



European Securities and  
Markets Authority

# Consultation Paper

**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) CCPRRR)**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex III. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by 20 September 2021.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

The collection of confidential responses is without prejudice to the scope of Regulation (EC) No 1049/2001. Possible requests for access to documents will be dealt in compliance with the requirements and obligations laid down in Regulation (EC) No 1049/2001.

### Data protection

Information on data protection can be found at <https://www.esma.europa.eu/data-protection> under the heading Data Protection.

### **Who should read this paper?**

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest for EU central counterparties, clearing members and clients of clearing members.

## Table of Contents

1	Executive Summary .....	5
2	Legislative References, Abbreviations and Definitions .....	7
3	Background and Mandate .....	9
4	Factors to assess in CCP’s recovery plans.....	11
4.1	Introduction .....	11
4.2	Article 10(3)(a) of CCPRRR — the CCP specific factors.....	12
4.2.1	Overall suitability assessment (Article 2 of the RTS) .....	12
4.2.2	Assessment of recovery plan scenarios and indicators (Article 3 of the RTS) ..	12
4.2.3	The CCP’s capital structure and financial viability (Article 4 of the RTS).....	13
4.2.4	CCP’s default waterfall (Article 5 of the RTS) .....	13
4.2.5	The level of complexity of the organisational structure (Article 6 of the RTS) ..	13
4.2.6	The substitutability of the CCP’s activities (Article 7 of the RTS) .....	14
4.2.7	The risk profile of the CCP (Article 8 of the RTS) .....	14
4.2.8	The business model of the CCP (Article 9 of the RTS).....	15
4.3	Article 10(3)(b) of CCPRRR - Overall impact on relevant entities .....	15
4.3.1	General links of the CCP (Article 10 of the RTS) .....	16
4.3.2	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 (Article 11 of the RTS)	16
4.3.3	Overall impact of the recovery plan on any linked FMIs (Article 12 of the RTS)	16
4.3.4	Overall impact on financial markets, including trading venues, served by the CCP (Article 13 of the RTS).....	17
4.3.5	Overall impact on the financial system of any Member State and the Union as a whole (Article 14 of the RTS).....	17
4.4	Article 10(3)(c) of CCPRRR – Incentives (Article 15 of the RTS).....	17
	<b>Annex I: Legislative mandate to develop the RTS .....</b>	<b>19</b>
	Annex II: Cost and Benefit analysis .....	20
	<b>Annex III: Summary of questions .....</b>	<b>24</b>
	Annex IV: Draft RTS.....	25

# 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 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.

The purpose of this consultation paper is to seek views from all interested stakeholders on these draft RTS further specifying the factors to be taken into consideration by competent authorities and supervisory colleges when assessing CCP recovery plans.

## Contents

Sections 2 and 3 set out the definitions, background and mandate for the RTS.

Section 4 outlines the approach ESMA suggests adopting with regard to further specifying the factors to be taken into consideration by competent authorities and supervisory colleges when assessing CCP recovery plans. It specifies the proposed elements that need to be considered by competent authorities and supervisory colleges when assessing CCP recovery plans, in particular, (i) elements related to the specific structure, organisation and business of a CCP that can affect the arrangements, effectiveness or any other relevant aspects of a recovery plan, (ii) elements related to impact of the arrangements, effectiveness or any other relevant aspects of a recovery plan on a variety of stakeholders, and (iii) elements related to the assessment of the appropriateness of incentives created by the recovery tools, and the sequence of execution specified by the recovery plan, in relation to various stakeholders.

---



---

Annex I sets out the legislative mandate for developing the RTS. Annex II provides for a high-level cost-benefit analysis for the RTS and Annex III contains a summary of the consultation questions. Annex IV contains the proposed draft RTS.

### **Next Steps**

The consultation will be open until 20 September 2021. ESMA will consider the feedback received to this consultation in Q3 2021 and expects to publish a final report and submission of the draft technical standards to the European Commission for endorsement in Q1 2022.

---



## 2 Legislative References, Abbreviations and Definitions

The following legislative references are used in this consultation paper:

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 <sup>1</sup>
EMIR	Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories <sup>2</sup>
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 <sup>3</sup>
RTS 152/2013	Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 on capital requirements for central counterparties <sup>4</sup>
RTS 153/2013	Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 on requirements for central counterparties <sup>5</sup>

The following abbreviations are used in this consultation paper:

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

---

<sup>1</sup> OJ L 184, 8.7.2016, p. 1–71

<sup>2</sup> OJ L 201, 27.7.2012, p.1

<sup>3</sup> OJ L 331, 15.12.2010, p. 84

<sup>4</sup> OJ L 52, 23.2.2013, p. 37

<sup>5</sup> 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>NCA</i>	Competent Authority
<i>RTS</i>	Regulatory Technical Standards

Unless otherwise specified, the terms used in this consultation paper have the same meaning as in CCPRRR, EMIR and the RTS 152/2013 and 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 2021<sup>6</sup>. CCPRRR puts into place a recovery and resolution framework for CCPs which are systemically important for the financial system aiming at ensuring that the critical functions of CCPs are preserved while maintaining financial stability and helping to avoid the costs associated with the restructuring and the resolution of failing CCPs from falling on taxpayers. 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 paragraph 1 of Article 9 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 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 college.
4. The CCPs should ensure that their recovery plan is non-discriminatory and balanced in terms of its impact and the incentives it creates. The effects of the recovery measures on clearing members and, where the relevant information is available, their clients and on the financial system of the Union or of one or more of its Member States more broadly should be proportionate.
5. 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<sup>7</sup>. 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 the draft RTS.
6. 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)

---

<sup>6</sup> 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>

<sup>7</sup> Articles 9, 10 and 11 of CCPRRR and Recital 21.

and (c) of Article 10(3) of CCPRRR. The draft RTS is to be submitted to the European Commission by 12 February 2022.

7. This consultation paper (and the accompanying draft RTS) specifies the elements further specifying the factors, that need to be considered by competent authorities and supervisory colleges when assessing the adequacy of CCPs' recovery plans.

#### Recitals

(21) The CCP should submit its recovery plan to the competent authority which should without undue delay transmit the plan to the supervisory college, established under Regulation (EU) No 648/2012, for a complete assessment, to be carried out by joint decision of the college. The assessment should include whether the plan is comprehensive and whether it could feasibly restore the viability of the CCP, in a timely manner, including in periods of severe financial distress.

(22) Recovery plans should comprehensively set out the actions that the CCP would take to address any unmatched outstanding obligations, uncovered loss, liquidity shortfall, or capital inadequacy, as well as the actions to replenish any depleted pre-funded financial resources and liquidity arrangements in order to restore the CCP's viability and its continuing ability to meet its requirements for authorisation. Neither the power of the resolution authority to apply a resolution cash call nor the requirement to have a minimum contractual commitment for the recovery cash call should affect the right of the CCP to introduce recovery cash calls in its rules above the minimum obligatory contractual commitment specified in this Regulation or the risk management of the CCP.

(23) Recovery plans should also consider cyber-attacks which could lead to a significant deterioration of the financial situation of the CCP or to a risk of breaching prudential requirements under Regulation (EU) No 648/2012.

(24) CCPs should ensure that their recovery plan is non-discriminatory and balanced in terms of its impact and the incentives it creates. The effects of the recovery measures on clearing members and, where the relevant information is available, their clients and on the financial system of the Union or of one or more of its Member States more broadly should be proportionate. In particular, in accordance with Regulation (EU) No 648/2012 CCPs have to ensure that their clearing members have limited exposures toward the CCP. CCPs should ensure that all relevant stakeholders are involved in the drawing-up of the recovery plan through their involvement in the CCP's risk committee, as the case might be, and by being appropriately consulted. Since opinions can be expected to differ among stakeholders, CCPs should establish clear processes to manage the diversity of stakeholders' views as well as any conflict of interest between those stakeholders and the CCP.

#### Article 10

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 FMI's;
  - (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.

8. With this consultation paper ESMA seeks input and views of the stakeholders on the draft RTS. This consultation paper should be read and considered in conjunction with the ESMA consultation paper on draft guidelines on CCP recovery plan scenarios (ESMA70-151-3404) and the ESMA consultation paper on draft guidelines on CCP recovery plan indicators (ESMA70-151-3421).

## 4 Factors to assess in CCP's recovery plans

### 4.1 Introduction

9. Pursuant to Article 10(2) of CCPRRR competent authorities are required to review, in coordination with supervisory colleges in accordance with Article 11 of CCPRRR, the compliance of CCP recovery plans with respect to the requirements set out in Article 9 of CCPRRR, which details the objectives and requirements of recovery plans, as well the requirements regarding the content of the recovery plan as set out in Section A of the Annex of CCPRRR.
10. The CCPs shall therefore draw up and maintain a recovery plan reflecting the requirements set out in Article 9 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.
11. The recovery plan shall include indicators based on the risk profile of the CCP, that identify the circumstances under which measures in the recovery plan are to be taken.
12. Where the measures set out in the recovery plans create financial or contractual obligations, those shall form part of the operating rules of CCPs and the CCPs shall ensure that the measures set out in the recovery plans are enforceable at all times in all jurisdictions where the clearing members, linked FMIs or trading venues are located.

13. The competent authority shall transmit the recovery plan to the supervisory college and to the resolution authority without undue delay. The competent authority shall 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, in accordance with the procedure in Article 11 of CCPRRR. 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. Hence the competent authority and the college shall, when assessing the recovery plan, take into consideration the factors listed in points (a), (b) and (c) of paragraph 3 in Article 10 of CCPRRR.
14. ESMA has carefully considered those three main factors that shall be used to measure the recovery plan against and how to further specify them.

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

15. 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.
16. Therefore, with regard to these factors, referred to in point (a) of Article 10(3) of CCPRRR, ESMA proposes that the NCA 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.

### 4.2.1 Overall suitability assessment (Article 2 of the RTS)

17. 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.

### 4.2.2 Assessment of recovery plan scenarios and indicators (Article 3 of the RTS)

18. 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.

#### 4.2.3 The CCP's capital structure and financial viability (Article 4 of the RTS)

19. 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.

#### 4.2.4 CCP's default waterfall (Article 5 of the RTS)

20. 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.

#### 4.2.5 The level of complexity of the organisational structure (Article 6 of the RTS)

21. 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.

#### 4.2.6 The substitutability of the CCP's activities (Article 7 of the RTS)

22. 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.

#### 4.2.7 The risk profile of the CCP (Article 8 of the RTS)

23. 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.

24. 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.

#### 4.2.8 The business model of the CCP (Article 9 of the RTS)

25. 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.

**Question 1: Do you agree with the proposed list of elements (as further specified in the RTS) to be taken into consideration under point (a) of Article 10(3) of CCPRRR?**

**Question 2: Would you add any additional elements and/or delete any? If so, please justify.**

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

26. 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:

- 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.

27. Therefore, with regard to these factors, referred to in point (b) of Article 10(3) of CCPRRR, ESMA proposes that the NCA and the supervisory college 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.

#### 4.3.1 General links of the CCP (Article 10 of the RTS)

28. 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.

#### 4.3.2 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 (Article 11 of the RTS)

29. 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).

#### 4.3.3 Overall impact of the recovery plan on any linked FMIs (Article 12 of the RTS)

30. 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.

#### 4.3.4 Overall impact on financial markets, including trading venues, served by the CCP (Article 13 of the RTS)

31. 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.

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

32. 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.

**Question 3: Do you agree with the proposed list of elements (as further specified in the RTS) to be taken into consideration under point (b) of Article 10(3) of CCPRRR?**

**Question 4: Would you add any additional elements and/or delete any? If so, please justify.**

#### **4.4 Article 10(3)(c) of CCPRRR – Incentives (Article 15 of the RTS)**

33. 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.

34. 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.).

**Question 5: Do you agree with the proposed list of elements (as further specified in the RTS) to be taken into consideration under point (c) of Article 10(3) of CCPRRR?**

**Question 6: Would you add any additional elements and/or delete any? If so, please justify.**

## **Annex I: Legislative mandate to develop the RTS**

Article 10 of the 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 paragraph 12 of Article 10 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 paragraph 3 of Article 10.

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 paragraph 3 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 Commission<sup>8</sup>;
- ESMA does not have the power to deviate from its specific mandate provided by the Commission;
- ESMA 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 paragraph 3 of Article 10 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 paragraph 3 of Article 10, the variable on which ESMA can complement is fairly

---

<sup>8</sup> <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.

<p><b>Specific objective</b></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 paragraph 3 in Article 10 of CCPRRR and those factors are to be further specified in the current draft RTS.</p>
<p><b>Policy option 1</b></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. ESMA has divided the factors into four buckets. Three parts contain the elements further specifying each of the separate factors and the separation derives from Article 10(3) (a), (b) and (c). The fourth part provides elements further specifying the factors from a more general perspective, i.e. covers the factors set out under (a), (b) and (c) jointly. The reason is to provide some overarching elements to be considered in the assessment before further specifying the factors on an individual basis.</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 all main aspects that are covered by the recovery plan would be considered based on some additional elements assisting the competent authority and the supervisory college in its assessments as to the adequacy of the recovery plan for the CCP.</p>
<p><b>Policy option 2</b></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>

How would this option achieve the objective?	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.
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.

<b>Impacts of the proposed policies:</b>	
<b>Policy option 1</b>	
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.
<b>Policy option 2</b>	

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 authorises 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 costs for competent authorises will moderate, however already envisaged by CCPRRR due to the detailed list of factors and the RTS envisaged to further specify them.

**Question 7: Do you agree with the Option 1, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 1)?**

**Question 8: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.**



## **Annex III: Summary of questions**

### ***Questions on draft RTS***

**Question 1: Do you agree with the proposed list of elements (as further specified in the RTS) to be taken into consideration under point (a) of Article 10(3) of CCPRRR?**

**Question 2: Would you add any additional elements and/or delete any? If so, please justify.**

**Question 3: Do you agree with the proposed list of elements (as further specified in the RTS) to be taken into consideration under point (b) of Article 10(3) of CCPRRR?**

**Question 4: Would you add any additional elements and/or delete any? If so, please justify.**

**Question 5: Do you agree with the proposed list of elements (as further specified in the RTS) to be taken into consideration under point (c) of Article 10(3) of CCPRRR?**

**Question 6: Would you add any additional elements and/or delete any? If so, please justify.**

### ***Questions on cost-benefit analysis***

**Question 7: Do you agree with the Option 1, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 1)?**

**Question 8: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.**



## 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:

1. Article 10(12) of Regulation (EU) No 2021/23 empowers ESMA, in cooperation with the ESCB and the ESRB, to develop draft regulatory technical standards further specifying the factors referred to in points (a) to (c) of paragraph 3 in Article 10 under Regulation (EU) No 2021/23.
2. A recovery plan shall be drawn up in accordance with Section A of the Annex under Regulation (EU) No 2021/23 and the competent authority and the supervisory college shall review the recovery plan and assess the extent to which it satisfies the requirements set out in Article 9 of Regulation (EU) No 2021/23.
3. This Regulation further specifies the factors, under Article 10(3) (a) to (c) of Regulation (EU) No 2021/23, that the competent authority and the supervisory college shall consider for the purpose of assessing the extent to which the recovery plan satisfies the requirements set out in Article 9 of Regulation (EU) No 2021/23 in accordance with Article 10(2) of that Regulation.
4. The factors include three main aspects, the CCP driven factors, such as the risk profile of the CCP, the overall impact the recovery plan would have on certain entities, including clearing members and linked FMIs and whether the recovery tools and their sequence specified by the recovery plan create appropriate incentives.

5. The elements provided in this regulation, to further specify the factors under Article 10(3) (a) to (c) of Regulation (EU) No 2021/23, provides details on how to assess the recovery plan based on the factors to ensure a common assessment approach by the competent authority and the supervisory college.
6. The Articles 2 and 3 of this Regulation further specify the point (a) to (c) of Article 10(3) of Regulation (EU) No 2021/23 where the assessment of the recovery plan considers the factors jointly and provide elements further specifying the factors from a more general perspective. The aim is to provide some overarching elements to be considered in the assessment before further specifying the factors on an individual basis.
7. The Articles 4 to 9 of this Regulation further specify the factors listed in point (a) of Article 10(3) of Regulation (EU) No 2021/23 containing elements related to the CCP, hence the first aspect of the assessment is to consider whether the recovery measures are suitable for the CCP, i.e. for 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.
8. The Articles 10 to 14 of this Regulation further specify the factors listed in point (b) of Article 10(3) of Regulation (EU) No 2021/23 containing elements related to the overall impact that the implementation of the recovery plan would have on entities related to the CCP and contain details on the entities that may be affected by the application of the measures under the recovery plan, such as (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; and (iii) financial markets, including trading venues, served by the CCP. Under this aspect the competent authority and the college should also consider the overall market impact, if the recovery plan was implemented, on the financial system of any Member State and the Union as a whole.
9. The Article 15 of this Regulation further specifies the factors listed in point (c) of Article 10(3) of Regulation (EU) No 2021/23 containing elements related to 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.
10. This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
11. 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 open public consultations 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

##### Subject matter

1. This Regulation further specifies the factors that the competent authority and the supervisory college shall consider under Article 10(3) (a) to (c) of Regulation (EU) No 2021/23 for the purpose of assessing the extent to which the recovery plan satisfies the requirements set out in Article 9 of Regulation (EU) No 2021/23 in accordance with Article 10(2) of that Regulation.
2. The factors set out in points (a) to (c) of Article 10(3) of Regulation (EU) No 2021/23 are further specified in Articles 2 and 3 of this Regulation where the assessment of the recovery plan considering the factors jointly.
3. The factors set out in point (a) of Article 10(3) of Regulation (EU) No 2021/23 are further specified in Articles 4 to 9 of this Regulation.
4. The factors set out in point (b) of Article 10(3) of Regulation (EU) No 2021/23 are further specified in Articles 10 to 14 of this Regulation.
5. The factors set out in point (c) of Article 10(3) of Regulation (EU) No 2021/23 are further specified in Article 15 of this Regulation.

#### Article 2

##### Suitability assessments

The competent authority and the supervisory college shall assess the *overall suitability* of the recovery plan by considering at least the following elements:

- a) Whether the CCP's communication and disclosure plan manages to achieve the objectives of:
  - (i) acting in a transparent manner towards its stakeholders, including clearing members and the financial market in general; and
  - (ii) managing expectations and potentially negative market reactions when disclosing information.

- b) Whether the overall timing of the different elements of the recovery plan, including an estimation of the timeframe for implementing each material aspect of the plan, is suitable, practicable and meets relevant legal requirements applicable to the CCP. The timeframe shall be tested regularly and the plan shall provide clear details on how and at what intervals such timeframes are regularly tested. The recovery plan may include pre-made templates with relevant addresses included or other suitable pre-completed processes and clear procedures of how and when to share information with different stakeholders with clear descriptions on how such procedures have taken into consideration legal requirements and other binding requirements.
- c) Whether the CCP provides other services linked to clearing, in addition to clearing services, and whether any measure under the recovery plan may have an impact on such other or ancillary services.
- 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 paragraph 16 of Article 9 of Regulation (EU) No 2021/23 has been executed in an effective and satisfactory manner.

### Article 3

#### Recovery plan scenarios and indicators

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

- a) Whether the recovery plan duly reflects:
  - (i) the recovery plan scenarios as required under Article 9(1) and 9(2) of Regulation (EU) No 2021/23 and as further specified in guidelines adopted by ESMA in accordance with paragraph 12 of Article 9 of Regulation (EU) No 2021/23;
  - (ii) the recovery plan indicators as required under Article 9(3) of Regulation (EU) No 2021/23 and as further specified in guidelines adopted by ESMA in accordance with paragraph 5 of Article 9 of Regulation (EU) No 2021/23; and
- (b) Whether the recovery plan scenarios and indicators:
  - (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;

- (iii) are consistent with the CCP's broader financial risk management and risk governance frameworks; and
  - (iv) take into account the CCP's dependencies on, for example, related group entities and third parties.
- (c) Whether the recovery plan provides for an assessment of the appropriateness of the recovery options elected to address each relevant recovery plan scenario as required under point 8 of Section A of Annex in the Regulation (EU) No 2021/23 and if the assessment covers in sufficient details the aspects considered and that the recovery options elected are supported by the assessment and are suitable for CCP.
- (d) Whether the framework of quantitative and qualitative indicators included in the recovery plan identifies the suitable times at which appropriate actions referred to in the plan should be taken.

#### Article 4

##### 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 paragraph 14 of Article 9 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 /XXX<sup>9</sup>] in accordance with paragraph 15 of Article 9 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;

---

<sup>9</sup> [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)]

(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.
- e) Whether the liquidity arrangements, with the identities of the liquidity providers detailed in a satisfactory manner, may give rise to concentrated CCP liquidity exposures due to the multiple roles the liquidity providers may have, including roles as clearing member, payment bank, investment bank, custodian, provider of liquidity back-stop arrangement, and whether the recovery plan clearly distinguishes between prefunded, committed and uncommitted liquidity arrangements and other funding sources in terms of their credibility and prompt availability.
- f) Whether the recovery measures envisaged under the recovery plan have considered the margin model and margin processes within the CCP, for example,
- (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.
- g) 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 5

### 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 various 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 6

### 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 hindrance 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 7

##### 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 EMIR provide some or all of the clearing services provided by the CCP.
- b) Whether 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 and whether this possibility is presented with an assessment of its viability complemented with how the plan accounts for the possibility that the portability or transfer is not possible.

#### Article 8

##### 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, including 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, 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) 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 EMIR or OTC;
  - (v) the special features of the different services provided by the CCP; and
- d) the Member States where the CCP provides, or intends to provide, services and other cross-border activities of the CCP.
  - e) 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).
  - f) Whether the recovery plan is consistent with the corporate governance structure of the CCP and with the CCP's decision processes and internal governance.
  - g) Whether the recovery plan considers the risk of cyber-attacks which could lead to a significant deterioration of the financial situation of the CCP and any risks identified in ESMA stress-test exercise that are relevant for the recovery plan (if any) and in particular in relation to operational risks with a focus on cyber risks and environmental risks.
  - h) 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 9

### The business model of the CCP

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.

## Article 10

### Entities linked to the CCP

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

- a) 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 impacts the recovery measures as well as how the recovery plan may impact the operations of the linked entities and whether the recovery plan measures are suitable and workable for the entities with material links identified.
- b) Whether the significance or materiality of each link has been assessed, including in terms of volumes cleared and financial resources exchanged as part of these arrangements.
- c) 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 11

### 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*, 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 has considered the 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 (including where they have been designated as O-SIIs) and to the extent the information is available, their clients and indirect clients, and whether an identified impact may represent a threat to the stability of the entities concerned directly or indirectly.
- c) Whether the relevant recovery plan measures and any possible effect of measures taken under the recovery plan is known to clearing members and where possible, the information is available to their clients and indirect clients, and that any material liability is agreed to by the clearing members and, where relevant, clients and indirect clients. The information should include how the amount is calculated, if any maximum or cap is applied, if the amount is a pre-agreed sum or if it will be the amount derived as a function of the member's/client's exposures and how such resources would be requested.

## Article 12

### 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.

#### Article 13

##### 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 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.

#### Article 14

##### 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 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 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. This should include the consideration of any ESMA findings with regard to concentrated exposures of EU CCPs to certain financial service and liquidity providers including in their roles as clearing members, payment banks, investment banks, custodians, providers of liquidity back-stop arrangements.
- c) 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 15

##### 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 how additional voluntary contributions could be incentivised.
- b) Whether the calls for resources, whether voluntary or not, 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 committed resources that could include the provision of seconded personnel to a default management advisory committee or providing resources through engaging 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 participation to risk-management discussions, including at the risk committee, of clearing members and client representatives to incentivise commitment and dedication to the CCP is properly structured to ensure the balance between different interests are upheld.
- g) Whether the different categories of participants (clearing members and clients) have been appropriately represented in the risk committee and 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 relative to the mitigation of losses in the event of recovery embeds the right incentives to provide the CCP with the right services, including acting as a repo counterparty and providing liquidity.

#### Article 16

#### **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*