certain proposed approach. There are however a few specific aspects and comments raised in the consultation responses and they are listed below.

53. One comment received in the consultation is that the content of the RTS per se should point out and request the information used for the assessment to be for the exclusive use of the competent authority and college of supervisor and be considered business sensitive information. This comment is dealt with under Section 4.1.2, noting the overall requirements on confidentiality under CCPRRR.

4.3.1.1 Proposed Article 10 – General links of the CCP

54. Some respondents appreciate the reference to the assessment taking into account the significance and materiality (Article 10(b) of the proposed RTS) of the links that the CCP has with other entities. However, they would appreciate receiving a clarification on what is meant by ‘*financial resources exchanged*’ and the types of financial resources that should be considered for this purpose, as the nature and maturity of these exchanges significantly affect the risks inherent in the links between the CCP and its counterparties. For example, it is unclear whether standing credit facilities would be counted by the total available amount from the point where they are opened, even when the outstanding balance is 0, or only when and to the extent that they are drawn, or in some other manner.

4.3.1.2 Proposed Article 11 - Overall impact of the recovery plan on the CCP’s clearing members their clients and indirect clients

55. One respondent suggests adding a parameter on how recovery tools affect clearing members and their clients, especially if recovery tools affect clearing participants equally, and the financial impact these recovery tools could mean for clearing participants. The reason being that when the competent authority is assessing the potential impact of the recovery plan on clearing members and end-users, it is important that they consider whether recovery tools, which draw on resources provided by clearing members or clients, are capped at a reasonable level. For example:

- A CCP should only be permitted to assess over a reasonable period, and assessment should be capped. This would limit the pro-cyclical effect of assessments, reduce performance risk of those assessments, enabling members to measure and manage their exposures and reduce the likelihood that the assessments lead to systemic risk or a liquidity crunch.
- Tools such as Partial Tear Ups and Variation Margin Gains Haircutting must similarly be limited in amount and time (e.g., no more than a day), as these measures could subject clearing members and end users to undesirable market or liquidity risk and cause procyclical effects if participants are incentivized to close out positions.

56. Several respondents question whether the cost of clearing, a commercial feature unrelated to the CCP's risk management structure, is relevant for this assessment and suggests removing it from criteria 11 (b). One respondent highlights that the CCP can only provide this as agreed in the CCP's rulebook, however, the CCP cannot be held responsible for managing the financial situation of the clearing members.
57. Also, respondents note that they would like to make it clearer that Article 11(c) of the RTS should refer to the relevant knowledge of the recovery plan by clearing members, i.e. clearing members should be made aware of the obligations they have with how they are affected by certain recovery options (e.g. cash call or variation margin gain haircutting), rather than the elements that have no impact on them, such as the identification of critical functions. While the respondent fully supports such level of targeted transparency, it believes the CCPs should have the flexibility to determine how to make its clearing members aware of this, as there are different ways in which this could be done, e.g. rulebooks, risk committees, due diligence procedures, etc. This Article should therefore not lead to the full disclosure of the recovery plan to clearing members (and clients). However, should refer to the relevant knowledge of the recovery plan by clearing members, i.e. clearing members should be made aware of the obligations they have and how they are affected by certain recovery options (e.g. cash call or variation margin gain haircutting). It is up to the CCP to determine how to make its clearing members aware of this (e.g. via the rulebook). It is also not possible for a CCP to comprehensively analyse whether the application of its recovery tools might impact the stability of its clearing members or their clients, as the CCP does not have complete information on the financial situation of the clearing members or their clients.

4.3.1.3 Proposed Article 13 - Overall impact on financial markets, including trading venues

58. One respondent notes that while there can be impacts on trading venues (e.g. if executed transactions cannot be cleared right away because of operational difficulties at a CCP), trading venues will be overall less affected by recovery as other stakeholders, especially if the CCP tries to recover from financial stress.

4.3.1.4 Proposed Article 14 - Overall impact on the financial system of any Member State and the Union as a whole

59. One respondent agrees that the ESMA's cross-CCP stress testing exercises should be used however noting that so far, stresses used in these exercises have not been severe enough to meaningfully inform recovery planning and recommends ESMA to introduce scenarios (in addition to other scenarios) in its stress testing that are designed to trigger recovery situations to show impact of the recovery tools to the regulators and market participants.
60. Some respondents similarly note that the results of ESMA's cross-CCP stress-testing exercises may not always be suitable to be considered in the CCP's recovery plan, but they may rather be considered for the default management process prior to the recovery phase and suggests that this is reflected in the text of the RTS.

61. One respondent also recommends ESMA to leverage its work on the analysis according to Article 25(2c) of EMIR whether Tier 2 CCPs or some of their clearing services are of such substantial systemic importance that a CCP should not be recognised to provide certain clearing services or activities. The scenarios and transmission mechanisms under which Tier 2 CCPs might impact the financial system of the European Union or any Member State and as a whole will be very similar to the impact of recovery actions of an EU CCP. The crisis scenarios from ESMA's analysis should therefore form useful guidance in the appropriateness and effectiveness of recovery tools considered in the CCP's recovery plan.
62. Several respondents note that Article 14(c) of the proposed RTS is similar to Articles 4(b) and 10(a) and wonder whether it is appropriate to have duplicative assessments and hence if there is a need to repeat here.

4.3.2 ESMA's feedback

63. ESMA generally has sympathy for the comments raised and has recalibrated the RTS to accommodate those comments to the extent possible.
64. On Article 10 of the RTS there is an uncertainty on what is meant by '*financial resources exchanged*' and the types of financial resources that should be considered for this purpose. ESMA notes this uncertainty and to some extent agrees with this and has replaced the reference to "financial resources" to "financial exposures", i.e., to capture financial interlinkages and would focus of the assessment on how important the link is, hence would ensure that the assessment of i.e. undrawn facility is suitable by considering its scope of availability. However, the elements of Article 10 have been moved into other articles (and at times adjusted) of the RTS to ensure clarity on which factor the elements are further specifying as well as to ensure proportionality and legal clarity.
65. On Article 11 of the RTS there is the comment on the "costs of clearing" that the reference to the stability of its clearing members or their clients, is challenged due to lack of information by the CCP and it is proposed that those aspects should be deleted. ESMA agrees that the actual cost of clearing would depend on the clearing member and the market and hence not be able to be pre-set and assess, however the recovery plan should consider its overall impact on clearing members in providing clearing services generally. ESMA also agrees on the difficulty to assess threats to financial stability and agrees to delete this reference.
66. On Article 11 of the RTS there are also comments on how to involve clearing members (and their clients and indirect clients) and how to provide caps, however those aspects are catered for under CCPRRR and EMIR (see for example Article 9, Section A point 11 of CCPRRR and Article 38 of EMIR as amended by CCPRRR) hence only minor recalibrations are included under the RTS to better align the wording of the RTS with CCPRRR to minimise interpretation issues.
67. On Article 14 of the RTS the ESMA's cross-CCP stress testing exercises is reflected upon, ESMA takes note of the suggestion for future exercises to introduce scenarios (in addition

to other scenarios) in its stress testing that are designed to trigger recovery situations to show impact of the recovery tools to the regulators and market participants. ESMA also notes the comment that ESMA's cross-CCP stress-testing exercises may not always be suitable to be considered in the CCP's recovery plan and ESMA included this qualification.

68. Finally, Article 14(c) is considered as duplicative to Article 4(b) and Article 10(a). Based on this comment ESMA has deleted Article 4(b) but not Article 10(a) as the scope of this article is different.

69. ESMA refers mainly to the revised Articles 8 to 12 of the draft RTS.

4.4 Article 10(3)(c) of CCPRRR – Incentives

Article 10(3)(c) of CCPRRR requires the competent authority and the supervisory college, when assessing the recovery plan, to take into consideration whether the recovery tools and their sequence as specified by the recovery plan create appropriate incentives for the CCP's owners, clearing members, and where possible their clients, 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 contribute to the CCP's default management process.

To assess the adequacy of the recovery plan with respect to *appropriate incentives* the following elements (as specified in Article 15 of the draft RTS) should, at least, be considered:

- a) if the calls for resources, whether voluntary or not, and the allocations of costs associated with the recovery plan, create the appropriate incentives;
- b) if effective participation to the default management by the clearing members, and possibly clients, is incentivised by the structure of the default management process (e.g. auction), by the use of recovery tools and by the resources to be provided to the CCP in a recovery;
- c) the suitability of the arrangements and measures incentivising non-defaulting clearing members to bid competitively in auctions of a defaulted members' positions and if they create the incentives as envisaged;
- d) if the link between clearing members activity and their potential losses (as a result of the recovery plan) creates an appropriate incentive and if the incentives are making a successful recovery more likely;
- e) the participation to risk-management discussions, including at the risk committee, of clearing members and client representatives to incentivise commitment and dedication to the CCP and if the different categories of participants (clearing members and clients) have been appropriately represented in the risk committee; and

- f) if the involvement of clearing members, and possibly clients, or other entities linked to the CCP in the provision of services related to the mitigation of losses in the event of recovery, embeds the right incentives to provide the CCP with the right services (e.g. acting as a repo counterparty, providing liquidity, etc.).

4.4.1 Summary of the consultation responses

70. There is an overall support for Article 15 of the proposed RTS and this conclusion is based on comment(s) received and also due to the fact that ESMA has not received comments questioning a certain proposed approach. There are however a few specific aspects and comments raised in the consultation responses and they are listed below.

4.4.1.1 Proposed Article 15 – Incentives

71. One respondent finds the proposed list of elements to be taken into consideration under point (c) of Article 10(3) of CCPRRR is too detailed, does not necessarily take into account the variety of arrangements established by CCPs and could therefore make the recovery unnecessarily extensive. This respondent believes that the list of elements to be assessed by authorities and colleges should guide competent authorities in assessing the adequacy of the recovery plan in creating appropriate incentives for the various stakeholders involved. These elements should not be understood as a tool for implicitly prescribing specific solutions or arrangements, as this would be interpreted as a way of introducing additional requirements for CCPs, not referenced in level 1.

72. Another respondent notes that the incentives linked to recovery actions are complex and refers to a response to an FSB consultation which entails an incentive analysis, which could be useful in recalibrating the current proposal. They however note that this analysis is a complex document and therefore propose for ESMA to produce something similar or to use the analysis provided to avoid that every competent authority has to duplicate this analysis.

73. Some respondents note the use of “voluntary contributions”. One respondent kindly requests clarification on the assessment in Article 15(a) and (b) of how to incentivise additional voluntary contributions. They believe that any additional voluntary contributions should only be assessed where a CCP has chosen to incentivise voluntary contributions when implementing specific recovery tools. One respondent similarly thinks that the assessment in Article 15(a) of how to incentivise additional voluntary contributions could be deleted or should only be assessed where a CCP has chosen to incentivise voluntary contributions.

74. One respondent also notes that Article 15(a) and (b) of the draft RTS refer respectively to 'voluntary contributions' and 'calls for resources, whether voluntary or not'. This has two potential meanings:

That contributions made by clearing members in response to the use of one or more of the recovery tools are voluntary. The respondent would respond that, where a CCP does

choose to implement any or all of the recovery tools provided for in the Regulation, the contributions received due to the exercise of those tools would not be 'voluntary': Since any recovery tools a CCP opts to use must be implemented in the CCP's rulebook (Article 9(20) of CCPRRR), they are contractual obligations on clearing members and therefore mandatory.

That the CCP has the discretion to voluntarily implement any or all of the recovery tools as it sees fit, and that the implementation of the recovery tools is therefore 'voluntary' on the part of the CCP. The respondent would find this meaning problematic, since a requirement for competent authorities to assess a CCP's recovery plan against criteria regarding the implementation of recovery tools puts considerable pressure on the CCP to have implemented those tools. The Level 1 text is clear that the implementation of any or all of the recovery tools provided for in CCPRRR is at the discretion of the CCP.

Article 9(10) of the CCPRRR in conjunction with paragraph (4) of Section A of the Annex refers to a number of loss and position allocation tools that CCPs 'may' implement in their rulebooks, i.e., there is no requirement that CCPs must implement any or all of these specific tools in their rulebooks for use in recovery. Regarding the recovery cash calls and VMGH in particular, paragraph 4 states that 'loss allocation actions may include recovery cash calls and a reduction in the value of gains payable by the CCP to non-defaulting clearing members'. If a CCP's decision to implement or not implement these tools were to become one of the factors against which its recovery plan is assessed, it would effectively introduce a requirement for CCPs to implement the recovery tools, which they believe is not fully consistent with the Level 1 text.

75. Based on this, the respondent asks ESMA to clarify what it means with the term 'voluntary' and where the second meaning is intended, the respondent also asks ESMA to consider slightly rephrasing the requirements so that these criteria are only assessed where and to the extent that a CCP has chosen to implement any or all of the recovery tools, making clear that this requirement of the RTS is not intended to be read as an obligation on CCPs to implement any or all of the recovery tools.
76. One respondent questions how those CCPs that do not meet the conditions set out in Article 15 of the proposed RTS would be impacted by the current proposal, e.g.: (i) would a CCP be obliged to implement certain practices if, for example, it does not foresee clients' participation in default management auctions or does not have in place a default advisory committee as indicated in Article 15(c); or (ii) what if a CCP does not include incentive measures in the context of auctions in its operating rules as indicated in Article 15(d)? The respondent kindly asks ESMA to clarify these.
77. It is further noted that certain elements to be assessed appear to refer to EMIR BAU activities (e.g. default management arrangements) rather than to the recovery phase. This is particularly the case for Article 15(f) and therefore questions the need for it. The need for the concept of 'properly structured participation' which seems rather general and could likely lead to divergent interpretation by competent authorities is further questioned. The respondent therefore suggested deleting it.

78. Finally, it is noted that further clarity regarding Article 15(h) would be welcomed, especially regarding the services relative to the mitigation of losses in the event of recovery.

4.4.2 ESMA's feedback

79. ESMA generally has sympathy for the comments raised and has recalibrated the RTS to accommodate those comments to the extent possible.

80. On Article 15 of the RTS there is some criticism as to the complexity of the elements to assess the factor on incentives, however whilst ESMA has introduced some changes to Article 15 there is no overall reduction of the elements as the list of aspects to be considered under Article 10(3)(c) of CCPRRR entails several different aspects. ESMA though confirms that the elements should not be understood as a tool for implicitly prescribing specific solutions or arrangements, but rather as described elements to be considered in assessing the incentive structure under the recovery plan.

81. ESMA agrees with the comments in relation to the use of “voluntary contributions” and has amended this wording. ESMA has also noted the comments on the 'calls for resources, whether voluntary or not' and how the reference to “voluntary” should be understood. ESMA agrees that once a contribution is envisaged and agreed to under the rule book or operational rules of the CCP, it is no longer “voluntary” but contractually agreed however the rulebook could contain the optionality for clearing members to contribute, hence this aspect is added to the RTS. The term voluntary addresses the contribution that are indeed not agreed to under the rule book but is provided by a clearing member on a voluntary basis.

82. ESMA also confirms that the reference to the elements to be assessed under the incentive structure does not mean that the CCP should have implemented all tools and possible actions under its recovery plan where not required under CCPRRR, as this may indeed not result in the best incentive structure for the CCP at hand. ESMA notes that whilst there is some flexibility in the application of certain recovery tools, considering point 4, Section A of the Annex, referring to “Loss allocation actions may include recovery 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”, other aspects may be required under CCPRRR, such as point 12 of Section A of the Annex of CCPRRR stating that “the arrangements and measures incentivising non-defaulting clearing members to bid competitively in auctions of a defaulted members' positions” should be included in the recovery plan.

83. Also links to EMIR BAU and the proposed concept of ‘properly structured participation’ was challenged as a rather general requirement and could likely lead to divergent interpretation by competent authorities and this element is suggested to be deleted. ESMA to some extent agrees that the wording could be clarified and have revised the RTS accordingly.

84. Further clarity regarding Article 15(h) is also sought, especially regarding the services relative to the mitigation of losses in the event of recovery. ESMA has recalibrated Article 15 based on those comments.



85. ESMA refers to the revised Article 13 of the draft RTS.

Annex I: Legislative mandate to develop the RTS

Article 10 of CCPRRR provides that:

“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, including in terms of financial, operational and cyber risks;

(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 O-SIIs;

(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, clearing members, and where possible their clients, 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 contribute to the CCP’s default management process.

(...) 12. ESMA, in cooperation with the ESCB and the ESRB, shall develop draft regulatory technical standards further specifying the factors referred to in points (a), (b) and (c) of paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 12 February 2022.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.”

Annex II: Cost and Benefit analysis

1. Introduction

Pursuant to the third subparagraph of Article 10(12) of CCPRRR the Commission is empowered to adopt a delegated act to supplement the CCPRRR by further specifying the factors referred to in points (a), (b) and (c) of Article 10(3) of CCPRRR.

Pursuant to the second subparagraph of Article 10(12) of CCPRRR ESMA, in cooperation with the ESCB and the ESRB, has to develop the draft regulatory technical standards further specifying the factors referred to in points (a), (b) and (c) of Article 10(3) of CCPRRR and ESMA shall submit those draft regulatory technical standards to the Commission by 12 February 2022. ESMA has established cooperation arrangements with ESCB and ESRB.

In carrying out a cost benefit analysis on the draft regulatory technical standards it should be noted that:

- The main policy decisions have already been taken under the primary legislation (CCPRRR) and the impact of such policy decisions have already been analysed to some extent by the Impact Assessment by the European Commission⁸;
- ESMA does not have the power to deviate from its specific mandate provided by the Commission; and
- ESMA's policy options should be of a pure technical nature and not contain strategic decisions or policy choices and their content is delimited by the legislative acts on which they are based.

2. Background

The competent authority and the supervisory college of a CCP should in accordance with paragraph 2 of Article 10 of CCPRRR review the recovery plan and assess the extent to which it satisfies the requirements set out in Article 9 of CCPRRR.

The assessment should include whether the plan is comprehensive and whether it could restore the viability of the CCP, in a timely manner, including under scenarios of severe financial markets distress. The review shall use the factors referred to in points (a), (b) and (c) of Article 10(3) of CCPRRR and which are to be further specified in the draft RTS.

3. Policy Options

Considering the empowerment to ESMA to further specify the factors referred to in points (a), (b) and (c) of Article 10(3) of CCPRRR, the variable on which ESMA can complement is fairly

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2016%3A0368%3AFIN>

limited and the actual policy option is to provide a well-considered range of elements further assisting the competent authority in assessing the adequacy of the recovery plan.

ESMA has considered how to further specify the factors through different elements for the competent authority to consider and identified a few options, mainly in relation to the granularity as the mandate is very detailed under CCPRRR.

4. Cost-benefit analysis

Below is detailed the different corresponding policy options on how to further specify the factors through different elements.

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| <p>Specific objective</p> | <p>The aim of the recovery plan is to establish the measures to be taken to restore the CCP’s financial soundness and allow the CCP to continue to provide critical functions following a significant deterioration of its financial situation or a risk of breaching its capital and prudential requirements under EMIR.</p> <p>When assessing the recovery plan, the competent authority and the supervisory college shall take into consideration the factors listed in points (a), (b) and (c) of Article 10(3) of CCPRRR and those factors are to be further specified in an RTS.</p> |
| <p>Policy option 1</p> | <p>To provide elements further specifying the factors based on the aspects to be covered in the recovery plan, for example reflecting aspects required under Section A, Annex of the CCPRRR. The three parts contain the elements further specifying each of the factors and the separation derives from points (a), (b) and (c) of Article 10(3) of CCPRRR.</p> |
| <p>How would this option achieve the objective?</p> | <p>This option would in ESMA’s view be satisfactory for several reasons, one is that the recovery plan would be considered based on pre-identified elements assisting the competent authority and the supervisory college in applying the factors to assess the adequacy of the recovery plan for the CCP.</p> |
| <p>Policy option 2</p> | <p>To provide a limited set of aspects in addition to the factors, thereby mainly relying on the factors themselves to be used in assessing the recovery plans but without any further guidance.</p> |
| <p>How would this option achieve the objective?</p> | <p>This option would provide some additional value in relation to some specific aspects guiding the competent authority and the supervisory college in its assessments, however the value added would be limited.</p> |

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| Which policy option is the preferred one? | Policy option 1, given that option 2 would be too limited and could lead to the assessment of recovery plans being merely a content driven assessment rather than a thorough assessment considering not only that the recovery plan covers the aspects as required under CCPRRR but also that the recovery plan is suitably structured and tailor-made to cover for the specifics of the CCP and allow for the relevant risks to the CCP to be captured in a sufficient manner. |
| Is the policy chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted? | ESMA is empowered to provide a draft regulatory technical standard to the Commission which has the responsibility to define how to ensure the policy option chosen for its Delegated Act achieves its aim under the CCPRRR. |

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| Impacts of the proposed policies: | |
| Policy option 1 | |
| Benefits | It will provide a wide range of elements to further specify the factors that will ensure a thorough assessments as to the suitability of the recovery plan. |
| Regulator's costs | The costs for competent authorities will be moderate, however already envisaged by CCPRRR due to the detailed list of factors and the RTS envisaged to further specify them. |
| Compliance costs | The compliance costs for CCPs will be moderate, however already envisaged by CCPRRR due to the detailed requirements on the recovery plans and the list of factors envisaged to be used to assess the plan. |
| Policy option 2 | |
| Benefits | It will provide some specific elements to further specify the factors that will probably result in a more ad-hoc assessment and possible with less convergence as a result. |
| Regulator's costs | The costs for competent authorities will be moderate, however already envisaged by CCPRRR due to the detailed list of factors and the RTS envisaged to further specify them. |

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| Compliance costs | The costs for competent authorities will be moderate, however already envisaged by CCPRRR due to the detailed list of factors and the RTS envisaged to further specify them. |
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4.4.3 Summary of consultation responses

Only two responses were provided, one respondent agrees with the cost-benefit analysis provided by ESMA and supports the conclusion of ESMA, that the benefits of issuing these Guidelines outweigh the costs, which results in the preferable choice of Option 1 - to provide elements further specifying the factors based on the aspects to be covered in the recovery plan, for example reflecting aspects required under Section A, Annex of the CCPRRR. The respondent has not identified other benefits and costs not mentioned above associated to the proposed approach (Option 1). Also, the second respondent generally agrees with the proposed approach and therefore also agrees with option 1 in the cost-benefit analysis.

4.4.4 ESMA's feedback

ESMA notes that the Option 1 is supported.



Annex III: Advice of the Securities and Markets Stakeholder Group

In accordance with Article 16 of ESMA Regulation, ESMA has requested the advice of the Securities and Markets Stakeholder Group (SMSG). The SMSG has not provided any comment.



Annex IV: Draft RTS

COMMISSION DELEGATED REGULATION (EU) No .../..

supplementing Regulation (EU) No 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the factors referred to in points (a), (b) and (c) of Article 10(3) of Regulation (EU) No 2021/23 that shall be taken into consideration by the competent authority and the supervisory college when assessing the CCP recovery plan

of []

(text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 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 in particular Articles 10(12) thereof,

Whereas:

- a) In order to further specify the factors which competent authorities and supervisory colleges have to consider when assessing the CCP's recovery plan, ESMA has included a number of relevant quantitative or qualitative elements which cover specific aspects of the factors.
- b) When considering the factor related to the CCP's risk profile for the assessment of the recovery plan, the competent authority and the supervisory college should also consider the extent to which the CCP's risk has been taken into account when defining the underlying strategy of the recovery plan and its actual implementation. In particular the competent authority and the supervisory college should consider the adequacy of the default and non-default scenarios and recovery plan indicators as they should be based on the CCP's risk profile.
- c) Another aspect to be taken into account by the competent authority and the supervisory college, when considering the CCP's risk profile, should be the extent to which the recovery plan considers risks (if any) identified in other relevant risk based assessments, such as stress-test exercises undertaken in accordance with Regulation (EU) No 648/2012 and Regulation (EU) No 1095/2010, where relevant in relation to recovery planning.

- d) The level of preparedness of relevant entities, certain financial markets or the financial system depends, to a certain extent, on when and how the CCP has communicated the relevant parts of the recovery plan in relation to the measures.
- e) The impact of the measures on relevant entities, certain financial markets or the financial system is related on their preparedness, hence the competent authority and the supervisory college should take into account the communication and disclosure plans of the CCP when considering such impact.
- f) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- g) In accordance with Regulation (EU) No 2021/23, ESMA has developed the draft technical standards on which this Regulation is based in cooperation with European System of Central Banks (ESCB) and the European Systemic Risk Board (ESRB). ESMA has conducted an open public consultation on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

Article 1

The CCP's capital structure and financial risk

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of the *CCP's capital structure and financial risk*, by considering at least the following elements:

- a) Whether any inconsistencies or gaps exist between the CCP's capital structure and the recovery measures designed to ensure a timely recapitalisation of the CCP should its capital level fall below the notification threshold or capital requirements.
- b) Whether the recovery plan duly accounts for the additional amount of pre-funded dedicated own resources referred to under Article 9(14) of Regulation (EU) No 2021/23 and which is calculated by the CCP in accordance with the methodology for the calculation and maintenance of the additional amount of pre-funded dedicated own

resources set out in the [Commission Delegated Regulation XXX /XXX⁹] in accordance with Article 9(15) of Regulation (EU) No 2021/23.

- c) Whether measures aimed to:
- (i) restore the CCP's matched book and capital;
 - (ii) replenish pre-funded resources;
 - (iii) maintain access to sufficient sources of liquidity;
 - (iv) maintain or restore the financial viability and soundness of the CCP by undertaking certain recovery tools or measures including loss allocation tools such as recovery cash calls, reduction in value of gains payable by the CCP to non-defaulting clearing members, position allocation and other liquidity actions,
- are well designed, can be deemed feasible, credible and suitable for the CCP considering the types of products cleared and whether the measures are accordingly tested to allow for allocation and price discovery and that the recovery plan provides sufficient reliability and prompt availability of these tools in case of both idiosyncratic and system-wide recovery events.
- d) Whether the recovery plan identifies appropriate arrangements to address both funding gaps and temporary liquidity gaps including specifying the relevant liquidity arrangements available to the CCP.
- e) Whether the recovery measures envisaged under the recovery plan have considered the margin model and margin processes as well as the collateral framework including list of accepted collateral and collateral haircuts within the CCP, and in particular:
- (i) the maximum amount of margins collected by the CCP;
 - (ii) where applicable for each default fund of the CCP, the maximum default fund contributions required;
 - (iii) the estimated largest payment obligation on a single day in total that would be caused by the default of any one or two largest single clearing members (and their affiliates) in extreme but plausible market conditions; and
 - (iv) the possibility to transfer resources or liquidity across business lines.

⁹ [COMMISSION DELEGATED REGULATION (EU) No .../...supplementing Regulation (EU) No 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used in accordance with Article 9(14)]

- f) Whether the recovery plan uses or relies on standing central bank facilities and clearly identifies those assets that would be expected to qualify as collateral under the terms of the central bank facility.

Article 2

CCP's default waterfall

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of the *CCP's default waterfall*, by considering at least the following elements:

- a) Whether the default waterfalls and different paths of loss propagation are clearly specified and that the consequences of losses arising in different areas or for different reasons, are modelled in accordance with the rules allocating these losses.
- b) Whether relevant legal risks have been assessed and addressed in ensuring the enforceability of the waterfall, including with regard to clearing members that are domiciled in third-country jurisdictions.

Article 3

Organisational structure

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of the *level of complexity of the organisational structure*, by considering at least the following elements:

- a) Whether the ownership structure may affect the recovery plan and how the ownership structure is reflected in incentive structures or decision processes of the CCP and how requirements on owners under the recovery plan may affect the recovery plan, including where contractual parental or group support agreements form part of the recovery plan, the reliability and enforceability of such support shall be assessed and whether the recovery plan appropriately considers and addresses the case where such support agreements cannot be honoured.
- b) Whether the links of the CCP to any same-group entity is sufficiently assessed, to ensure any risk of contagion that may arise in case of any group company being subject to financial constraints or being in default is accounted for and how this link may have an impact on the applicability of the measures under the recovery plan.
- c) Whether 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 are suitable, clear and practicable.

- d) Whether the complexity of the CCP's internal organisation may be a hinderance to timely actions or whether processes are likely to run efficiently with clear decision-making lines and clearly defined responsibilities.
- e) Whether the recovery plan is clear and practicable in procedures and action plans, including procedures for decision processes, detailed contact sheets, remote access abilities and accessibility to decision making persons, including to consider how to access key persons both on and off-site.
- f) Whether the recovery plan is effectively included (where required) under the operating rules of the CCP to ensure its efficiency and to mitigate potential challenges and delays in the activation of the recovery plan.
- g) Whether the CCP has in place appropriate rules and procedures to test its recovery plan with its clearing members and where possible to identify, its clients and indirect clients on a regular basis to confirm the recovery plan's feasibility and credibility.

Article 4

The substitutability of the CCP's activities

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of *the substitutability of the CCP's activities*, by considering at least the following elements:

- a) Whether the recovery plan has considered if other CCPs authorised or recognised under respectively Articles 14 or 25 of Regulation (EU) No 648/2012 provide some or all of the clearing services provided by the CCP and the extent to which the recovery plan provides details, using the information available to the CCP, on how clearing services provided by another CCP have been identified and to the extent such identified services by other CCPs are established services or newly established clearing services.
- b) Where the portability of transactions or the transfer of non-critical activities, partially or in full, to another service provider is envisaged under the recovery plan, whether this possibility is presented with an assessment of its viability, using the information available to the CCP, and how the plan caters for the eventuality that its implementation turns out not to be possible.

Article 5

The risk profile of the CCP

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of *the risk profile of the CCP*, by considering at least the following elements:

- a) Whether the CCP's recovery plan overall encompasses and provides adequate measures to address different types of risk, and plausible combinations thereof, which may lead to the recovery tools being needed. The types of risk to be considered, depending on the CCP, includes operational, credit, liquidity, general business, custody, settlement, investment, market, systemic, and finally environmental and climate risks.
- b) Whether the recovery plan assesses and mitigates the risk of disruptions both originating at the CCP and those originating in other entities and service providers to which the CCP is exposed, including; clearing, investment, custody and payments.
- c) Whether the nature, size and complexity of the CCP's business has been taken into consideration in the recovery plan and in how it has been reflected in the proposed measures by the CCP. Those aspects may be assessed in the recovery plan by considering at least the following aspects of the CCP's business:
 - (i) the type of financial instruments cleared or to be cleared by the CCP;
 - (ii) the financial instruments cleared or to be cleared by the CCP that are subject to the clearing obligation under Article 4 of Regulation (EU) No 648/2012;
 - (iii) the average values cleared by the CCP over one year (per type of product and by currency both in absolute terms, as well as relative terms to the CCP's capital) at the level of each clearing member (and client where possible);
 - (iv) if the transactions cleared by the CCP are executed on an EU trading venue, or a third-country trading venue considered equivalent in accordance with Article 2a of Regulation (EU) No 648/2012 or OTC; and
 - (v) the Member States where the CCP provides, or intends to provide, services and other cross-border activities of the CCP.
- d) Whether the CCP can independently apply the recovery plan without interference from other entities in the same corporate group and that any spill over effects on other group entities and financial interdependencies are clearly identified (where possible).
- e) Whether the recovery plan is consistent with the corporate governance structure of the CCP and with the CCP's decision processes and internal governance.

- f) Whether the recovery plan considers environmental risks and the risk of cyber-attacks which could lead to a significant deterioration of the financial situation of the CCP and any other risks identified in stress-test exercises performed in accordance with Regulation (EU) No 648/2012 and Regulation (EU) No 1095/2010, if relevant for the recovery plan.
- g) Whether the legal risks have been assessed in the recovery plan, mainly to ensure all measures are legal, valid, binding and enforceable and that the arrangements, agreements and contracts (including, the rulebook of the CCP and agreements with service providers) are clear, legal, valid, binding and enforceable and actionable to ensure the risks for legal challenges and lawsuits are managed and minimised and that legal opinions have been collected, where needed, to evidence the legal validity and enforceability of the recovery measures and agreements in particular where the counterparty to the agreement is located outside of the Union, to ensure the CCP is in a position to undertake its measures as set out in the recovery plan in a swift and efficient manner once activated.

Article 6

The risk profile of the CCP in relation to the CCP preparedness

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of *risk profile of the CCP and in particular how the risk profile of the CCP has been reflected in the planned application of the recovery plan and in designing the strategy of its application, including the designed scenarios and indicators in the recovery plan*, by considering at least the following elements:

- a) Whether the recovery plan's planned application and designed strategy:
 - (i) reflect the CCP's risk profile arising from its business model and product mix, including considerations as to its market liquidity, market concentration, the role of direct clearing members and clients, settlement methodologies, currencies and clearing hours, as well as trading venues served;
 - (ii) take into account the CCP's specific structure and organisational set-up, including considerations as to its default waterfall segregation and risk pooling possibilities across services; and
 - (iii) take into account the CCP's dependencies on, for example, related group entities and third parties.
- b) Whether the framework of quantitative and qualitative indicators included in the recovery plan identifies the suitable circumstances in which measures in the recovery plan are to be taken.

Article 7

The risk profile of the CCP in relation to the business model

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of *risk profile of the CCP and in particular in relation to the operational risk of the business model of the CCP*, by considering at least the following elements:

- a) Whether the critical functions of the CCP are properly identified.
- b) Whether the preparatory arrangements to facilitate the sale of assets or business lines, as envisaged in the recovery plan, are suitable for the CCP taking into account the following:
 - (i) if the processes for determining the value and marketability of the core business lines, operations and assets of the CCP are suitable, robust and operational;
 - (ii) if the timeframe envisaged to prepare the sale is appropriate considering the type of instruments cleared and the scope of the sale;
 - (iii) if the assessment of the potential impact of such a sale on the operations of the CCP is reflecting the specific operations of the CCP, i.e. the type of products cleared or margining methods (across products) and account structures; and
 - (iv) if the impact of such a separation of the business lines on clearing members and clients and indirect clients where possible to identify, are sufficiently assessed and any negative effects mitigated.
- c) Where the CCP clears several products, whether the CCP has considered the potential of how to split a sale between products and if any impediments have been identified as an effect of such separation or if any other effect on the recovery plan has been identified by such a separation of products for example on netting efficiencies.
- d) Whether the number and importance of different links with entities such as liquidity providers, settlement banks, platforms, custodians, investment agents, banks or service providers have been assessed in the recovery plan and how such links impact the recovery measures and the effectiveness of the recovery plan.
- e) Whether the significance or materiality of each link has been assessed, including in terms of volumes cleared and the financial exposures under these arrangements.
- f) Whether outsourcing arrangements that cover part of the CCP's core business, including where another entity undertakes price determination, provides systems for the clearing, margin calculations or other essential parts of the CCP's operations, have been sufficiently assessed and any identified risks mitigated and how the recovery plan has assessed the legal enforceability of the recovery plans against such core service providers and whether any inability of the provider of such outsourced arrangements

to comply with its obligations under the outsourcing arrangements has been satisfactorily assessed and how those risks are mitigated in the recovery plan.

Article 8

Overall impact on certain entities in relation to communication and disclosure plan of the CCP

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of the CCP's communication and disclosure plan considering the *overall impact* that the implementation of the recovery plan would have on the entities or markets as listed under point (b), paragraph 3, Article 10 of Regulation (EU) No 2021/23, by considering at least the following elements:

- a) Whether the CCP's communication and disclosure plan manages to achieve the objectives in accordance with point 3, Section A, Annex of Regulation (EU) No 2021/23 of:
 - (i) assessing how information is envisaged to be shared in as transparent manner as possible towards its stakeholders, including clearing members and the financial market in general; and
 - (ii) ensuring the recovery plan envisages and provide clear guidance on how to manage expectations and how it envisages to minimise potentially negative market reactions when disclosing information.
- b) Whether the recovery plan provides clear procedures of how and when to share information with different entities with clear descriptions on how such procedures have taken into consideration legal requirements and other binding requirements.

Article 9

Impact on clearing members, their clients and indirect clients

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of *the impact of the recovery plan on the CCP's clearing members, and to the extent the information is available, their clients and indirect clients*, including where they have been designated as O-SIIs, by considering at least the following elements:

- a) Whether the recovery plan correctly reflects the complexity of the CCP's clearing membership, including (i) the level of client clearing in the CCP, (ii) the number of clearing members established (A) within the CCP's jurisdiction, (B) in another Member State, or (C) outside the Union, and (iii) the concentration of the membership.

- b) Whether the recovery plan considers the overall impacts on clearing members and, to the extent the information is available to the CCP, their clients and indirect clients, of a possible disruption of the clearing services provided by the CCP, including potential impacts on access to clearing, and other effects derived from the operating rules of the CCP.
- c) Whether the recovery plan considers the potential effect of the agreed measures to be taken under the recovery plan (as implemented under the operating rules) to clearing members and where relevant their clients and indirect clients.
- d) That any financial or contractual obligation is agreed to by the clearing members and, where relevant, clients and indirect clients under the operating rules of the CCP, including how the amount of the obligation is calculated, if any maximum or cap is applied, if the amount is a pre-agreed sum or if it will be derived as a function of the member's/client's exposures and how such resources would be requested.

Article 10

Impact on linked FMIs

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of *the impact of the recovery plan on any linked FMIs*, by considering at least the following elements:

- a) Whether the recovery plan assesses the potential impact of applying the recovery measures on any interoperable CCP and on any other FMI linked to the CCP, by assessing the significance of the CCP's involvement in those entities.
- b) Whether the recovery plan addresses any interoperability or cross-margining agreements with other CCPs and the scope of such arrangements, including volumes cleared and financial resources exchanged as part of these arrangements.
- c) Whether the impact of the implementation of any of the measures under the recovery plan may affect the access to other FMIs, and where impediments or limitations are identified, how they are mitigated.
- d) Whether the involvement of 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 recovery plan in accordance with Article 9(16) of Regulation (EU) No 2021/23 has been executed in an effective and satisfactory manner.

Article 11

Impact on financial markets, including trading venues, served by the CCP

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of *the recovery plan on financial markets, including trading venues, served by the CCP*, by considering at least:

- a) Whether the recovery plan assesses the potential impact of applying the recovery measures on trading venues as well as any other sources of trading connected to the CCP, including assessing the significance of the CCP's involvement in those entities and whether the impact represents a threat to the stability of the entities concerned; and
- b) Whether the CCP provides other material or significant services linked to clearing, in addition to clearing services, and whether any measure under the recovery plan may have an impact on the financial market served by the CCP where the CCP provides such other or ancillary material or significant services.

Article 12

Impact on the financial system of any Member State and the Union as a whole

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in respect of the impact on *the financial system of any Member State and the Union as a whole*, by considering at least the following elements:

- a) Whether the recovery plan assesses the potential impact of the recovery plan on the financial stability of any Member State and the Union arising as a result of a possible contagion effects, including in terms of credit, liquidity and/or operational risks for clearing participants and interdependent FMIs or on the financial system of any Member State and the Union as a whole resulting from one or several entities linked to the CCP or the CCP itself being impacted by the recovery plan.
- b) Whether, in view of assessing the wider systemic risk impact of the recovery plan, the results from analyses performed from time to time by ESMA are considered and reflected upon, where relevant for the recovery plans, in the recovery plan and that any relevant discoveries or concerns are mitigated (to the extent possible) in the recovery plan.
- c) Whether material links with entities such as liquidity providers, settlement banks, platforms, custodians, investment agents, banks or service providers have been considered by assessing how the recovery plan may impact the operations of the linked entities, whether the recovery plan measures are suitable and workable for the entities with material links identified or could have a material negative impact on the financial system of any Member State and the Union as a whole.

- d) Whether liquidity providers, where supervised by the CCP's competent authority or to the extent it is known, gives rise to concentrated liquidity exposures due to the multiple roles they may play for several CCPs, including as clearing member, payment bank, investment bank, custodian, provider of liquidity back-stop arrangement.

Article 13

Incentives

The competent authority and the supervisory college shall assess the adequacy of the recovery plan in creating appropriate *incentives* for the CCP's owners, clearing members, and where possible their clients, 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 contribute to the CCP's default management process, by considering at least the following elements:

- a) Whether the incentives increase the likelihood of a successful recovery and that the recovery plan entails details as to identified incentives for different stakeholders and providing examples, including where relevant, how voluntary or optional contributions in addition to the agreed contributions under the operating rules of the CCP could be incentivised at a time of crisis.
- b) Whether calls for resources, contributions and the allocations of costs associated with the recovery plan create the appropriate incentives for the CCP, its clearing members, its clients and indirect clients to the extent they are known, shareholders and other entities within the same group, to act in a way that minimises risks and potential costs.
- c) Whether participation to the default management of the clearing members and their clients is incentivised by the structure of the default management process, by the use of recovery tools and by the resources to be provided to the CCP in a recovery, including but not limited to penalties in the event of a failure to provide, where agreed, committed resources that could include the provision of seconded personnel to assist in the recovery management or engage in competitive bidding in an auction.
- d) Whether the arrangements and measures incentivising non-defaulting clearing members to bid competitively in auctions of a defaulted members' positions are suitable, well organised and create the incentives as envisaged.
- e) Whether the link between clearing members' activity and their potential losses (as a result of the recovery plan) creates an appropriate incentive, including whether the losses or a cap on potential losses are proportional to a metric related to the activity of the member, based on variation margin, initial margin, default fund contributions or other risk-based and activity-based metrics.
- f) Whether the CCPs 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 the plan and in the participation to relevant risk-management discussions, are adequate and creates suitable incentives for the clearing members and client representatives to ensure the balance between different interests.

- g) Where the board of the CCP has decided not to follow the advice of the risk committee when approving the CCP's recovery plan, whether the justification provided by the CCP both to the members of the risk committee and to its competent authority, pursuant to Article 9(18) of Regulation (EU) No 2021/23, is adequate.
- h) Whether the involvement of clearing members, and possibly clients, or other entities linked to the CCP in the provision of services to address the mitigation of losses in the event of recovery, embeds the right incentives to provide the CCP with the suitable services, including acting as a repo counterparty and providing liquidity.

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,

For the Commission

The President