



European Securities and  
Markets Authority

# Consultation Paper

**Draft RTS on the content of CCP resolution plans (Article 12(9) of the CCPRRR)**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. 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 24 January 2022.

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.

### Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

### Who should read this paper

All interested stakeholders are invited to respond to this consultation paper. In particular, this paper may be specifically of interest to CCPs, clearing members, clients, indirect clients and authorities involved in CCPs recovery and resolution.

## Table of Contents

1	Executive Summary .....	6
2	Introduction .....	7
3	Resolution Plans - scope of mandate .....	8
3.1	Resolution plans under BRRD.....	9
3.2	Principle of proportionality .....	9
3.3	National insolvency laws .....	10
3.4	Nature and complexity of the CCP .....	10
4	Resolution Plans under CCP RRR .....	11
4.1	A summary of the key elements of the resolution plan.....	11
4.2	A summary of the material changes to the CCP .....	11
4.3	Critical functions.....	12
4.4	Timeframe for implementation.....	14
4.5	Assessment of resolvability .....	14
4.6	Measures to address or remove identified impediments to resolvability.....	17
4.7	Processes for determining the value and marketability of the critical functions and assets	17
4.8	Information requirements.....	18
4.9	How resolution actions could be financed.....	20
4.10	Resolution strategies and scenarios.....	21
4.10.1	Introduction to resolution scenarios and resolution strategies.....	21
4.10.2	Resolution Scenarios .....	22
4.10.3	Quantify aspects of the resolution scenarios or strategies.....	22
4.10.4	Resolution Strategies .....	25
4.11	Critical interdependencies .....	26
4.12	Critical intra-group interdependencies .....	28
4.13	Ensure certain functions of the CCP.....	29
4.14	How to obtain the necessary information to perform the valuation.....	30
4.15	Impact assessment of the plan on employees.....	32
4.16	Communication plan.....	32
4.17	Essential operations and systems .....	33
4.18	Notification to the resolution college .....	34
4.19	Measures to facilitate portability of positions and related assets.....	34
5	Annexes.....	36



5.1	Annex 1 Legislative mandate to develop technical standards.....	36
5.2	Annex 2 Cost-benefit analysis .....	37
5.3	Annex 3 Summary of questions.....	43
5.4	Annex 4 Draft RTS on the content of CCP resolution plans.....	44



## Legislative references

CCPRRR	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
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories

## Abbreviations

CM	Clearing Member
CCP	Central Counterparty
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
FSB	Financial Stability Board
OJ	The Official Journal of the European Union
RTS	Regulatory Technical Standards

## Definitions

Unless otherwise specified, the terms used in this consultation paper have the same meaning as in CCP RRR and EMIR.

## **1 Executive Summary**

### **Reasons for publication**

The resolution plan shall provide for the resolution actions that the resolution authority may take where the CCP meets the conditions for resolution referred to in Article 22 of CCPRRR. The resolution plan shall include information and descriptions, quantified whenever appropriate and possible, of several aspects listed in paragraph 7 of Article 12 of CCPRRR, including among other aspects, a description of how the CCP's critical functions could be legally and economically separated, an estimation of the timeframe for implementing each material aspect of the plan, a detailed description of the assessment of resolvability and a description of any measures required to address or remove impediments to resolvability as identified, a description of the processes for determining the value and marketability of the critical functions and assets of the CCP and a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and their related timeframes.

The resolution plan shall clearly distinguish, in particular through different scenarios, between failure caused by default events, non-default events, and a combination of both, as well as between different types of non-default events.

ESMA, after consulting the ESRB and taking into account the relevant provisions of the delegated acts adopted on the basis of Article 10(9) of Directive 2014/59/EU and respecting the principle of proportionality, shall develop draft regulatory technical standards further specifying the contents of the resolution plan.

### **Contents**

Section 2 of the report contains an introduction to the mandate, Section 3 contains the mandate and Section 4 contains the requirements for resolution plans. Section 5 entails the Annexes, the mandate (Annex 1), the cost-benefit analysis (Annex 2), the summary of questions (Annex 3) and the draft RTS (Annex 4).

### **Next Steps**

ESMA will consider the feedback it received to this consultation in Q1 2022 and expects to publish a final report and submission of the draft technical standards to the European Commission for endorsement spring 2022.

---



## 2 Introduction

1. The objective of the resolution framework is to ensure that CCPs maintain the continuity of the critical functions of a CCP which is failing or likely to fail while avoiding a significant adverse effect on the stability of the financial system and its ability to serve the real economy and ultimately minimising the cost of a CCP failure to taxpayers.
2. The Regulation (EU) 2021/23 ('CCPRRR') on recovery and resolution of central counterparties was published in the OJ on 22 January 2021 and it entered into force on 12 February 2021<sup>1</sup>.
3. Resolution is covered under several articles under CCPRRR and Article 12 of CCPRRR contains the requirements for resolution plans and provides the requirements for the content of resolution plans. The resolution authority of the CCP is responsible for drawing up the resolution plan for the CCP.
4. ESMA's mandate, set out under Article 12(9) of CCPRRR, is to develop a draft RTS further specifying the content of the resolution plan in accordance with Article 12(7) of CCPRRR. When developing the draft RTS, ESMA shall enable sufficient flexibility for resolution authorities to take into consideration the specificities of their national legal framework in the area of insolvency law, as well as the nature and complexity of the clearing business performed by the CCPs. ESMA shall submit the draft RTS to the Commission by 12 February 2022.
5. In developing the draft RTS, ESMA has to take into account the relevant provisions of the corresponding [RTS 2016/1075](#) (BRRD RTS)<sup>2</sup> developed by the EBA for the content of banks' resolution plans<sup>3</sup>, and consult the ESRB.
6. ESMA has also considered the work done by the FSB on resolution matters, such as the "Key Attributes of Effective Resolution Regimes of Financial Institutions"<sup>4</sup>, the "Guidance on Central Counterparty Resolution and Resolution Planning"<sup>5</sup> and the "Guidance on Financial Resources to Support CCP Resolution and on the Treatment of CCP Equity in Resolution"<sup>6</sup>.

---

<sup>1</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

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2021.022.01.0001.01.ENG&toc=OJ%3AL%3A2021%3A022%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.022.01.0001.01.ENG&toc=OJ%3AL%3A2021%3A022%3ATOC)

<sup>2</sup> 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 (Text with EEA relevance)

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2016.184.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.184.01.0001.01.ENG)

<sup>3</sup> See Recitals 18 and 19, and Article 22.

<sup>4</sup> [https://www.fsb.org/wp-content/uploads/r\\_141015.pdf](https://www.fsb.org/wp-content/uploads/r_141015.pdf)

<sup>5</sup> <https://www.fsb.org/wp-content/uploads/P050717-1.pdf>

<sup>6</sup> <https://www.fsb.org/wp-content/uploads/P161120-1.pdf>

### 3 Resolution Plans - scope of mandate

7. The resolution plan shall, as set out in paragraph 7 of Article 12, specify the circumstances and different scenarios for applying the resolution tools and exercising the resolution powers and it shall clearly distinguish, in particular through different scenarios, between failure caused by default events, non-default events, and a combination of both, as well as between different types of non-default events and the resolution plan shall be quantified whenever appropriate and possible.
8. When ESMA develops the draft RTS, to further specify the contents of the resolution plan, ESMA will focus on specifying and further providing details on the type of information that should be included in descriptions under the plan, the content to be covered in different parts of the plan and providing a list of different scenarios that could be included and how resolution strategies may be further specified. In undertaking this mandate ESMA shall take the following into account;
  - a) the relevant provisions of the delegated acts adopted on the basis of Article 10(9) of Directive 2014/59/EU; and
  - b) the principle of proportionality.
9. ESMA shall also, when developing the draft RTS, enable sufficient flexibility for resolution authorities to take into consideration:
  - a) the specificities of their national legal framework in the area of insolvency law; and
  - b) the nature and complexity of the clearing business performed by the CCPs.

#### Recital 28

Resolution planning is an essential component of effective resolution. The plans should be drawn up by the resolution authority of the CCP and jointly agreed in the resolution college. The plans should cover a broad range of scenarios, distinguishing scenarios resulting from default events, non-default events and a combination of both, as well as different types of non-default events. Authorities should have all the information necessary to identify and ensure the continuity of critical functions. The content of a resolution plan should, however, be appropriate to the activities of the CCP and the types of products it clears and it should be based, inter alia, on the information provided by it. In order to facilitate the enforcement of resolution cash calls and of the reduction of the amount of any gains payable to a non-defaulting clearing member of a CCP under resolution, a reference to the power of the resolution authority to require such resolution cash calls and such reduction should be included in the operating rules of the CCP. Where needed, the operating rules of the CCP that are agreed contractually with clearing members should contain provisions to ensure the enforceability of other resolution measures by resolution authorities.

#### Article 12(9)

9. ESMA, after consulting the ESRB and taking into account the relevant provisions of the delegated acts adopted on the basis of Article 10(9) of Directive 2014/59/EU and respecting the principle of proportionality shall develop draft regulatory technical standards further specifying the contents of the resolution plan in accordance with paragraph 7 of this Article.



When developing the draft regulatory technical standards, ESMA shall enable sufficient flexibility for resolution authorities to take into consideration the specificities of their national legal framework in the area of insolvency law, as well as the nature and complexity of the clearing business performed by the CCPs.

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.

### **3.1 Resolution plans under BRRD**

10. ESMA notes that in developing the draft RTS for CCPRRR, ESMA shall take into account the relevant provisions of the delegated acts adopted on the basis of Article 10(9) of Directive 2014/59/EU.
11. Whilst ESMA has considered this BRRD RTS, it is to some extent of a limited value as the level of detail in the BRRD RTS is similar to the level of detail under CCPRRR, hence for ESMA to further specify the requirements listed under paragraph 7 of Article 12 of CCPRRR, ESMA has in addition to the BRRD RTS considered the development in the markets and the recent guidance developed on resolution planning<sup>7</sup> to ensure the RTS achieves the aim to further specify the requirements listed.

### **3.2 Principle of proportionality**

12. In developing the draft RTS, ESMA has to ensure that the principle of proportionality is respected. ESMA has therefore concluded that the draft RTS should not provide a fixed list of requirements for the resolution authority to include, as such a list would not be able to provide the resolution authority with the flexibility needed to ensure the resolution plan is well suited for the CCP based on its risk and organisational profile, including in view of the products cleared, business model and membership.
13. Article 12(7) of the CCPRRR sets out the requirements as to what the resolution plan shall contain and ESMA's mandate is to further specify the content of the resolution plan including detailing required descriptions, plans, analyses and scenarios. Bearing the requirement of proportionality in mind, the proposed RTS provides for a set of aspects or elements the resolution authority shall take into account in establishing the resolution plan and ensure such elements are reflected in the resolution plan but where the final resolution plan will depend on the specificities of the CCP and should be proportionate for the CCP at hand.
14. ESMA notes that it may not be necessary to include all the underlying assessments in the resolution plan, but it is necessary to include the key conclusions of these assessments.

---

<sup>7</sup> ESMA has considered, for example, SRB: <https://srb.europa.eu/en/node/163>  
FSB: <https://www.fsb.org/wp-content/uploads/P161120-1.pdf>



The full assessments including technical notes shall be included in annex to the plan or in ancillary documents shared with the resolution college.

15. ESMA is of the view that the proportionality will not entail a tiering of EU CCPs, hence the main elements of the resolution plan content outlined in the RTS shall be suitable for all EU CCPs and the proportionality will not lead to a dis-application of certain elements of resolution plans for certain CCPs, as no such tiering is envisaged under L1 and the resolution plan may be equally complex for a smaller EU CCP, as complexity derives from the profile of the CCP, its interconnectedness and scope of critical services etc and not only from the size of participants' credit exposures or payment/settlement obligations.

### **3.3 National insolvency laws**

16. When developing the draft RTS, ESMA shall enable sufficient flexibility for resolution authorities to take into consideration the specificities of the applicable national legal framework in the area of insolvency law.
17. ESMA notes that the resolution authority may want to consider some aspects carefully during the planning phase of the resolution planning, such as the NCWO counterfactual, insolvency hierarchy, the potential impact of the divergences between the ranking in national insolvency procedures (subordination criteria) and the order of loss absorption under CCPRRR. However, due to the inherent flexibility of the resolution plan ESMA has considered that sufficient flexibility has been provided in the RTS for resolution authorities to take into consideration the specificities of the applicable national legal framework in the area of insolvency law.

### **3.4 Nature and complexity of the CCP**

18. When developing the draft RTS, ESMA shall enable sufficient flexibility for the resolution authorities to take into consideration the nature and complexity of the clearing business performed by the CCPs.
19. Again, due to the inherent flexibility of the resolution plan ESMA has considered that sufficient flexibility has been provided in the RTS to ensure the resolution plan is suitable for the CCP, ESMA has included several references to the specificities of the CCP and that the resolution plan should be suitable for the CCP's profile, including its risk profile. The nature and complexity of the CCP is also reflected under the principle of proportionality under section 3.2.

**Question 1: Do you agree with how ESMA has enabled sufficient flexibility and ensured proportionality in the draft RTS? If not, please explain?**

**Question 2: Is there any aspect from the BRRD RTS that is not included in the draft RTS, but should be? If yes, please specify and explain why?**

## 4 Resolution Plans under CCP RRR

### 4.1 A summary of the key elements of the resolution plan

a) *a summary of the **key elements** of the plan, distinguishing between default events, non-default events and a combination of the two;*

20. The requirement for a summary of the key elements of the resolution plan is linked to the transparency of the resolution plan. Transparency towards the CCP is regulated under paragraph 8 of Article 12 of CCPRRR and states that the information referred to in point (a) of paragraph 7 of Article 12 of CCPRRR shall be disclosed to the CCP concerned. It is further stated that the CCP may express its opinion in writing on the resolution plan to the resolution authority. That opinion shall be included in the plan.

21. ESMA would suggest that whilst the summary should contain the key elements in relation to the different scenarios distinguishing between default events, non-default events and a combination of the two, in addition, all the points under paragraph 7 of Article 12 CCPRRR should be included in the summary, however only with the level of details necessary for the CCP to understand the key features of resolution plan, however it should not include a comprehensive description of the whole resolution plan.

22. ESMA would suggest the summary of the key elements of the resolution plan to contain, at least, the following information:

- a) The key elements of each scenario and strategies established under the resolution plan, distinguishing between default events, non-default events and a combination of the two, and listing the key assumptions of each scenario in terms of broader market moves.
- b) A short summary of the material key elements of the resolution plan in relation to each of the points under points (b)-(s) of paragraph 7 of Article 12 of CCPRRR.

### 4.2 A summary of the material changes to the CCP

b) *a summary of the material changes to the CCP that have occurred since the resolution plan was last updated;*

23. To ensure that the resolution plan contains a summary of the material changes that have occurred since the resolution plan was last updated, ESMA proposes that the following information should be included;

- a) Any material changes to the markets where the CCP operates, to the business lines considered core to the CCP and to the clearing services and key ancillary clearing related services offered by the CCP.

- b) Any material changes to interoperability arrangements of the CCP or to interdependences of the CCP, including the service providers of the CCP.
- c) Any material changes to the capital and capital structure of the CCP, including SITG and SSITG.
- d) Any material changes to the prudential requirements of the CCP, including changes in the default fund methodologies, margin and liquidity risk management frameworks, composition and structure, investment policies, collateral policies and settlement.
- e) Any material changes to the structure of the CCP's organisation, ownership and managers incentive structures.
- f) Any material changes, or planned changes, to the resolution scenarios and resolution strategies.

### 4.3 Critical functions

*c) a description of **how the CCP's critical functions could be legally and economically separated**, to the extent necessary, from its other functions so as to ensure the **continuity of its critical functions in the resolution of the CCP**;*

24. The resolution plan shall include a description of how the CCP's critical functions could be legally and economically separated, to the extent necessary, from its other functions, to ensure the continuity of its critical functions during and after the resolution of the CCP and hence, separability is assessed in the designation of the resolution strategies.
25. FSB<sup>8</sup> writes in its guidance that a key component of the resolution plan is a strategic analysis that identifies the firm's essential and systemically important functions and sets out the key steps to maintaining them in recovery as well as in resolution scenarios. FSB provides elements that should be considered in such analysis, including identifying the actions necessary for maintaining operations of, and funding for, those essential and systemically important functions.
26. ESMA also notes the Commission Delegated Regulation (EU) 2016/778 of 2 February 2016 supplementing Directive 2014/59/EU with regard to the criteria for the determination of the activities, services and operations with regard to critical functions, and for the determination of the business lines and associated services with regard to core business lines<sup>9</sup>.
27. ESMA finally notes that assessing the CCPs' resolvability entails an assessment of the implications of applying a separation of the CCPs' critical functions under a resolution strategy; if separation is deemed manageable, then a resolution strategy may contain such elements requiring separation and be able to implement the plan with a high degree of

---

<sup>8</sup> <https://www.fsb.org/wp-content/uploads/P161120-1.pdf>

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0778>

success. Where the contrary is concluded, the strategies should limit the resolution tools requiring segregation to be implemented to ensure the resolution effectiveness.

28. ESMA proposes that at least the following aspects should be covered in the assessment of critical functions:

- a) A description of the functions defined as critical by the resolution authority and if this entails any differences compared to the recovery plans' list of critical functions and where there are differences, a detailed description of the main reasons why the resolution authority has assessed the critical functions differently, the material effects of such a change and how this could affect the resolvability of the CCP.
- b) A description of the main dependencies between critical functions and critical interdependencies and of the key internal and external arrangements and processes, such as operations, IT procedures, a list of key staff and main service providers that are necessary for the CCP to continue providing its critical functions or any other aspects that may be necessary to consider in view of a possible transfer of some or all of the operations of the CCP to another FMI or bridge CCP, if that is part of the proposed resolution strategy.
- c) A description of how critical functions could be separated from non-critical functions in economic, operational and legal terms and including details on how the resolution authority has assessed the material effects of such separation on stakeholders including;
  - a. material effects on netting sets for clearing members where transactions are split into different silos of the CCP or a different CCP;
  - b. where possible to identify, any material effects on operations or legal effects of splitting transactions into different CCPs and the effects on CM, clients and indirect clients (where identified);
  - c. where possible to identify, any material effects on the calculation of collateral requirements and in particular variation margins and how the separation would affect the collateral requested by CM, clients and indirect clients (where identified); and
  - d. where possible to identify, an evaluation of the price of transfer of such transactions.
- d) A summary of how the CCP's proposed approach to separating or not separating the CCP's critical functions from its other functions may affect the resolvability assessment for the CCP.
- e) A mapping of critical functions to identified legal entities and to the CCP's core business lines.

## 4.4 Timeframe for implementation

d) *an estimation of the timeframe for implementing each material aspect of the plan, including for replenishing the CCP's financial resources;*

29. The resolution plan shall contain an estimated timeframe for implementing each material aspect of the plan, including replenishing the CCP's financial resources.

30. ESMA proposes that the following aspects, at least, shall be included in the estimated timeframe;

- a) A list of actions that the resolution authorities would envisage to take and, where relevant, where these actions derive from the application of the recovery plan.
- b) A list of the steps with allocated times to be taken by the resolution authority for implementing each material aspect of the resolution plan and specifying corresponding steps, including an estimated timetable to assess each of the relevant resolution strategies.
- c) A description of how replenishment is envisaged under the resolution plan (including where derived from the recovery plan) and the estimated time for different measures of replenishment.

31. ESMA proposes that the estimated timeframes, set out above under a-c, shall

- a) be suitable and relevant, evidenced by a description of how the resolution authority has assessed the feasibility and credibility of the envisaged steps and allocated times in the resolution plan;
- b) be tested regularly and at least upon the establishment of the resolution plan and thereafter following any material changes; and
- c) be effective by containing details of the processes and procedures including templates and other pre-completed processes and procedures of how and when to undertake certain steps and how to collect certain information to ensure, to the extent possible, that the estimated timeframes are likely to be upheld.

## 4.5 Assessment of resolvability

e) *a detailed description of the **assessment of resolvability** carried out in accordance with Article 15;*

32. Article 15 of CCPRRR entails details on the assessment of resolvability, where the resolution authority, in coordination with the resolution college and after consultation with the competent authority, shall assess the extent to which a CCP is resolvable. The resolution authority shall, in coordination with the resolution college, make the resolvability

assessment at the same time as drawing up and updating the resolution plan. The resolution plan shall entail a detailed description of the assessment of resolvability carried out in accordance with Article 15 of CCPRRR.

33. ESMA is mandated to issue guidelines to promote the convergence of resolution practices regarding the application of Section C of the Annex of CCPRRR (Matters that the resolution authority is to consider when assessing the resolvability of a CCP) by 12 August 2022, in close cooperation with the ESRB.

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

- (1) the extent to which the CCP is able to map core business lines and critical operations to legal persons;
- (2) the extent to which legal and corporate structures are aligned with core business lines and critical operations;
- (3) the extent to which the legal structure of the CCP inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;
- (4) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;
- (5) the existence and robustness of service level agreements;
- (6) the extent to which the service agreements that the CCP maintains are fully enforceable in the event of resolution of the CCP;
- (7) the extent to which the governance structure of the CCP is adequate for managing and ensuring compliance with the CCP's internal policies with respect to its service level agreements;
- (8) the extent to which the CCP has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;
- (9) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;
- (10) the adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;
- (11) the capacity of the management information systems to provide the information essential for the effective resolution of the CCP at all times even under rapidly changing conditions;
- (12) the extent to which the CCP has tested its management information systems under stress scenarios as defined by the resolution authority;
- (13) the extent to which the CCP can ensure the continuity of its management information systems both for the affected CCP and the new CCP in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;
- (14) the extent to which any intra-group guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust, where the CCP benefits from or is exposed to such guarantees;
- (15) the extent to which any intra-group transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust, where the CCP engages in such transactions;
- (16) the extent to which the use of any intra-group guarantees or transactions increases contagion across the group;
- (17) the extent to which the resolution of the CCP could have a negative impact on another part of its group, in particular where such group comprises other FMIs, where applicable;
- (18) whether third-country authorities have the resolution tools necessary to support resolution actions by Union resolution authorities, and the scope for coordinated action between Union and third-country authorities;
- (19) the feasibility of applying resolution tools in such a way which meets the resolution objectives, given the tools available and the CCP's structure;

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

34. ESMA notes that the assessment on the resolvability of a CCP is extensive. To ensure proportionality of the resolution plan, ESMA would therefore suggest that the resolution plan includes and is focused on the key conclusions and key aspects of the resolvability of the CCP and that the full assessments, including technical notes, may be included in document sets shared with the resolution college where considered relevant or upon request by one of the resolution college members. ESMA also notes the empowerment for resolvability to be further specified in the Guidelines, issued by ESMA in accordance with paragraph 5 of Article 15 of CCPRRR, to promote the convergence of resolution practices regarding the application of Section C, considered by the resolution authority in the assessment as to the CCP's resolvability.

35. ESMA proposes that the resolution plan contains a detailed description of the key aspects on the assessment of resolvability and at least the following aspects:

- a) The conclusions of the assessment of resolvability, including at least, whether or not the CCP is deemed resolvable based on the resolution authorities' considerations under paragraph 2 of Article 15 of CCPRRR.
- b) A description on how the resolution authority has assessed the CCP as being deemed resolvable without assuming any of the financing arrangements as set out in point a-c, under paragraph 1 of Article 15 of CCPRRR.
- c) A description of how the resolution authority has ascertained the feasibility of applying the resolution tools in such a way that meets the resolution objectives.
- d) A description on the resolution authorities' assessments as to the information received from the CCP under paragraph 3 of Article 15 of CCPRRR and if the resolution authority agrees with the CCP's assessment as to the lack of impediments.
- e) A description providing evidence and details of when and how the resolvability has been assessed most recently by the resolution authority to ensure the assessment of the CCP being deemed as resolvable remains valid.



- f) A detailed description of the availability of the envisaged assets to the CCP under resolution and if such assets would in fact be available for use in resolution or whether such use or transfer could be hampered or prevented by residual interests of direct and indirect participants in those assets or by legal constraints, such as the legal mechanism by which collateral is provided, including whether collateral is provided as a security interest, pledge or by way of title transfer all of which that could impact the status of that collateral in insolvency.
- g) A description of each aspect, as set out in Section C, *Matters that the resolution authority is to consider when assessing the resolvability of a CCP*, of the Annex of CCPRRR.

#### 4.6 Measures to address or remove identified impediments to resolvability

f) a description of any **measures required pursuant to Article 16 to address or remove impediments to resolvability** identified as a result of the assessment carried out in accordance with Article 15;

36. Where the resolution authority, in coordination with the resolution college, concludes that there are material impediments to the resolvability of a CCP, the resolution authority, in cooperation with the competent authority, shall prepare and submit a report to the CCP and to the resolution college. The resolution plan shall contain a description of any measures required pursuant to Article 16 of CCPRRR to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 15 of CCPRRR.

37. ESMA proposes that the resolution plan contains the key aspects on the assessment of resolvability, including at least the following aspects:

- a) Where a material impediment has been identified, a descriptive summary of the measures required under Article 16 of CCPRRR, to identify any necessary changes to the structure, operations or risk management frameworks and financial resources of the CCP or any measures to improve the CCP's resolvability, and the timeline for completing the requested changes.
- b) A description on any impediments addressed or removed in accordance with Articles 16 and 17 of CCPRRR over a period of two years preceding the current review of the impediments under Article 15 of CCPRRR.

#### 4.7 Processes for determining the value and marketability of the critical functions and assets

g) a description of the **processes for determining the value and marketability of the critical functions and assets of the CCP**;

38. The resolution plan shall entail a description of the processes for determining the value and marketability of the critical functions and assets of the CCP.
39. ESMA proposes that the resolution plan shall, at least, entail the following key aspects on the process of determining value and marketability;
- a) A description of the processes applied for determining the value and marketability of the critical functions and assets such as the core business lines, operations and assets of the CCP mainly focusing on aspects that could have an impact on the valuation such as volatility in the market, inaccessibility and/or uncertainty of the market prices, time constraints and legal aspects and if the process applied deviates from the valuation methodology applied under the recovery plan, and where there are differences, a description of the main reasons why the resolution authority has assessed the valuation methodology differently and the material effects of such a difference (if any).
  - b) A description of the information and processes for ensuring availability in an appropriate timescale of the information required for the purposes of valuation, in particular pursuant to Title V, Chapter II on Valuation under CCPRRR, and for marketability, in particular pursuant to the marketing requirements for the sale of business and bridge CCP tools.
  - c) A description of the determined value and the marketability of the critical functions and assets, defined according to the letter a) and b).

## 4.8 Information requirements

*h) a detailed description of the arrangements for ensuring that the **information required pursuant to Article 13 is up to date and available** to the resolution authorities at all times;*

40. Article 13 of CCPRRR contains a requirement for CCPs to cooperate as necessary in the drawing up of resolution plans and provide their resolution authority, either directly or through their competent authority, with all the information necessary to draw up and implement those plans, including the information and analysis specified in Section B of the Annex of CCPRRR. A CCP shall also, where required by the resolution authority, provide the resolution authority, with certain time limits and with detailed records of the contracts referred to in Article 29 of EMIR to which they are a party.
41. The list set out in Section B of the Annex of CCPRRR contains a significant list of information (see list below) to be provided by the CCP to the resolution authority upon request.

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

- (1) a detailed description of the CCP's organisational structure including a list of all legal persons;
- (2) identification of the direct holders and the percentage of voting and non-voting rights of each legal person;

- (3) the location, jurisdiction of incorporation, licensing and key management associated with each legal person;
- (4) a mapping of the CCP's critical functions and core business lines, including balance sheet details of such functions and business lines, by reference to legal persons;
- (5) a detailed description of the components of the CCP's and all its legal entities' business activities, separating, at a minimum by types of services and respective amounts of cleared volumes, open interest, initial margin, variation margin flows, default funds and any associated assessment rights or other recovery actions pertaining to such business lines;
- (6) details of capital and debt instruments issued by the CCP and its legal entities;
- (7) an identification of from whom the CCP has received collateral and in what form (title transfer or security interest), and to whom it has pledged collateral and in what form and the person that holds the collateral, and in both cases the jurisdiction in which the collateral is located;
- (8) a description of the off balance sheet exposures of the CCP and its legal entities, including a mapping to its critical operations and core business lines;
- (9) the material hedges of the CCP including a mapping to legal persons;
- (10) identification of the relative exposures and importance of clearing members of the CCP as well as an analysis of the impact of the failure of major clearing members on the CCP;
- (11) each system on which the CCP conducts a material number or value amount of trades, including a mapping to the CCP's legal persons, critical operations and core business lines;
- (12) each payment, clearing or settlement system of which the CCP is directly or indirectly a member, including a mapping to the CCP's legal persons, critical operations and core business lines;
- (13) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the CCP including a mapping to the CCP's legal persons, critical operations and core business lines;
- (14) an identification of the owners of the systems identified in point (13), service level agreements related thereto, and any software and systems or licenses, including a mapping to their legal entities, critical operations and core business lines;
- (15) an identification and mapping of the legal persons and the interconnections and interdependencies among the different legal persons such as:
  - (i) common or shared personnel, facilities and systems;
  - (ii) capital, funding or liquidity arrangements;
  - (iii) existing or contingent credit exposures;
  - (iv) cross-guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;
  - (v) risks transfers and back-to-back trading arrangements;
  - (vi) service level agreements;
- (16) the competent authority and resolution authority for each legal person, if different to those designated under Article 22 of Regulation (EU) No 648/2012 and under Article 3 of this Regulation;
- (17) the member of the board responsible for providing the information necessary to draw up the resolution plan of the CCP as well as those responsible, if different, for the different legal persons, critical operations and core business lines;
- (18) a description of the arrangements that the CCP has in place to ensure that, in the event of resolution, the resolution authority will have all the necessary information, as determined by the resolution authority, for applying the resolution tools and exercising the resolution powers;
- (19) all the agreements entered into by the CCP and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;
- (20) a description of possible liquidity sources for supporting resolution;
- (21) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.



42. ESMA is mandated to further specify a detailed description of the arrangements for information ensuring that the information required is up to date and available to the resolution authorities at all times.
43. ESMA notes that it could be useful if the plan and arrangements, for ensuring information is available and kept up to date to the resolution authorities, cover several years to ensure consistency.
44. ESMA would propose that the CCP regularly reviews all information provided under Article 13 of CCPRRR and reviews certain aspects of the information upon request by the resolution authority or where otherwise a review and possible update would be reasonably expected to be made. In addition, the resolution authority may identify certain information as material and require such material information to be kept up to date and available at all times compared to information not considered material that would follow the main principle established above. This suggested approach is to bring proportionality to the RTS by ensuring the CCP shall be obliged to keep material information up to date, but not all information, at all times.
45. ESMA therefore, based on above, proposes that the resolution plan contains at least the following key descriptions of how information is kept up to date, remains relevant and practicable and is available to the resolution authority;
  - a) A description of the arrangements with the CCP to ensure access to (and sharing of) information for the resolution authority and how the CCP shall maintain the information systems and controls that can promptly produce and make available relevant data and information to the resolution authority. The arrangements shall include procedures to date the information and to provide standardised updates where there are material changes.
  - b) A description on how the CCP shall at least yearly review all information with the exception of the information considered material by the resolution authority under point (c), shared with the resolution authority and in addition, shall review certain aspects of the information shared with the resolution authority upon the request by the resolution authority or where otherwise a review and possible update would be reasonable expected to be made.
  - c) A description of the procedure on how the resolution authority may identify certain information as material and how the CCP shall ensure that such material information is kept up to date and available at all times to the resolution authority compared to information not considered material that would follow the procedures for updates as set out under (b).

## 4.9 How resolution actions could be financed

- |  |
|--|
| <p>i) <i>an explanation as to <b>how resolution actions could be financed</b> without the assumption of the elements referred to in paragraph 4;</i></p> |
|--|

46. The resolution plan shall explain how the resolution actions (including the position and allocation tools, the write down and conversion tools, the sale of business tool and the bridge CCP tool) could be financed without relying on extraordinary public financial support, central bank emergency liquidity assistance and central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.
47. ESMA proposes that the resolution plan shall contain an explanation of the material envisaged financial sources that could be used in relation to each scenario considered, and the explanation shall include, at least, the following aspects:
- a) A description of the financial resources envisaged to be needed under the resolution plan detailing whether such financial resources or tools would be reserved for resolution or if they would also be available in recovery, clearly separating solvency from liquidity funding needs, and in addition details on the envisaged financial resources that are likely to be required in relation to the implementation of the resolution strategy including each relevant resolution scenario.
  - b) A description of potential sources of resolution funding, including the terms of financing, preconditions for their use, the timing of their availability, and any collateral requirements.
  - c) A description and analysis of how and when the CCP may apply for the use of central bank facilities (respecting the requirement that resolution plans should not assume any access to central bank facilities on non-standard terms) in resolution.
  - d) A description and identification of assets that could be used (and are expected to qualify) as collateral and how such an expectation of use of the assets may create encumbrances, primarily in the value and use of such asset.

## 4.10 Resolution strategies and scenarios

***j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and their related timeframes;***

### 4.10.1 Introduction to resolution scenarios and resolution strategies

48. The resolution plans should cover a broad range of scenarios, distinguishing between scenarios resulting from default events, non-default events and a combination of both, as well as different types of non-default events.
49. The content of a resolution plan should be appropriate to the activities of the CCP and the types of products it clears, and it should be based, inter alia, on the information provided by the CCP. ESMA notes that the resolution plan should not just entail a resolution strategy per scenario but should use the established scenarios to build the resolution strategies suitable to the CCP. A resolution strategy may combine different elements of different scenarios if this would achieve the best resolution plan for a CCP.

50. The resolution plan shall include a summary of the key resolution strategies and an operational plan for implementation of the strategies based on established resolution scenarios.
51. An effective resolution regime for CCPs should pursue financial stability and allow for the continuity of the critical functions of CCPs without exposing taxpayers to loss, either by restoring the ability of the CCP to perform those functions as a going concern or by ensuring the performance of those functions by another entity or arrangement coupled with the orderly wind-down of the CCP in resolution.

#### 4.10.2 Resolution Scenarios

52. The FSB has identified a list of hypothetical default and non-default scenarios that a resolution authority should consider in its resolution planning<sup>10</sup>. ESMA notes that many authorities have commenced resolution planning for systemically important CCPs and started considering the adequacy of CCPs' financial resources for resolution. This includes considering various default and non-default loss scenarios, although some authorities are at a relatively early stage of their analysis.
53. In order to provide for a comprehensive range of scenarios, the resolution plans should include at least one scenario for each of the types of scenarios, as set out in Table 1 below, and they should include further scenarios not specified in the draft RTS where needed to address specificities and operations of the CCP. The RTS provides the resolution authority with the tools to create suitable scenarios in order to provide a degree of flexibility, to take into account the specificities of each CCP and to ensure the overall proportionality of the plan. Hence, the resolution authorities should build each of these scenarios in a way that best fits the specific characteristics and level of complexity of the CCP.
54. ESMA has limited the type of resolution scenarios to be covered in the resolution plan to at least 9, again with the aim to ensure that the regulatory requirements on resolution authorities are proportionate.

#### 4.10.3 Quantify aspects of the resolution scenarios or strategies

55. The mandate also requests ESMA to consider, whenever appropriate and possible, to quantify aspects of the resolution plan. However, ESMA notes the difficulty of identifying relevant data to make such assessments, hence concludes that the quantification should be undertaken to the extent possible.
56. ESMA notes that the FSB guidance states<sup>11</sup> that the resolution authority should compare the different resolution costs assessed in different steps to identify any potential shortfalls or gaps that could cause resources to be inadequate to achieve the resolution objective.

---

<sup>10</sup> FSB Guidance on Financial Resources to Support CCP Resolution and on the Treatment of CCP Equity in Resolution, page 4, <https://www.fsb.org/wp-content/uploads/P161120-1.pdf>

<sup>11</sup> FSB Guidance on Financial Resources to Support CCP Resolution and on the Treatment of CCP Equity in Resolution, page 13, <https://www.fsb.org/wp-content/uploads/P161120-1.pdf>



In case of detecting gaps, it is noted that it would be necessary to analyse possible ways to manage them and their impact on financial stability.

57. The FSB has considered the following aspects that the resolution authority may consider in conducting quantitative analyses<sup>12</sup>:

- Differentiating the amount of resources available for resolution according to the nature of the underlying resources and tools (e.g. prefunded, committed or uncommitted);
- Developing metrics for fully recognising or discounting different types of resources based on the level of confidence about whether they are likely to be available in a comprehensive and timely manner;
- Coordinating with the oversight and/or supervisory authorities of CMs notably in the context of assessing the potential performance risk and/or financial stability implications of enforcing certain recovery and resolution tools; and
- Consider supervisory stress testing for extreme market scenarios and/or reverse stress testing which could also inform the resolution authority’s quantitative analyses of existing and potentially available financial resources for resolution.

58. ESMA proposes to include quantitative assessment tools for each type of scenario (where possible depending on access to data) that may be used to produce quantitative impacts for the scenarios in order to test the related resolution measures. Where no data is available, and cannot be generated with reasonable efforts, the resolution authority shall conduct a qualitative assessment of the tools, and this assessment shall include a section why a quantitative assessment could not be undertaken for a certain scenario. This is to ensure the requirements under the RTS are not too burdensome and create unproportionate requirements on resolution authorities.

**Table 1: Matrix for building the range of CCP resolution plan scenarios**

Types of scenarios (Article 12(3)(a) and 12(7)(j))	Factors to describe type of scenarios (Article 12(3)(a) and 12(7)(j))
<b>Default Scenario</b> – Unsuccessful recovery where the CCP does not have sufficient resources and tools for a successful recovery	Establish scenario where a CCP has not fully addressed liquidity shortfalls or established loss allocation arrangements that fully address uncovered credit losses. As a result, recovery resources and tools are insufficient to absorb losses and replenish financial resources to minimum regulatory requirements.
<b>Default Scenario</b> - Failure of loss allocation arrangements	Establish scenario where the CCP’s loss allocation arrangements set out in the recovery plan do not operate as intended and as a result, the planned resources or tools are not, or not sufficiently, available at the time of recovery.

<sup>12</sup> FSB Guidance on Financial Resources to Support CCP Resolution and on the Treatment of CCP Equity in Resolution, page 8, <https://www.fsb.org/wp-content/uploads/P161120-1.pdf>

Types of scenarios (Article 12(3)(a) and 12(7)(j))	Factors to describe type of scenarios (Article 12(3)(a) and 12(7)(j))
<b>Default Scenario</b> - Multiple clearing members do not meet their obligations under the CCP's recovery actions	Establish scenario where the multiple clearing members do not meet their obligations under the CCP's recovery actions. If the group of non-performing clearing members is sufficiently large or if their failure to meet obligations leads to a general loss of confidence in the CCP, the CCP may become unable to continue operations.
<b>Default Scenario</b> – Timing of resolution actions	Establish scenario where the relevant authorities determine that resolution should be initiated before some of the arrangements or tools under the CCP's recovery plan are applied. In this scenario, the relevant authorities have determined that applying recovery arrangements or tools in the prevailing market conditions may threaten financial stability and/or the continuity of critical functions.
<b>Non-default Scenario</b> - Investment risks	Establish scenario where losses on investments of initial margin or default fund assets could arise for example if an investment counterparty fails. A CCP may need to bear such losses, if the loss allocation tools in the CCP's rules do not cover them in another manner. Losses could also occur from the investment of a CCP's own financial resources including SITG and SSITG. Investment losses could materialise suddenly.
<b>Non-default Scenario</b> - Failure of service providers	Establish scenario where, as a result of a failure of a custodian, depository, a payment or settlement bank, a payment system, a securities settlement system or other entity providing similar services, the CCP could lose timely access to its assets, become unable to collect margins or become unable to transform non-cash collateral or investments into cash. This could cause liquidity and/or solvency challenges to a CCP, depending on the nature or consequences of the failure and the time it takes to regain access to the assets.
<b>Non-Default Scenario</b> - Operational risk events	Establish scenario where financial losses or liquidity challenges arise from a range of operational failures, such as human error, information technology failure, fraud, cyber incident, or non-performance of vendors or service providers. A CCP can incur operational losses directly (primary losses) or due to the legal actions taken by others affected by the event (secondary losses). Operational risk events can happen suddenly, but certain losses, particularly secondary losses can take years to fully materialise.
<b>Non-Default Scenario</b> - Financial losses (Comprehensive loss allocation arrangements for custody and investment losses the CCP incurs as a result of its clearing and settlement activity)	Establish scenario where the CCP does not have sufficient financial resources or tools to cover non-default losses (including losses deriving from legal risks, including legal, regulatory, enforcement or contractual penalties that could lead to significant losses or uncertainty for the CCP and that can take a long time to materialise). In this scenario, the non-default losses would be larger than the CCP's capital and contingent resources (e.g., insurance, parental guarantees). Alternatively, in a scenario where the CCP's clearing members would also be required to bear losses, the aggregate resources available would be insufficient to cover the losses and/or to replenish capital back to the required minimum.
	Establish scenario where the CCP's arrangements to cover (specific) non-default losses set out in the recovery plan cannot be used or do not operate as intended. As a result, the planned resources or tools are not, or not sufficiently, available at the time of recovery.
	Establish scenario where the CCP's clearing members do not meet their obligations under the CCP's recovery actions. In this scenario, clearing members do not meet the applicable loss allocation or replenishment obligations.
	Establish scenario where the CCP's shareholders do not support the CCP's recovery actions. In this scenario, the CCP's parent company or other shareholders do not cover the CCP's non-default losses that are not allocated elsewhere and/or are unwilling to



Types of scenarios (Article 12(3)(a) and 12(7)(j))	Factors to describe type of scenarios (Article 12(3)(a) and 12(7)(j))
	<p>recapitalise the CCP, irrespective of whether there is a contractual commitment, parental guarantee, or similar arrangement to provide financial resources or not.</p> <p>Establish scenario where the relevant authorities determine that resolution should be initiated before some of the recovery arrangements or tools are applied or the CCP is wound down. In this scenario, the CCP's recovery and wind-down arrangements are consistent with the PFMI, but the relevant authorities have determined that applying them in the prevailing market conditions may threaten financial stability and/or the continuity of critical functions.</p>
<p><b>Event(s) causing simultaneous default and non-default losses -</b> <i>This scenario addresses the situation in which there are concurrent default and non-default losses as a result of a single event or as a result of multiple events that occur in a reduced time span.</i></p>	<p>Establish scenario where there are specific entities that are material sources of both default and non-default losses, specific scenarios analyzing the effects of default events affecting these entities may be relevant.</p> <p>Considering where non-default losses would be borne by clearing members affecting the path of loss propagation and where there are material differences between different combinations of default and non-default events with respect to the available tools, usage of tools, paths of losses or impact on stakeholders.</p>

#### 4.10.4 Resolution Strategies

59. ESMA shall in addition to establishing hypothetical resolution plan scenarios for CCPs covering both default and non-default situations, further specify a detailed description of the different resolution strategies that could be applied according to the different possible scenarios. Resolution authorities should identify one or two preferred resolution strategies but may also need to include choices to be made within those strategies depending on the situation or where unforeseen impediments to an elected strategy are discovered at implementation.
60. ESMA notes that the FSB report states that the resolution authority shall develop resolution strategies and operational plans to facilitate the effective resolution of the FMI in a way that ensures continuity of the critical functions carried out by the FMI and provides a list of features that should be reflected in the resolution plans<sup>13</sup>.
61. ESMA further notes that Article 25 “Identification of a resolution strategy” of the BRRD RTS specifies certain aspects to be considered for identification of a resolution strategy.

<sup>13</sup> Financial Stability Board, Key Attributes of Effective Resolution Regimes for Financial Institutions, October 2014, page 68-69, [https://www.fsb.org/wp-content/uploads/r\\_141015.pdf](https://www.fsb.org/wp-content/uploads/r_141015.pdf) and FSB Guidance on Financial Resources to Support CCP Resolution and on the Treatment of CCP Equity in Resolution, page 23, <https://www.fsb.org/wp-content/uploads/P161120-1.pdf>

62. ESMA has, based on the FSB report and the BRRD RTS, established a proposed list of key aspects to be considered when establishing resolution strategies for the resolution scenarios. ESMA proposes that at least the following aspects to be covered:

- a) A detailed description of the main resolution strategy elected, and if several strategies are elected how their application differs, and the key strategic analysis that underlies the different choices of elected resolution strategies.
- b) A description of how, the procedure, unforeseen situations are envisaged to be mitigated, for example where unforeseen impediments to an elected strategy are discovered at implementation.
- c) A detailed description of conditions for intervention under the resolution strategy, describing for example necessary and sufficient prerequisites for triggering the implementation of resolution actions together with concrete and practical options for applicable resolution tools.
- d) A detailed description of how the resolution strategy takes into account the impact on direct and indirect participants in the CCP as well as interdependencies such as other linked FMIs and trading venues.
- e) A detailed description of the effects of different resolution actions under the resolution strategies, such as resolution tools that would split netting sets and also descriptions on how this could impact other aspects of the functioning of the CCP, such as liquidity and collateral requirements as well as other types of resolution tools including the sale of a business tool or the write down or conversion of, for example, debt instruments.
- f) A detailed description of how the resolution strategy takes into account and ensures continuity of the CCP's legal and technical arrangement and how the plan supports the transfer of its functions, for example by providing for advance agreement with other FMIs or relevant service providers.

#### 4.11 Critical interdependencies

*k) a description of critical interdependencies between the CCP and other market participants and between the CCP and critical service providers, interoperability arrangements and links with other FMIs, as well as ways to address all of those interdependencies;*

63. The resolution plan shall contain a description of the critical interdependencies as well as ways to address all of those interdependencies (listed below);

- a) between the CCP and other market participants, such as CMs, clients and indirect clients;

- b) between the CCP and critical service providers such as liquidity providers, settlement banks or agents, platforms, custodians, investment agents, banks or other service providers (e.g., IT provider, data provider);
- c) between the CCP and other CCPs, i.e., interoperability arrangements; and
- d) links between the CCP and other FMIs.

64. ESMA proposes that the resolution plan shall contain a description of the critical interdependencies of the CCP, including what would make an interdependence considered critical. The description shall include, at least, the following aspects;

- a) A description under the resolution plan of all critical interdependencies identified and if such identified interdependences entail any differences compared to the recovery plan's list of critical interdependencies and where there are differences, a detailed description of the main reasons why the resolution authority has assessed the critical interdependencies differently and any material effects of such a change.
- b) A description of the different type of entities with interdependencies to the CCP including a list containing all relevant stakeholders including the CCP's direct and indirect participants (where possible to identify), owners, financial service providers such as liquidity providers, settlement banks or agents, platforms, investment agents, banks, custodians and other service providers (e.g., IT provider, data provider) and linked FMIs, and their relevance in the resolution procedure.
- c) A description of the assessment of the entities (as identified under b) with an interdependence to the CCP, covering their importance for the CCP, i.e., why they would, or would not, be considered critical, and if the ability of the CCP to continue providing its critical functions is dependent on these entities.
- d) A description of outsourcing arrangements to critical service providers 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.
- e) A description of how entities subject to a critical interdependency with the CCP have been assessed and any identified risks mitigated and addressed, including legal enforceability and regulatory constraints of arrangements (set-off and netting) and how for example, any inability of the provider of outsourced arrangements to comply with its obligations under the outsourcing arrangements have been satisfactory assessed and how those risks are mitigated in the resolution plan.
- f) A description of how the resolution plan has assessed the potential impact of applying the resolution tools on any interoperable CCP, for example the transmission of resolution cash calls or variation margin gains haircutting via an interoperability arrangement.

- g) A description of possible impacts on other FMIs linked to the CCP, for example by assessing the significance of the CCP's involvement in those entities including whether the CCP's resolution could cause contagion through FMIs, for example by triggering of default procedures in FMIs, or leaving other firms without access to FMIs.
- h) A description of the mitigating measures related to those critical interdependencies and how they will ensure operational continuity in resolution, as necessary to maintain the continuity of the CCP's critical functions.

## 4.12 Critical intra-group interdependencies

*l) a description of critical intra-group interdependencies as well as ways to address them;*

65. The resolution plan shall contain a description of the critical intra-group interdependencies as well as ways to address them. Critical intra-group interdependencies may be described as relationships between entities within the group of the CCP, which are necessary for the provision of critical functions by the CCP, or for the provision of critical functions by these other entities within the group. As a consequence, such interdependencies would significantly impact the resolution plan or would be impacted in case the CCP undergoes resolution.
66. ESMA proposes that the resolution plan shall contain a description of the critical intra-group interdependencies of the CCP, including what would make an interdependence critical. The resolution plan shall include at least the following aspects;
- a) A description of the intra-group dependencies identified under the resolution plan and whether such identified interdependences entail any differences compared to the recovery plan's list of critical intra-group interdependencies and where there are differences, a detailed description of the main reasons why the resolution authority has assessed the critical intra-group interdependencies differently and any material effects of such a change (if any).
  - b) A description of the group the CCP belongs to and a list of the group entities the CCP has links with and an assessment as to what group entities should be considered as critical intra-group interdependencies.
  - c) A description on the impact of resolution actions on other business lines of critical intra-group entities and legal entities, for example if resolution measures would affect other entity's ability to continue to operate.
  - d) A description on how relevant entities would be able to provide financial support (pre-agreed or on a voluntary basis).
  - e) A description on legal enforceability or regulatory constraints that could affect the intra-group interdependencies.

- f) A description of the mitigating measures related to those critical intra-group interdependencies which will allow to ensure operational continuity in resolution, as necessary to maintain the continuity of the CCP's critical functions.

#### 4.13 Ensure certain functions of the CCP

- m) a description of the different options to ensure:*
- i. access to payments and clearing services and other infrastructures;*
  - ii. timely settlement of obligations due to clearing members and, where applicable, their clients and any linked FMIs;*
  - iii. access of clearing members, and, where applicable, their clients on a transparent and non-discriminatory basis to securities or cash accounts provided by the CCP and securities or cash collateral posted to and held by the CCP that is owed to such participants;*
  - iv. continuity in the operations of links between the CCP and other FMIs and between the CCP and trading venues;*
  - v. preservation of the portability of the positions and related assets of direct and indirect clients; and*
  - vi. preservation of the licenses, authorisations, recognitions and legal designations of a CCP where necessary for the continued performance of the CCP's critical functions including its recognition for the purposes of the application of the relevant settlement finality rules and the participation in or links with other FMIs or with trading venues;*

67. The resolution plan shall include several descriptions of options to pursue for the resolution authority to ensure the viability of the CCP, including access to other FMIs, payment service providers, settlement providers, continuity of links access to clearing members etc.

68. ESMA notes that this aspect is crucial for the viability and continuity of a CCP in resolution and that the resolution authority shall provide clear details on those aspects to ensure, with a high degree of clarity and reliability on, those aspects in resolution.

69. These options, to ensure operational continuity, could be with a focus on documentation, contractual resilience (resolution-proof clauses), arms' length pricing structures (for internal services), access to operational assets, financial resilience (of service providers) and staff retention.

70. ESMA proposes that the resolution plan contains descriptions on the following key aspects considered to ensure the continuity of the CCPs services, including;

- a) A description of how the resolution authority has assessed each of the aspects listed in point (m) of Article 12 (7) of CCPRRR and the key outcomes of the assessments.
- b) A description of the options identified to maintain financial resilience.

- c) A description of the options identified to ensure contractual agreements are maintained, including contractual resilience clauses, resolution-proof clauses and limitations of termination rights in resolution.
- d) A description of the options identified to ensure internal agreements can be maintained during the resolution phase including arms' length pricing structures and continued access to operational assets.
- e) A detailed description of the essential operations and systems and a description on how to maintain such essential operations and systems, by providing identified options of continued access to infrastructures, processes and operational arrangements, to maintain the continuous functioning of the CCP's operational processes as listed in this point (m) of paragraph 7 of Article 12.
- f) A description of the different arrangements already entered into under the resolution plan to ensure continuity of the functioning of the operational processes, listed in point (m) paragraph 7 of Article 12, during resolution.
- g) A description of how the resolution plan would allow, using identified options, the CCP to continue to provide uninterrupted critical clearing services, for example by using interim solutions, such as a purchaser or bridge institution using existing staff and infrastructure or, where it is not possible to develop such solutions in advance, a list of options that may be applied in resolution and a list of information necessary to draw up such an arrangements and agreements at short notice.

#### 4.14 How to obtain the necessary information to perform the valuation

***n) a description of how the resolution authority will obtain the necessary information to perform the valuation referred to in Article 24;***

71. The resolution plan shall contain a description of how the resolution authority will obtain the necessary information required to perform valuations under the resolution plans in accordance with Article 24 of CCPRRR.
72. The resolution plan shall specify the circumstances and different scenarios for applying the resolution tools and exercising the resolution powers. ESMA noted the report “Valuation reports in the context of banking resolution: What are the challenges?”<sup>14</sup> specifying that valuations require granular information on the assets and liabilities of the bank in resolution.

*“The information about the assets should primarily allow the valuator to assess the extent to which the resolution, including potential resolution tools, might*

---

<sup>14</sup> [https://www.europarl.europa.eu/RegData/etudes/IDAN/2018/624418/IPOL\\_IDA\(2018\)624418\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2018/624418/IPOL_IDA(2018)624418_EN.pdf)

*affect the value as well as to assess the quality of the assets. This is important notably for assets for which there is no liquid market available.”*

73. According to the report, a lack of complete, correct and sufficiently granular information makes it more challenging not only for the independent valuator to prepare the valuations, but also for parties that would potentially like to acquire the entity, as uncertainty is likely to lower the final sales price.
74. The report also notes IT systems need to be able to provide the information the independent valuer needs for a robust valuation and that preparedness has to be considered, i.e. the ability to provide the information in a standardised format to valuers when needed as valuations are likely undertaken under time constraints. The standardisation as well as quality assurance processes are important to reduce the time required to prepare the data for the valuation exercise by the independent valuator and needs to be covered in the resolution planning in details and any flaws should probably be addressed in the impediments to resolution processes.
75. ESMA proposes that the resolution plan contains at least the following description of how the resolution authority will obtain the necessary information:
- a) A description of how the resolution authority (and the independent valuer) is envisaged to obtain the necessary information to perform the valuation referred to in Article 24 of CCPRRR.
  - b) A description of how relevant market data is collected, stored, structured, organised and updated by the CCP and how such market data relevant for the resolution plan is prepared and validated as close as possible to the valuation date.
  - c) A description on how the financial statements and regulatory reporting are prepared by the CCP and regularly updated and how such financial information is prepared, detailed and validated as close as possible to the valuation date and that the valuations of assets and liabilities are complete.
  - d) A description on how the level of detail of information is sufficient for the resolution authority (and the independent valuer) to take actions under the resolution plan, for example the description shall provide requirements on the level of granularity needed for the valuation, including where the information shall include detailed information on line-by-line or portfolio-by-portfolio positions, transactions and collateral and the CCPs own capital.
  - e) A description of the rules, key methodologies, assumptions and judgements used by the CCP in order to prepare the financial statements and regulatory reporting.
  - f) A description of how information is organised, labelled, and structured and how it can be used and analysed by the resolution authority (and the independent valuer) in an effective and secure manner to ensure the resolution authority has the information as required to take actions under the resolution plan.

## 4.15 Impact assessment of the plan on employees

*o) an analysis of the impact of the plan on the employees of the CCP, including an assessment of any associated costs, and a description of envisaged procedures to consult with staff during the resolution process, taking into account any national rules and systems for dialogue with social partners;*

76. The resolution plan shall include an analysis of the impact of the plan on the employees of the CCP, including an assessment of any associated costs, and a description of envisaged procedures to consult with staff during the resolution process, taking into account any national rules and systems for dialogue with social partners to ensure the continuity of the CCP.

77. ESMA proposes that the resolution plan contains at least the following analysis;

- a) A description of the different types of employees, contract staff and consultants of the CCP, including categorisations of how different types of staff (employees, contract staff and consultants) should be informed and managed in a resolution situation.
- b) A high-level description on the estimated impact of the plan on the employees of the CCP.
- c) A description on how to maintain material staff during a resolution phase (considering any regulatory procedures required to be followed in resolution, if any), including assessments as to incentive structures and a description as to the possibility to undertake changes in employment structures and contracts during a resolution phase and an analysis and an estimate of any associated costs of maintaining material staff including an assessment of any associated costs taking into account any national rules for compensation and reimbursements during resolution (if any).
- d) A description of the plan for communication with employees, contract staff and consultants, including a description of envisaged procedures to consult with staff during the resolution process, taking into account any national rules and systems for dialogue with social partners, the management, owners, and staff unions.

## 4.16 Communication plan

*p) a plan for communicating with the media and the public so as to be as transparent as possible;*

78. The resolution plan shall include a plan on how to communicate with the media and the public to ensure transparency, and to manage the information flow and impact on financial markets. The resolution plan should consider to what extent the CCP's resolution is likely to cause disruptions in domestic or international financial markets, for example, because of lack of confidence or uncertainty effects.



79. The resolution plan should distinguish between the CCPs' communication plans and the resolution authority's communication plan. The resolution plan should focus on the plans for communicating with the media and the public, it could be understood that the communication plan envisaged here is not the communication of the CCP or the resolution authority with the relevant identified stakeholders or stakeholder groups.
80. ESMA proposes that the resolution plan contains at least the following description of how the resolution authority plan to share information with the media and public:
- a) A description of the communication plan specifying the following;
    - i. who informs the media and the public,
    - ii. when is the media and public informed, and
    - iii. what is planned to be communicated, to ensure only public information of the resolution plan is communicated in accordance with Regulation (EU) No 2021/23.
  - b) A description of the adequacy of the operational arrangements and procedures of the communication plan, the criteria for the communication strategy and how the plan achieves the aim of ensuring that the CCP's communication and disclosure plan manages to achieve the objectives of acting in a transparent manner.
  - c) A description differentiating between legally required formal notifications and voluntary undertaken communication with a description of how the resolution plan has taken into account different regulatory requirements for disclosure of information, particularly where such information could impact critical services in the financial market and where the CCP is a listed company or is owned by a listed company.
  - d) A description of how the resolution plan envisage to manage expectations and potentially negative market reactions when disclosing information.

#### 4.17 Essential operations and systems

q) *a description of **essential operations and systems** for maintaining the continuous functioning of the CCP's operational processes;*

81. The resolution plan shall include a description of the essential operations and systems of the CCP, and how they are identified and a description for maintaining the continuous functioning of the CCP's operational processes, with a focus on the operations considered essential.
82. ESMA proposes that the resolution plan contains at least the following descriptions on the CCPs essential operations and systems that are essential to the CCP for maintaining the continuous functioning of the CCP's clearing services:

- a) A description of the essential operations and systems identified under the resolution plan and if the identified operations and systems are different from the essential operations and systems identified under the recovery plan.
- b) A description of how such essential operations and systems are identified, the criteria applied, and thresholds used, to differentiate them from other operations and systems of the CCP that are not to be considered essential operations and systems.

#### 4.18 Notification to the resolution college

r) *a description of the **arrangements for notifying the resolution college in accordance with Article 72(1)**;*

83. The resolution plan shall include a description of the arrangements for notifying the resolution college in accordance with Article 72(1)<sup>15</sup> of CCPRRR about the resolution actions the resolution authority intends to take and whether such actions deviate from the resolution plan.

84. ESMA proposes that the resolution plan contains at least the following descriptions of the arrangements for notifying the resolution college:

- a) A description of the procedures and processes to follow when notifying the resolution college and in particular, the resolution plan shall contain information on distribution lists, template documents and timelines on how and when to inform the resolution college.
- b) A description of the procedures to keep the distribution lists up to date.
- c) A description on the arrangements for how the notifying process of the resolution college is tested, including information on the scope and intervals for such testing exercises and procedures to address any shortcomings (errors, misunderstanding or delays).

#### 4.19 Measures to facilitate portability of positions and related assets

s) *a description of the **measures to facilitate the portability of positions and related assets of the clearing members and clients of the defaulting CCP from the defaulting***

---

<sup>15</sup> Article 72 (1). The resolution authority shall notify the resolution college of the resolution actions it intends to take. That notification shall also indicate whether the resolution actions deviate from the resolution plan.

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

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

*CCP to another CCP or a bridge CCP while not affecting the contractual relationships between the clearing members and their clients.*

85. The resolution plan shall include a description of the measures to facilitate the portability of positions and related assets of the clearing members and clients of the defaulting CCP from the defaulting CCP to another CCP or a bridge CCP while not affecting the contractual relationships between the clearing members and their clients.

86. ESMA proposes that the resolution plan contains at least the following descriptions:

- a) A description on the possibility of portability of positions and related assets to another CCP under the resolution plan and where this possibility is presented with an assessment as to its feasibility (and complemented with information where the portability or transfer, in the end, is not possible).
- b) A description on how the CCP keeps the relevant data on positions in client omnibus and segregated accounts in accordance with EMIR and is able to provide details on the resources and systems in place to maintain up-to-date information that could be provided rapidly in resolution to ensure that client positions (where possible to identify) at the CCP could be identified and potentially transferred smoothly.
- c) A description of the measures to facilitate the portability of positions and related assets of the clearing members and clients of the defaulting CCP from the defaulting CCP to another CCP or a bridge CCP while not affecting the contractual relationships between the clearing members and their clients.

**Question 3: Do you agree with how the draft RTS envisages to further specify the resolution plan? If not, please explain?**

**Question 4: In particular, do you agree with the content of the summary of the resolution plan (Article 12(7)(a))? Is there any aspect missing? If yes, please specify and explain why?**



## **5 Annexes**

### **5.1 Annex 1 Legislative mandate to develop technical standards**

*9. ESMA, after consulting the ESRB and taking into account the relevant provisions of the delegated acts adopted on the basis of Article 10(9) of Directive 2014/59/EU and respecting the principle of proportionality shall develop draft regulatory technical standards further specifying the contents of the resolution plan in accordance with paragraph 7 of this Article.*

*When developing the draft regulatory technical standards, ESMA shall enable sufficient flexibility for resolution authorities to take into consideration the specificities of their national legal framework in the area of insolvency law, as well as the nature and complexity of the clearing business performed by the CCPs.*

*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.*



## 5.2 Annex 2 Cost-benefit analysis

### 1. Introduction

Pursuant to the fourth subparagraph of paragraph 9 of Article 12 of CCPRRR the Commission is empowered to adopt a delegated act to supplement the CCPRRR by further specifying the contents of the resolution plan in accordance with paragraph 7 of Article 12 of CCPRRR.

ESMA, after consulting the ESRB, shall develop draft regulatory technical standards further specifying the contents of the resolution plan in accordance with paragraph 7 of Article 12 of CCPRRR and ESMA shall submit those draft regulatory technical standards to the Commission by 12 February 2022. ESMA has established cooperation arrangements with 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>16</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 limited by the legislative acts on which they are based.

### 2. Background

ESMA, after consulting the ESRB, shall develop draft regulatory technical standards further specifying the contents of the resolution plan. When ESMA develops the draft RTS, to further specify the contents of the resolution plan, ESMA will focus on specifying and further providing details on the type of information that should be included in descriptions under the plan, the content to be covered in different parts of the plan and providing a list of different scenarios that could be included and how resolution strategies may be further specified.

### 3. Policy Options

Considering the empowerment to ESMA to further specify the contents of the resolution plan, the variable on which ESMA can complement is fairly limited and the actual policy option is to provide a well-considered range of elements further assisting the resolution authority in drawing up the resolution plan for the CCP.

---

<sup>16</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2016%3A0368%3AFIN>



ESMA has considered how to further specify the content of the resolution plan, through different elements for the resolution 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 resolution plan shall provide for the resolution actions that the resolution authority may take where the CCP meets the conditions for resolution referred to in Article 22 of CCPRRR, and meet the requirements listed under Article 12 of CCPRRR, and in particular Article 12(7) of CCPRRR listing the content of the resolution plan.</p> <p>ESMA shall in developing the RTS respect the principles of proportionality and flexibility in considering the CCPs specificities and national law.</p>
<p><b>Policy option 1</b></p>	<p>To further specify the content of the resolution plan by providing the <i>elements for each requirement</i> under Article 12(7) of CCPRRR that the resolution authority shall ensure are reflected in the resolution plan was identified as an option on how to implement the mandate to further specify the content of the resolution plan.</p> <p>Whether to keep the same order as under Article 12(7) of CCPRRR or to group the resolution plan by subject was also reflected upon and it was concluded that there were benefits of keeping the order under CCPRRR, as it would simplify the reviews, coordination and cooperation if the resolution plans were similar in structure.</p> <p>ESMA further noted, in light of the principle of proportionality, that it may not be necessary to include all the underlying assessments in the resolution plan, but it is necessary to include the key conclusions of these assessments and where full assessments including technical notes shall be included in i.e. annex to the plan or in ancillary documents shared with the resolution college.</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 listed in Article 12(7) of CCPRRR is further specified providing enough details and guidance to the resolution authority in drawing up the resolution plans. This option would also meet the requirement of the RTS being both proportionate and flexible as the elements shall be reflected in the resolution plan, but the RTS is not detailing on how.</p>

<p><b>Policy option 2</b></p>	<p>To further specify the content of the resolution plan by providing a list of elements, but to separate the elements into two or three sections, where the level of details of the resolution plan is depending on the size of the CCP or the complexity of the CCP to ensure flexibility.</p>
<p>How would this option achieve the objective?</p>	<p>This option would in ESMA's view be satisfactory to some extent, as it would provide some additional value in relation to the applicable aspects guiding the resolution authority in its assessments and completion of the requirements that apply for drawing up the resolution plan. The RTS would however be depending on how a CCP is tiered and ESMA is of the view that the mandate does not include such a tiering of EU CCPs to be established nor provides the right for ESMA to provide for a possibility to disapply any of the requirements under Article 12(7) of the CCPRRR, hence this option would not meet the requirements under Article 12(9) and has not been pursued by ESMA.</p>
<p><b>Policy option 3</b></p>	<p>To further specify the content of the resolution plan by providing for firm requirements in the RTS, i.e. to further specify the requirements under Article 12(7) of CCPRRR with another set of requirements that the resolution plan shall contain.</p>
<p>How would this option achieve the objective?</p>	<p>This option would in ESMA's view be satisfactory to some extent, as it would provide additional value in relation to the applicable aspects guiding the resolution authority in its assessments and completion of the requirements that apply for drawing up the resolution plan.</p> <p>ESMA finds that such a list of firm requirements would probably not meet the requirements of proportionality and flexibility as required under Article 12(9) CCPRRR and has therefore not been pursued by ESMA.</p>
<p>Which policy option is the preferred one?</p>	<p>Policy option 1, as this option would provide the minimum of elements that the resolution authority shall ensure are reflected in the resolution plan, hence ensuring the resolution plan covers certain aspects but leave it to the resolution authority how to reflect the requirements in the resolution plan. It therefore provides the elements to be reflected in the resolution plan but ensures the resolution authority has the powers to draw up a resolution plan suitable to the CCP hence ensuring flexibility and proportionality.</p> <p>In relation to option 2, ESMA is of the view that to ensure proportionality this should not result in a tiering of EU CCPs, hence the elements to be reflected in the resolution plan should all be</p>

	<p>assessed by the resolution authority and be reflected in the resolution plan in accordance with its relevance to the CCP to ensure equal application but still respect the proportionality, as suggested under option 1.</p> <p>ESMA is also of the view that Option 3, would not meet the objective as a fixed list of requirements for the resolution authority to include would not provide the resolution authority with the flexibility needed to ensure the resolution plan is well suited for the CCP at hand nor would it be proportionate as not all aspects are equally relevant to all CCPs.</p>
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.

Impacts of the proposed policies:	
<b>Policy option 1</b>	
Benefits	It will provide a wide range of elements to further specify the requirements as specified by Article 12(7) of CCPRRR.
Regulator's costs	The costs for competent authorities will be overall notable however given that the content of the resolution plan is already specified under CCPRRR in a very detailed format the RTS may assist the resolution authority in its obligation to draw up the resolution plan by providing guidance on what aspects to reflect upon and may hence possibly reduce the costs of the resolution authority.
Compliance costs	For the CCP no compliance costs. The drawing up of the resolution plan is an obligation of the resolution authority hence not a cost to the CCP.
<b>Policy option 2</b>	
Benefits	It will provide a range of elements to further specify the requirements as specified by Article 12(7) of CCPRRR.



Regulator's costs	The costs for competent authorities will be overall notable however given that the content of the resolution plan is already specified under CCPRRR in a very detailed format the RTS may assist the resolution authority in its obligation to draw up the resolution plan by providing guidance on what aspects to reflect upon and may hence possibly reduce the costs of the resolution authority, but to the contrary, an exercise to tier the CCP would increase the cost for the resolution authority and as such a tiering is not envisaged under CCPRRR this would be an additional cost not deriving from CCPRRR.
Compliance costs	For the CCP no compliance costs. The drawing up of the resolution plan is an obligation of the resolution authority hence not a cost to the CCP.
<b>Policy option 3</b>	
Benefits	It will provide a wide range of requirements to further specify the resolution plan.
Regulator's costs	The costs for competent authorities will be overall notable however given that the content of the resolution plan is already specified under CCPRRR in a very detailed format, the RTS may assist the resolution authority in its obligation to draw up the resolution plan by providing guidance on what aspects to reflect upon and may hence possibly reduce the costs of the resolution authority, however as the RTS would entail requirements on what the resolution plan shall entail, this may result in additional costs as the resolution authority may have to cover aspects to a higher degree than justified by the relevance to the CCP.
Compliance costs	For the CCP no compliance costs. The drawing up of the resolution plan is an obligation of the resolution authority hence not a cost to the CCP.
Conclusion	ESMA notes that the costs are envisaged for by the CCPRRR as the establishment of the resolution plan is already envisaged under CCPRRR and further notes that the requirements as to the content of the resolution plans are already detailed under Article 12(7) of CCPRRR, and the mandate to ESMA is to add value by further specifying the content of the resolution plan and Option 1 results in a proportionate cost for the resolution authority.

**Question 5: 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 6: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.**



### **5.3 Annex 3 Summary of questions**

**Question 1: Do you agree with how ESMA has enabled sufficient flexibility and ensured proportionality in the draft RTS? If not, please explain?**

**Question 2: Is there any aspect from the BRRD RTS that is not included in the draft RTS, but should be? If yes, please specify and explain why?**

**Question 3: Do you agree with how the draft RTS envisages to further specify the resolution plan? If not, please explain?**

**Question 4: In particular, do you agree with the content of the summary of the resolution plan (Article 12(7)(a))? Is there any aspect missing? If yes, please specify and explain why?**

**Question 5: 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 6: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.**



## 5.4 Annex 4 Draft RTS on the content of CCP resolution plans

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

of [ ]

supplementing 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 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 with regard to the contents of the resolution plan

(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 Article 12(9) thereof,

Whereas:

(1) ESMA shall develop draft regulatory technical standards further specifying the contents of the resolution plan in accordance with paragraph 7 of Article 12 of Regulation (EU) No 2021/23. ESMA shall take into account the relevant provisions of the delegated acts adopted on the basis of Article 10(9) of Directive 2014/59/EU and respecting the principle of proportionality. In developing those standards ESMA shall also enable sufficient flexibility for resolution authorities to take into consideration the specificities of their national legal framework in the area of insolvency law, as well as the nature and complexity of the clearing business performed by the CCPs.

(2) To ensure the standards for the content of resolution plans are sufficiently flexible to take account of the circumstances of the CCP, such as the nature and complexity of the clearing business performed by the CCPs, and to ensure that the resolution plans are targeted and useful for the implementation of resolution strategies for the CCP, ESMA has concluded that the Regulation should provide the elements deriving from the points (a) to (s) of paragraph 7 in Article 12 that the resolution authority should ensure are reflected in the resolution plan. However, it will be for the resolution authority to decide how the elements are reflected in the resolution plan and to ensure the resolution plan is suitable for the CCP.

(3) Another aspect of providing elements for the resolution authority to consider in the development of the resolution plan, and not fixed requirements, is to respect the principle of proportionality. To provide flexibility for the resolution authority will ensure a proportionally balanced resolution plan focusing on the aspects relevant to the CCP.

(4) The resolution plan should contain resolution scenarios and resolution strategies, and the Regulation provides the resolution authority with the tools, in the form of nine type scenarios, to create relevant and



suitable scenarios and a list of key aspects to be considered when establishing resolution strategies for the resolution scenarios. This approach is to ensure the overall suitability and proportionality of the resolution plan.

(5) To further ensure the principle of proportionality, the resolution plan should be focused on the key conclusions and key aspects of the different aspects of the CCP and the full assessments, including technical analysis, may be included in annexes to the resolution plans and shared with the resolution college.

(6) The Regulation should ensure it enables sufficient flexibility for resolution authorities to take into consideration the specificities of the applicable national legal framework in the area of insolvency law and the resolution authority may want to consider some aspects, such as the mechanism under Article 60 of the Regulation (EU) No 2021/23, during the planning phase of the resolution plan. As the regulation provides the elements to be reflected in the resolution plan, there is no need for additional flexibility under this Regulation for the resolution authorities to be able to consider applicable national legal framework in the area of insolvency law in establishing the resolution plan.

(7) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(8) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

## Article 1

### **Quantification assessment**

The resolution plan shall include assessments, to the extent appropriate and possible, of how the different aspects of the resolution plan are or may be quantified. The resolution authority shall consider this quantification when drawing up the resolution plan and provide explanations on how, and to what extent, a quantitative assessment has been undertaken for a certain aspect of the resolution plan. Where the conclusion is reached, by the resolution authority, that in relation to a specific aspect of the resolution plan a quantitative assessment is either not appropriate or not possible, this should be stated in the resolution plan.

## Article 2

### **Summary of the key elements of the resolution plan**

When preparing a summary of the key elements of the resolution plan in accordance with point (a) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that at least the following elements are reflected in the resolution plan:

- a) The key elements of each scenario and strategies established under the resolution plan, distinguishing between default events, non-default events and a combination of the two, and listing the key assumptions of each scenario in terms of broader market moves.
- b) A short summary of the material key elements of the resolution plan in relation to each of the points under points (b)-(s) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23.

## Article 3

### **Summary of material changes**

When preparing a summary of material changes of the resolution plan in accordance with point (b) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that at least the following elements are reflected in the resolution plan:

- a) Any material changes to the markets where the CCP operates, to the business lines considered core to the CCP and to the clearing services and key ancillary clearing related services offered by the CCP.
- b) Any material changes to interoperability arrangements of the CCP or to interdependences of the CCP, including the service providers of the CCP.
- c) Any material changes to the capital and capital structure of the CCP, including the amounts of pre-funded dedicated own resources.
- d) Any material changes to the prudential requirements of the CCP, including changes in the default fund methodologies, margin and liquidity risk management frameworks, composition and structure, investment policies, collateral policies and settlement.
- e) Any material changes to the structure of the CCP's organisation, ownership and managers incentive structures.
- f) Any material changes, or planned changes, to the resolution scenarios and resolution strategies.

## Article 4

### **Critical Functions**



When preparing a description on how the critical functions of the resolution plan could be legally and economically separated in accordance with point (c) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that at least the following elements are reflected in the resolution plan:

- a) A description of the functions defined as critical by the resolution authority and if there are any differences compared to the recovery plans' list of critical functions. Where there are differences, a detailed description of the main reasons why the resolution authority has assessed the critical functions differently, the material effects of such different assessment and how this could affect the resolvability of the CCP.
- b) A description of the main dependencies between critical functions and critical interdependencies and of the key internal and external arrangements and processes, such as operations, IT procedures, a list of key staff and main service providers that are necessary for the CCP to continue providing its critical functions or any other aspects that may be necessary to consider in view of a possible transfer of some or all of the operations of the CCP to another financial market infrastructure or bridge CCP, if that is part of the proposed resolution strategy.
- c) A description of how critical functions could be separated from non-critical functions in economic, operational and legal terms and including details on how the resolution authority has assessed the material effects of such separation on stakeholders including;
  - i. material effects on netting sets for clearing members where transactions are split into different silos of the CCP or a different CCP;
  - ii. where possible to identify, any material effects on operations or legal effects of splitting transactions into different CCPs and the effects on CM, clients and indirect clients (where identified);
  - iii. where possible to identify, any material effects on the calculation of collateral requirements and in particular variation margins and how the separation would affect the collateral requested by CM, clients and indirect clients (where identified); and
  - iv. where possible to identify, an evaluation of the price of transfer of such transactions.
- d) A summary of how the CCP's proposed approach to separating or not separating the CCP's critical functions from its other functions may affect the resolvability assessment for the CCP.
- e) A mapping of critical functions to identified legal entities and to the CCP's core business lines.

## Articles 5

### **Timeframe for implementation**

1. When preparing an estimation of the timeframe for implementation of the resolution plan in accordance with point (d) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan:

- a) A list of actions that the resolution authorities would envisage to take and, where relevant, where these actions derive from the application of the recovery plan.
- b) A list of the steps with allocated times to be taken by the resolution authority for implementing each material aspect of the resolution plan and specifying corresponding steps, including an estimated timetable to assess each of the resolution strategies.
- c) A description of how replenishment is envisaged under the resolution plan, including where derived from the recovery plan, and the estimated time for different measures of replenishment.

2. The resolution authority shall ensure that timeframes identified under paragraph 1 are:

- a) suitable and relevant, evidenced by a description of how the resolution authority has assessed the feasibility and credibility of the envisaged steps and allocated times in the resolution plan;
- b) tested regularly and at least upon the establishment of the resolution plan and thereafter following any material changes; and
- c) effective by containing details of the processes and procedures. The resolution plan shall, where relevant, include templates and other pre-completed processes and procedures of how and when to undertake certain steps and how to collect certain information to ensure, to the extent possible, that the estimated timeframes are likely to be upheld.

## Article 6

### **Assessment of resolvability**

When preparing a detailed description of the assessment of resolvability of the resolution plan in accordance with point (e) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan:

- a) The conclusions of the assessment of resolvability, including at least, whether or not the CCP is deemed resolvable based on the resolution authorities' considerations under paragraph 2 of Article 15 of Regulation (EU) No 2021/23.
- b) A description of how the resolution authority has assessed the extent to which the CCP is resolvable without assuming any of the financing arrangements as set out in point a-c, under paragraph 1 of Article 15 of Regulation (EU) No 2021/23.
- c) A description of how the resolution authority has ascertained the feasibility of applying the resolution tools in such a way that meets the resolution objectives.
- d) A description of the resolution authority's assessments of the information received from the CCP under paragraph 3 of Article 15 of Regulation (EU) No 2021/23, detailing whether the resolution authority agrees with the CCPs' assessment as to the lack of impediments.
- e) A description providing evidence and details of when and how the resolvability has been assessed most recently by the resolution authority to ensure the assessment that the CCP is resolvable remains valid.



- f) A description of the availability of the envisaged assets to the CCP under resolution and if such assets would in fact be available for use in resolution or whether such use or transfer could be hampered or prevented by residual interests of direct and indirect participants in those assets or by legal constraints, such as the legal mechanism by which collateral is provided, including whether collateral is provided as a security interest, pledge or by way of title transfer all of which that could impact the status of that collateral in insolvency.
- g) A description of each aspect, as set out in Section C, *Matters that the resolution authority is to consider when assessing the resolvability of a CCP*, of the Annex of Regulation (EU) No 2021/23.

#### Article 7

##### **Impediments to resolvability**

When preparing a description of any measures required pursuant to Article 16 of Regulation (EU) No 2021/23 to address or remove impediments to resolvability of the resolution plan in accordance with point (f) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan:

- a) Where a material impediment has been identified, a descriptive summary of the measures required under Article 16 of Regulation (EU) No 2021/23, to identify any necessary changes to the structure, operations or risk management frameworks and financial resources of the CCP or any measures to improve the CCP's resolvability, and the timeline for completing the requested changes.
- b) A description of any impediments addressed or removed in accordance with Article 16 of Regulation (EU) No 2021/23 over a period of two years preceding the current review of the impediments under Article 15 of Regulation (EU) No 2021/23.

#### Article 8

##### **Determining the value of and marketability of the critical functions and assets**

When preparing a description of the processes for determining the value and marketability of the critical functions and assets of the resolution plan in accordance with point (g) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan:

- a) A description of the processes applied for determining the value and marketability of the critical functions and assets such as the core business lines, operations and assets of the CCP mainly focusing on aspects that could have an impact on the valuation such as volatility in the market, inaccessibility and/or uncertainty of the market prices, time constraints and legal aspects and if the process applied deviates from the valuation methodology applied under the recovery plan a description of the main reasons for which the resolution authority has assessed the valuation methodology differently and the material effects of such a difference, if any.
- b) A description of the information and processes for ensuring availability in an appropriate timescale of the information required for the purposes of valuation, in particular pursuant to Title V, Chapter



II on Valuation under Regulation (EU) No 2021/23, and for marketability, in particular pursuant to the marketing requirements for the sale of business and bridge CCP tools.

- c) A description of the determined value and the marketability of the critical functions and assets, defined according to the letter a) and b).

## Article 9

### **Information requirements**

When preparing a description of the information requirements set out in point (h) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan:

- a) A description of the arrangements with the CCP to ensure access to, and sharing of information, for the resolution authority and how the CCP shall maintain the information systems and controls that can promptly produce and make available relevant data and information to the resolution authority. The arrangements shall include procedures to date the information and to provide standardised updates where there are material changes.
- b) A description of how the CCP shall at least yearly review all information, with the exception of the information considered material by the resolution authority under point (c), shared with the resolution authority and in addition, shall review information shared with the resolution authority upon the request by the resolution authority or where otherwise a review and possible update would be reasonably expected to be made.
- c) A description of the procedure of the resolution authority to identify which information is considered material by the resolution authority and a description of how the CCP shall ensure that such material information is kept up to date and available at all times to the resolution authority compared to information not considered material that would follow the procedures for updates as set out under (b).

## Article 10

### **How resolution actions could be financed**

When preparing an explanation regarding the financing of resolution actions in accordance with point (i) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan:

- a) A description of the financial resources envisaged to be needed under the resolution plan detailing whether such financial resources or tools would be reserved for resolution or if they would also be available in recovery, clearly separating solvency from liquidity funding needs, and of details regarding the envisaged financial resources that are likely to be required in relation to the implementation of the resolution strategy including each relevant resolution scenario.

- b) A description of potential sources of resolution funding, including the terms of financing, preconditions for their use, the timing of their availability, and any collateral requirements.
- c) A description and analysis of how and when the CCP may apply for the use of central bank facilities, respecting the requirement that resolution plans should not assume any access to central bank facilities on non-standard terms, in resolution.
- d) A description and identification of assets that could be used, and if expected to qualify as collateral, and how such an expectation of use of the assets may create encumbrances, primarily in the value and use of such asset.

## Article 11

### **Resolution strategies and scenarios**

When preparing a detailed description of the resolution strategies and scenarios in accordance with point (j) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan:

1. The list of at least nine designed resolution plan scenarios based on the matrix for building the resolution plan scenarios as set out in Annex 1;
2. A detailed description of the resolution scenarios elected based on the assessment of the resolution authority considering the specific characteristics and level of complexity of the CCP, and if any additional scenarios to the mandatory ones are elected.
3. The resolution authority shall include quantitative assessment tools for each type of scenario, where possible depending on access to data, that shall be used to produce quantitative impacts for the resolution scenarios. Where no data is available, and cannot be generated with reasonable efforts, the resolution authority shall conduct a qualitative assessment of the tools to the extent possible including details on to what extent a quantitative assessment have been undertaken for a certain scenario.
4. A description of the elected resolution strategies for the resolution scenarios, specifying the following aspects:
  - a) A detailed description of the main resolution strategy elected, and if several strategies are elected how their application differs, and the key strategic analysis that underlies the different choices of elected resolution strategies.
  - b) A description of how, the procedure, unforeseen situations are envisaged to be mitigated, for example where unforeseen impediments to an elected strategy are discovered at implementation.
  - c) A detailed description of conditions for intervention under the resolution strategy, describing for example necessary and sufficient prerequisites for triggering the implementation of resolution actions together with concrete and practical options for applicable resolution tools.

- d) A detailed description of how the resolution strategy takes into account the impact on direct and indirect participants in the CCP as well as interdependencies such as other linked FMIs and trading venues.
- e) A detailed description of the effects of different resolution actions under the resolution strategies, such as resolution tools that would split netting sets and also descriptions on how this could impact other aspects of the functioning of the CCP, such as liquidity and collateral requirements as well as other types of resolution tools including the sale of a business tool or the write down or conversion,.
- f) A detailed description of how the resolution strategy takes into account and ensures continuity of the CCP's legal and technical arrangement and how the plan supports the transfer of its functions, for example by providing for advance agreement with other FMIs or relevant service providers.

## Article 12

### **Critical interdependencies**

When preparing a description of the critical interdependencies referred to in point (k) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan;

- a) A description under the resolution plan of all critical interdependencies identified and if such identified interdependences entail any differences compared to the recovery plan's list of critical interdependencies a detailed description of the main reasons for which the resolution authority has assessed the critical interdependencies differently and any material effects of such a change.
- b) A description of the different type of entities with interdependencies to the CCP including a list containing all relevant stakeholders including the CCP's direct and indirect participants (where possible to identify), owners, financial service providers such as liquidity providers, settlement banks or agents, platforms, investment agents, banks, custodians and other service providers, including IT providers and data providers, and linked FMIs, and their relevance in the resolution procedure.
- c) A description of the assessment of the entities (as identified under b)) with an interdependence to the CCP, covering their importance for the CCP, in particular, why they would, or would not, be considered critical, and if the ability of the CCP to continue providing its critical functions is dependent on these entities.
- d) A description of outsourcing arrangements to critical service providers 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.
- e) A description of how entities subject to a critical interdependency with the CCP have been assessed and any identified risks mitigated and addressed, including legal enforceability and regulatory constraints of arrangements such as set-off and netting, and how any inability of the provider of outsourced arrangements to comply with its obligations under the outsourcing arrangements, have been satisfactory assessed and how those risks are mitigated in the resolution plan.

- f) A description of how the resolution plan has reflected the potential impact of applying the resolution tools on any interoperable CCP, covering the transmission of resolution cash calls or variation margin gains haircutting via an interoperability arrangement.
- g) A description of possible impacts on other financial market infrastructures linked to the CCP, for example by assessing the significance of the CCP's involvement in those entities including whether the CCP's resolution could cause contagion through financial market infrastructures by triggering of default procedures in financial market infrastructures, or leaving other firms without access to financial market infrastructures.
- h) A description of the mitigating measures related to those critical interdependencies and how they will ensure operational continuity in resolution, as necessary to maintain the continuity of the CCP's critical functions.

### Article 13

#### **Critical intra-group interdependencies**

When preparing a description of the critical intra-group interdependencies in accordance with point (l) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan;

- a) A description of the intra-group dependencies identified under the resolution plan, and whether such identified interdependences entail any identified differences compared to the recovery plan's list of critical intra-group interdependencies and, where there are differences, a detailed description of the main reasons for which the resolution authority has assessed the critical intra-group interdependencies differently and any material effects of such a change, if any.
- b) A description of the group the CCP belongs to and a list of the group entities the CCP has links with and an assessment as to what group entities should be considered as critical intra-group interdependencies.
- c) A description on the impact of resolution actions on other business lines of critical intra-group entities and legal entities, including if resolution measures would affect other entity's ability to continue to operate.
- d) A description on how relevant entities would be able to provide financial support either pre-agreed or on a voluntary basis.
- e) A description of legal enforceability or regulatory constraints that could affect the intra-group interdependencies.
- f) A description of the mitigating measures related to those critical intra-group interdependencies which will allow to ensure operational continuity in resolution, as necessary to maintain the continuity of the CCP's critical functions.

## Article 14

### **Ensure certain functions of the CCP**

When preparing a description of how certain functions of the CCP are ensured in accordance with point (m) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan;

- a) A description of how the resolution authority has assessed each of the essential operational processes and systems for maintaining the continuous functioning of the CCP's operational processes as listed in point (m) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 and the key outcomes of the assessments.
- b) A description of the identified options to maintain financial resilience.
- c) A description of the options identified to ensure contractual agreements are maintained, including contractual resilience clauses, resolution-proof clauses and limitations of termination rights in resolution.
- d) A description of the options identified to ensure internal agreements can be maintained during the resolution phase including arms' length pricing structures and continued access to operational assets.
- e) A detailed description of the essential operations and systems and a description of how to maintain such essential operations and systems, by providing identified options of continued access to infrastructures, processes and operational arrangements, to maintain the continuous functioning of the CCP's operational processes as listed in point (m) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23.
- f) A description of the different arrangements already entered into under the resolution plan to ensure continuity of the functioning of the operational processes, listed in point (m) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23, during resolution.
- g) A description of how the resolution plan would allow, using identified options, the CCP to continue to provide uninterrupted critical clearing services, including by using interim solutions, such as a purchaser or bridge institution using existing staff and infrastructure or, where it is not possible to develop such solutions in advance, a list of options that may be applied in resolution and a list of information necessary to draw up such an arrangements and agreements at short notice.

## Article 15

### **How to obtain the necessary information to perform the valuation**

When preparing a description of how to obtain the necessary information to perform the valuation in accordance with point (n) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan;

- a) A description of how the resolution authority, and the independent valuer, is envisaged to obtain the necessary information to perform the valuation referred to in Article 24 of Regulation (EU) No 2021/23.
- b) A description of how relevant market data is collected, stored, structured, organised and updated by the CCP and how such market data relevant for the resolution plan is prepared and validated as close as possible to the valuation date.
- c) A description on how the financial statements and regulatory reporting are prepared by the CCP and regularly updated and how such financial information is prepared, detailed and validated as close as possible to the valuation date and that the valuations of assets and liabilities are complete.
- d) A description on how the level of detail of information is envisaged to be sufficient for the resolution authority, and the independent valuer to take actions under the resolution plan, by providing requirements on the level of granularity needed for the valuation, including where the information shall include detailed information on line-by-line or portfolio-by-portfolio positions, transactions and collateral and the CCPs own capital.
- e) A description of the rules, key methodologies, assumptions and judgements used by the CCP in order to prepare the financial statements and regulatory reporting.
- f) A description of how information is organised, labelled, and structured and how it can be used and analysed by the resolution authority, and the independent valuer, in an effective and secure manner to ensure the resolution authority has the information as required to take actions under the resolution plan.

## Article 16

### **Impact assessment on employees**

When preparing the impact assessment on employees in accordance with point (o) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan;

- a) A description of the different types of employees, contract staff and consultants of the CCP, including categorisations of how different types of staff including employees, contract staff and consultants, are to be informed and managed in a resolution situation.
- b) A high-level description on the estimated impact of the plan on the employees of the CCP.
- c) A description of how to maintain material staff during a resolution phase, considering any regulatory procedures required to be followed in resolution, and including assessments as to incentive structures and a description as to the possibility to undertake changes in employment structures and contracts during a resolution phase and an analysis and an estimate of any associated costs of maintaining material staff including an assessment of any associated costs taking into account relevant national rules for compensation and reimbursements during resolution.

- d) A description of the plan for communication with employees, contract staff and consultants, including a description of envisaged procedures to consult with staff during the resolution process, taking into account any national rules and systems for dialogue with social partners, the management, owners, and staff unions.

## Article 17

### **Communication plan**

When preparing a description regarding the communication plan in accordance with point (p) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan;

- a) A description of the communication plan specifying the following;
  - i. who informs the media and the public,
  - ii. when is the media and public informed, and
  - iii. what is planned to be communicated, to ensure only public information of the resolution plan is communicated in accordance with Regulation (EU) No 2021/23.
- b) A description of the adequacy of the operational arrangements and procedures of the communication plan, the criteria for the communication strategy and how the plan achieves the aim of ensuring that the CCP's communication and disclosure plan manages to achieve the objectives of acting in a transparent manner.
- c) A description differentiating between legally required formal notifications and voluntary undertaken communication with a description of how the resolution plan has taken into account different regulatory requirements for disclosure of information, particularly where such information could impact critical services in the financial market and where the CCP is a listed company or is owned by a listed company.
- d) A description of how the resolution plan envisages to cater for expectations and potentially negative market reactions when disclosing information.

## Article 18

### **Essential operations and systems**

When preparing a description regarding the essential operations and systems in accordance with point (q) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan;



- a) A description of the essential operations and systems identified under the resolution plan and if the identified operations and systems are different from the essential operations and systems identified under the recovery plan.
- b) A description of how such essential operations and systems are identified, the criteria applied, and thresholds used, to differentiate them from other operations and systems of the CCP that are not to be considered essential operations and systems.

## Article 19

### **Notification to the resolution college**

When preparing a description of the arrangements for notifying the resolution college in accordance with point (r) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan;

- a) A description of the procedures and processes to follow when notifying the resolution college and in particular, the information on distribution lists, template documents and timelines on how and when to inform the resolution college.
- b) A description of the procedures to keep the distribution lists up to date.
- c) A description on the arrangements for testing the notifying process of the resolution college, including information on the scope and intervals for such testing exercises and procedures to address any shortcomings such as errors, misunderstanding or delays.

## Article 20

### **Measures to facilitate portability of positions and related assets**

When preparing a description of the measures to facilitate portability of positions and related assets in accordance with point (s) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 the resolution authority shall ensure that, at least, the following elements are reflected in the resolution plan;

- a) an assessment of whether the portability of positions and related assets to another CCP is possible, including an assessment as to its feasibility and likely outcome and an assessment on the situation where the portability or transfer in the end is not possible.
- b) A description of how the CCP keeps the relevant data on positions in client omnibus and segregated accounts in accordance with Regulation (EU) No 648/2012 and how the CCP is able to provide details on the resources and systems in place to maintain up-to-date information that could be provided rapidly in resolution to ensure that client positions, where possible to identify, at the CCP could be identified and potentially transferred smoothly.



- c) A description of the measures to facilitate the portability of positions and related assets of the clearing members and clients of the defaulting CCP from the defaulting CCP to another CCP or a bridge CCP while not affecting the contractual relationships between the clearing members and their clients.

#### Article 21

##### **Entry into force and application**

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, XXX



## ANNEX 1

<p>Types of scenarios (Article 12(3)(a) and 12(7)(j))</p> <p>1.</p>	<p>Factors to describe type of scenarios (Article 12(3)(a) and 12(7)(j))</p>
<p><b>Default Scenario</b> – Unsuccessful recovery where the CCP does not have sufficient resources and tools for a successful recovery</p>	<p>Establish scenario where a CCP has not fully addressed liquidity shortfalls or established loss allocation arrangements that fully address uncovered credit losses. As a result, recovery resources and tools are insufficient to absorb losses and replenish financial resources to minimum regulatory requirements.</p>
<p><b>Default Scenario</b> - Failure of loss allocation arrangements</p>	<p>Establish scenario where the CCP's loss allocation arrangements set out in the recovery plan do not operate as intended and as a result, the planned resources or tools are not, or not sufficiently, available at the time of recovery.</p>
<p><b>Default Scenario</b> - Multiple clearing members do not meet their obligations under the CCP's recovery actions</p>	<p>Establish scenario where the multiple clearing members do not meet their obligations under the CCP's recovery actions. If the group of non-performing clearing members is sufficiently large or if their failure to meet obligations leads to a general loss of confidence in the CCP, the CCP may become unable to continue operations.</p>
<p><b>Default Scenario</b> – Timing of resolution actions</p>	<p>Establish scenario where the relevant authorities determine that resolution should be initiated before some of the arrangements or tools under the CCP's recovery plan are applied. In this scenario, the relevant authorities have determined that applying recovery arrangements or tools in the prevailing market conditions may threaten financial stability and/or the continuity of critical functions.</p>
<p><b>Non-default Scenario</b> - Investment risks</p>	<p>Establish scenario where losses on investments of initial margin or default fund assets could arise for example if an investment counterparty fails. A CCP may need to bear such losses, if the loss allocation tools in the CCP's rules do not cover them in another manner. Losses could also occur from the investment of a CCP's own financial resources including SITG and SSITG. Investment losses could materialise suddenly.</p>
<p><b>Non-default Scenario</b>- Failure of service providers</p>	<p>Establish scenario where, as a result of a failure of a custodian, depository, a payment or settlement bank, a payment system, a securities settlement system or other entity providing similar services, the CCP could lose timely access to its assets, become unable to collect margins or become unable to transform non-cash collateral or investments into cash. This could cause liquidity and/or solvency challenges to a CCP, depending on the nature or consequences of the failure and the time it takes to regain access to the assets.</p>
<p><b>Non-Default Scenario</b>- Operational risk events</p>	<p>Establish scenario where financial losses or liquidity challenges arise from a range of operational failures, such as human error, information technology failure, fraud, cyber incident, or non-performance of vendors or service providers. A CCP can incur operational losses directly (primary losses) or due to the legal actions taken by others affected by the event (secondary losses). Operational risk events can happen suddenly, but certain losses, particularly secondary losses can take years to fully materialise.</p>
<p><b>Non-Default Scenario</b> - Financial losses (Comprehensive loss allocation arrangements for custody and investment losses the CCP incurs as a result of its clearing and settlement activity)</p>	<p>Establish scenario where the CCP does not have sufficient financial resources or tools to cover non-default losses (including losses deriving from legal risks, including legal, regulatory, enforcement or contractual penalties that could lead to significant losses or uncertainty for the CCP and that can take a long time to materialise). In this scenario, the non-default losses would be larger than the CCP's capital and contingent resources (e.g. insurance, parental guarantees). Alternatively, in a scenario where the CCP's clearing members would also be required to bear losses, the aggregate resources available would be insufficient to cover the losses and/or to replenish capital back to the required minimum.</p>

<b>Types of scenarios</b> <b>(Article 12(3)(a) and 12(7)(j))</b>	<b>Factors to describe type of scenarios</b> <b>(Article 12(3)(a) and 12(7)(j))</b>
<p>1</p>	<p>Establish scenario where the CCP's arrangements to cover (specific) non-default losses set out in the recovery plan cannot be used or do not operate as intended. As a result, the planned resources or tools are not, or not sufficiently, available at the time of recovery.</p> <p>Establish scenario where the CCP's clearing members do not meet their obligations under the CCP's recovery actions. In this scenario, clearing members do not meet the applicable loss allocation or replenishment obligations.</p> <p>Establish scenario where the CCP's shareholders do not support the CCP's recovery actions. In this scenario, the CCP's parent company or other shareholders do not cover the CCP's non-default losses that are not allocated elsewhere and/or are unwilling to recapitalise the CCP, irrespective of whether there is a contractual commitment, parental guarantee, or similar arrangement to provide financial resources or not.</p> <p>Establish scenario where the relevant authorities determine that resolution should be initiated before some of the recovery arrangements or tools are applied or the CCP is wound down. In this scenario, the CCP's recovery and wind-down arrangements are consistent with the PFMI, but the relevant authorities have determined that applying them in the prevailing market conditions may threaten financial stability and/or the continuity of critical functions.</p>
<p><b>Event(s) causing simultaneous default and non-default losses -</b>  <i>This scenario addresses the situation in which there are concurrent default and non-default losses as a result of a single event or as a result of multiple events that occur in a reduced time span.</i></p>	<p>Establish scenario where there are specific entities that are material sources of both default and non-default losses, specific scenarios analyzing the effects of default events affecting these entities may be relevant.</p> <p>Considering where non-default losses would be borne by clearing members affecting the path of loss propagation and where there are material differences between different combinations of default and non-default events with respect to the available tools, usage of tools, paths of losses or impact on stakeholders.</p>