



European Securities and
Markets Authority

Final Report

RTS on the content of CCP resolution plans (Article 12(9) of CCPRR)





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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 Final Report have the same meaning as in CCPRRR 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 Article 12(7) 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 published the Consultation Paper with its draft RTS under Article 12(9) of CCPRRR on 18 November 2021. The consultation ended on 24 January 2022. ESMA also held a public hearing on the Consultation Paper (along with other consultation papers issued by ESMA under CCPRRR) on 14 January 2022.

In accordance with Article 12(9), ESMA has cooperated with the ESRB in finalising this draft RTS and has also sought advice from the Securities and Markets Stakeholder Group. This Final Report provides the draft RTS further specifying the content of the resolution plan in accordance with Article 12(7) of CCPRRR. The Final Report (and the accompanying draft RTS) assesses and takes into account, where suitable, the feedback provided by the respondents to the consultation.

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), SMSG (Annex 3) and the draft RTS (Annex 4).

Next Steps

ESMA will submit the Final Report and draft regulatory technical standards to the European Commission. The Commission has three months to decide whether to adopt the regulatory technical standards (in the form of a Commission Delegated Regulation). Following the



adoption, the regulatory technical standards are then subject to non-objection by the European Parliament and the Council.

2 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 ('CCPRR') on recovery and resolution of central counterparties was published in the OJ on 22 January 2021 and it entered into force on 12 February 2021¹.
3. Resolution is covered under several articles under CCPRR and Article 12 of CCPRR 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 CCPRR, is to develop, after consulting the ESRB, a draft RTS further specifying the content of the resolution plan in accordance with Article 12(7) of CCPRR. 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. Recital 28 states that 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.

¹ 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



6. In developing the draft RTS, ESMA has to take into account the relevant provisions of the corresponding RTS 2016/1075 (BRRD RTS)² developed by the EBA for the content of banks' resolution plans³, and consulted the ESRB.
7. ESMA has also considered the work done by the FSB on resolution matters, such as the “Key Attributes of Effective Resolution Regimes of Financial Institutions⁴”, the “Guidance on Central Counterparty Resolution and Resolution Planning”⁵ and the “Guidance on Financial Resources to Support CCP Resolution and on the Treatment of CCP Equity in Resolution”⁶.

3 Resolution Plans - scope of mandate

8. The resolution plan shall, as set out in Article 12(7) of CCPRRR, 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.
9. 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.
10. 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.

² 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

³ See Recitals 18 and 19, and Article 22.

⁴ https://www.fsb.org/wp-content/uploads/r_141015.pdf

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

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

3.1 Resolution plans under BRRD

11. 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.
12. 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 planning⁷ to ensure the RTS achieves the aim to further specify the requirements listed.

3.2 Principle of proportionality

13. 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 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.
14. Article 12(7) of 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 aspects or 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.
15. 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. The full assessments including technical notes should be included in an annex to the plan or in ancillary documents shared with the resolution college.
16. 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 CCPRRR 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.

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

3.3 National insolvency laws

17. 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.
18. 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

19. 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.
20. 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 so that the resolution plan is 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.

3.5 Consultation Responses

3.5.1 Overall Comments

21. The respondents generally agree with and support the approach that ESMA is proposing to take in the draft RTS as regards to the key elements that should be contained in the contents of the resolution plan.

3.5.2 BRRD RTS

22. There is an overall support of how ESMA has taken the BRRD RTS into account in drafting the draft RTS.
23. One respondent notes that ESMA has generally taken into consideration what is available in terms of resolution specifications, including provisions of BRRD, thereby complying with its mandate to take into account previous guidance adopted under the EU's bank resolution regime. Another respondent notes that there seems to be no aspects of the BRRD RTS that have not been included in the draft RTS and that it should have been.

24. One respondent provides the following additional information, that CCPs and banks are different, that bank resolution regimes may only serve as a starting point for ESMA's consideration as CCPs serve vastly different purposes compared to banks. CCPs purpose is to act as risk managers as opposed to risk takers like banks. Both types of entities differ in terms of business objectives, risk management methodologies and performance and therefore bank resolution regimes as such are not appropriate for CCPs and should not be directly applied in order to take into account these differences.

3.5.3 Recovery vs Resolution

25. One respondent notes that outside of an actual resolution, the CCP's supervisory authority should maintain its full supervisory powers at all times (i.e., oversight of a CCP should continue to reside with its primary supervisory authority) and to the extent the resolution authority has any concerns, it should raise them with the supervisory authority in the first instance.
26. One respondent notes that recovery is almost always preferable to resolution, but nevertheless welcomes well-designed international efforts to enhance and strengthen how CCPs will be resolved if the worst was to occur – such as a simultaneous default of several of the largest globally systemic banks. They therefore generally support further initiatives which encourage better planning by resolution authorities.
27. A few of the respondents notes that the point of resolution should be clearly defined in the plan as an early intervention by the resolution authority will undermine any chances of recovery by the CCP outside of resolution. If a resolution authority were to intervene prior to the exhaustion of all resources and tools defined for recovery in a CCP's rulebook and recovery plan, the incentives for market participants have to actively participate in the recovery process could be skewed.

3.5.4 Proportionality

28. There is an overall support of ensuring sufficient flexibility and proportionality in accordance with the legislative mandate set out in Article 12(9) of CCPRRR. The flexibility would be provided to resolution authorities to design resolution plans based on the specificities of CCPs as well as the local regulatory structure and legal framework. It is noted that the resolution plan should be comprehensive and fair – i.e., not one-size fits-all – because CCPs have different risk profiles and clear different products.
29. It is therefore believed that taking a too prescriptive approach can limit flexibility to the resolution authority to assess the factors to be reflected in its resolution plan based on the CCP's risk profile and specificities. The RTS should not require a fixed list of requirements for the resolution authority to include since it would not enable the necessary flexibility to ensure the plan is best suited for the CCP based on its risk profile, including products cleared, business model and membership.
30. One respondent notes that the circumstances that could lead to a CCP's resolution would be extreme and unprecedented and would almost certainly be accompanied by very high

levels of uncertainty. In such an environment a 'pre-packed' set of resolution measures would be of limited value whilst procedures and organisation that allow prompt, targeted action based on facts and circumstances at the relevant time would be necessary.

31. Hence, flexibility and proportionality are essential to ensuring that the resolution authorities are able to update the resolution plans for any innovations and changes in future to CCPs and thereby useful for the resolution authority to ensure the resolution planning is able to stay fit-for-purpose for any innovations and changes in future to CCPs.
32. It is noted that the resolution authorities of the jurisdiction where the CCP is established are best placed to judge the nuances of the extreme and unlikely event that could push a CCP into resolution based on the local regulatory structure and legal framework.
33. However, whilst resolution authorities should have discretion to design the final resolution plan based on the specificities of the CCP and their own jurisdiction, it is important that they consider the input and information provided by the supervisory authorities as well as all main elements of the resolution plan outlined in the RTS and reflect them in the final plan.
34. One respondent notes that they support ESMA's proposal to follow the principle of proportionality in the draft RTS but without tiering of CCPs so as to ensure an equal application of the standards across the EU.
35. The respondents overall agree with the draft RTS but the main challenge is the mandatory approach taken on resolution scenarios where a larger degree of flexibility is requested and this is further assessed under the section covering Article 11 on resolution strategies and scenarios.

3.5.4.1 Transparency Sharing of the summary to other stakeholders in a resolution

36. One respondent notes that parts of the resolution should be more transparent in order for the resolution objectives to be met by all stakeholders. It is important that all, including market participants, have information about the resolution goals and the tools utilised in the resolution plan to enable them to adapt their actions accordingly. It is further noted that if market participants do not have the required visibility, they may develop worst case scenarios and enact mitigation actions to cover all potential resolution actions, even if these were never part of the resolution plan and that some of these mitigating actions by clearing participants might run counter to resolution actions employed by the resolution authority.
37. One respondent believes that it is important to communicate the content of the resolution plan to all entities that are essential to successful execution of a CCP's resolution plan, together with the opportunity to provide comments. Hence, whilst the summary of a resolution plan will be shared with CCPs, such respondent would recommend to share the summary also with clearing participants (clearing members and their clients).

3.6 ESMA's feedback

38. ESMA notes the comments on when the resolution plan should be activated and this point in time should be clearly set out in the resolution plan. This is unfortunately not possible as the time when resolution is activated is set out under CCPRRR Title V, Resolution and were Article 22 states that the resolution authority shall take a resolution action in relation to a CCP provided that certain conditions are met. In addition, the comment on resolution not to intervene prior to the exhaustion of all resources and tools defined for recovery in a CCP's rulebook and recovery plan, is also not something that can be covered in the RTS but the interaction between recovery tools and other obligations and the application of resolution tools are catered for under CCPRRR, for example Articles 22(5), 23(1) and 27(3). Finally, on the timing of the application of the resolution measures, this comment may be more relevant for the Guidelines on determining what is considered under CCPRRR Article 22(1)(a) on when a CCP is failing or likely to fail.
39. ESMA generally agrees with the comments made and notes that indeed proportionality is important and how to balance flexibility with at the same time ensuring a harmonised approach and an equal application of the RTS.
40. ESMA further notes that transparency is a complex question and outside the mandate for the RTS, but has sympathy for the comments made and notes the competing interests where on one side information sharing of the plan ensures awareness, efficient planning and preparedness of the market but on the other hand, recognising that the resolution plan is a crisis management tool and instrument for the resolution authority to apply at its discretion in a crisis situation and where sharing information of the plan in advance may instead impede its efficient application in a crisis.
41. ESMA notes that one part of the information sharing to be undertaken under CCPRRR is the information referred to in Article 12(7)(a) i.e. the summary of the key elements of the plan, that is to be disclosed to the CCP concerned. The scope of information to be shared under this Article is further elaborated on under the section on Article 2 of the draft RTS below.
42. ESMA notes that Recital 32 states that "Given the sensitivity of the information contained in the recovery and resolution plans, those plans should be subject to appropriate confidentiality provisions". In addition, Recital 69 states "The resolution framework should include procedural requirements to ensure that *resolution actions are properly notified and made public*. However, as information obtained by resolution authorities and their professional advisers during the resolution process is likely to be sensitive, before the resolution decision is made public, it should be subject to an effective confidentiality regime. [...] It is therefore necessary to ensure that there are appropriate mechanisms for *maintaining the confidentiality of such information, such as the content and details of recovery and resolution plans* and the result of any assessment carried out in that context."
43. As noted, the obligation to disclose and share certain information referred to in point (a) of Article 12(7) to the CCP, i.e., a summary of the key elements of the plan is set out under

Article 12(8) of CCPRRR. ESMA therefore notes that no further disclosure is foreseen of the resolution plan under CCPRRR.

44. Under the recovery regime it is stated under Article 9(20) of CCPRRR that the measures set out in the recovery plans that create financial or contractual obligations on clearing members and, where relevant, clients and indirect clients, linked FMI or trading venues *shall form part of the operating rules of CCPs*.
45. ESMA notes that whilst recovery is depending on contractual arrangements, resolution is not, as resolution is regulated by the CCPRRR. Hence, the CCPRRR does not mandate nor envisage the resolution authority to share the resolution plan to clearing members and clients or service providers.
46. Under Article 73(1) of CCPRRR the requirements of professional secrecy shall be binding in respect of the senior management and members of the board of the CCP, and employees, during and after their appointment (CCPs). Article 73(3) of CCPRRR states “that the persons referred to in paragraph 1, including CCPs shall be prohibited from disclosing confidential information received during the course of their professional activities or from a competent authority or resolution authority in connection with their functions under this Regulation, to any person or authority [...]”. The Article further refer to possible disclosures during certain conditions and Article 73(4) of CCPRRR provides the possibility to derogate from paragraph 3, where the CCP may exchange confidential information with certain listed recipients provided that the recipient is subject to requirements of confidentiality for the purposes of that exchange. Infringement of Article 79 shall be subject to civil liability in accordance with national law.
47. ESMA notes that the CCP may want to explore the extent to which the CCP may be able to share the information under the plan to relevant stakeholders where such entities are either affected or relevant for the resolution plan. However, ESMA notes that there are clear limitations based on the confidentiality requirements under CCPRRR and that it is essential (as noted above) that confidentiality is maintained including the content and details of recovery and resolution plans. ESMA cannot under this RTS enable the sharing of information under the summary of the resolution plan beside the sharing of the resolution authority to the CCP as envisaged by Article 12(8) of CCPRRR.
48. Finally, in order to improve clarity and to ensure legal certainty, the RTS has been slightly amended based on the comments received.

4 Resolution Plans under CCPRRR as proposed under the Consultation Paper

4.1 A summary of the key elements of the resolution plan

49. As set out in point (a) of Article 12(7) “a summary of the key elements of the plan, distinguishing between default events, non-default events and a combination of the two”

50. 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 Article 12(8) of CCPRRR and states that the information referred to in point (a) of Article 12(7) 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.
51. 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 of the points under paragraph Article 12(7) 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.

Proposed RTS from Consultation Paper

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

52. As stated out in point (b) of Article 12(7) of CCPRRR, the Resolution plan shall include “a summary of the material changes to the CCP that have occurred since the resolution plan was last updated”

Proposed RTS from Consultation Paper

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;

- c) 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.
- d) Any material changes to interoperability arrangements of the CCP or to interdependences of the CCP, including the service providers of the CCP.
- e) Any material changes to the capital and capital structure of the CCP, including SITG and SSITG.

- f) 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.
- g) Any material changes to the structure of the CCP's organisation, ownership and managers incentive structures.
- h) Any material changes, or planned changes, to the resolution scenarios and resolution strategies.

4.3 Critical functions

53. As set out in point (c) of Article 12(7) of CCPRRR 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 so as to ensure the continuity of its critical functions during in the resolution of the CCP” and hence, separability is assessed in the designation of the resolution strategies.
54. FSB⁸ 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.
55. 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 lines⁹.
56. 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 success. Where the contrary is concluded, the strategies should limit the resolution tools requiring segregation to be implemented to ensure the resolution effectiveness.

Proposed RTS from Consultation Paper

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

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

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

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

57. As set out in point (d) of Article 12(7) of CCPRRR the resolution plan shall contain “an estimated timeframe for implementing each material aspect of the plan, including replenishing the CCP's financial resources”.

Proposed RTS from Consultation Paper

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.

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

- 58. As set out in point (e) of Article 12(7) of CCPRRR, the resolution plan shall include “a detailed description of the assessment of resolvability carried out in accordance with Article 15”.
- 59. 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.
- 60. 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.
- 61. 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.

Proposed RTS from Consultation Paper

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

62. As set out in point (f) of Article 12(7) of CCPRRR, the resolution plan shall include "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".
63. 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.

Proposed RTS from Consultation Paper

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

64. As set out in point (g) of Article 12(7) of CCPRRR, 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”.

Proposed RTS from Consultation Paper

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

65. As set out in point (h) of Article 12(7) of CCPRRR, the resolution plan shall contain “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”.
66. 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.
67. The list set out in Section B of the Annex of CCPRRR contains a significant list of information to be provided by the CCP to the resolution authority upon request.
68. 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.
69. 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.
70. ESMA initially proposed that 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 be subject to regular reviews and be updated upon request by the resolution authority or where otherwise a review and possible update would be reasonably expected to be made. The approach to ensuring information is up to date and available has been amended in this Final Report.

Proposed RTS from Consultation Paper

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

71. As set out in point (i) of Article 12(7), the resolution plan shall include “an explanation as to how resolution actions could be financed without the assumption of the elements referred to in paragraph 4” i.e., 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.

Proposed RTS from Consultation Paper

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

72. As set out in point (j) of Article 12(7) of CCPRRR, the resolution plan shall include “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

73. 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.

74. 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.
75. 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.
76. 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

77. The FSB has identified a list of hypothetical default and non-default scenarios that a resolution authority should consider in its resolution planning¹⁰. 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.
78. In order to provide for a comprehensive range of scenarios, the resolution plans should include several scenarios, and they should include further scenarios not specified in the draft RTS where needed to address specificities and operations of the CCP.
79. 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.
80. ESMA has proposed in the Consultation Paper to limit 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. However, the approach has been slightly adjusted based on comments received.

¹⁰ 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>

4.10.3 Quantify aspects of the resolution scenarios or strategies

81. 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.
82. ESMA notes that the FSB guidance states¹¹ 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. 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.
83. The FSB has considered the following aspects that the resolution authority may consider in conducting quantitative analyses¹²:
- 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.
84. 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.

¹¹ 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>

¹² 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>

Table 1:

Matrix proposed in the Consultation Paper 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))
Default Scenario – 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.
Default Scenario - 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.
Default Scenario - 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.
Default Scenario – 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.
Non-Default Scenario - 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.
Non-Default Scenario - 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.
Non-Default Scenario - 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.
Non-Default Scenario - 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.

Table 1:

Matrix proposed in the Consultation Paper 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))
	<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>Event(s) causing simultaneous default and non-default losses - <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

85. 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.
86. 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 plans¹³.

87. 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.

Proposed RTS from Consultation Paper

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

88. As set out in point (k) of Article 12(7) of CCPRRR, the resolution plan shall contain “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”

¹³ 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 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>

Proposed RTS from Consultation Paper

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 satisfactorily 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

89. As set out in point (l) of Article 12(7) of CCPRRR, the resolution plan shall contain “a description of the critical intra-group interdependencies as well as ways to address them”.
90. 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.

Proposed RTS from Consultation Paper

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

91. As set out in point (m) of Article 12(7) of CCPRRR, 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.

92. 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.
93. 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.

Proposed RTS from Consultation Paper

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

94. As set out in point (n) of Article 12(7) of CCPRRR, the resolution plan shall contain “a description of how the resolution authority will obtain the necessary information to perform valuation referred to in Article 24” of CCPRRR.

95. 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?”¹⁴ 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 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.”

96. 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.

97. 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.

Proposed RTS from Consultation Paper

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.

¹⁴ [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)

- 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

98. As set out in point (o) of Article 12(7) of CCPRRR, 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”.

Proposed RTS from Consultation Paper

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

99. As set out in point (p) of Article 12 (7) of CCPRRR, the resolution plan shall include “*a plan for communicating with the media and the public so as to be as transparent as possible*”, 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.

100. 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.

Proposed RTS from Consultation Paper

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

101. As set out in point (q) of Article 12(7) of CCPRRR, the resolution plan shall include “a description of essential operations and systems for maintaining the continuous functioning of the CCP's operational processes”, with a focus on the operations considered essential.

Proposed RTS from Consultation Paper

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

102. As set out in point (r) of Article 12(7) of CCPRRR, the resolution plan shall include “a description of the arrangements for notifying the resolution college in accordance with Article 72(1)¹⁵ of CCPRRR about the resolution actions the resolution authority intends to take and whether such actions deviate from the resolution plan.

Proposed RTS from Consultation Paper

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

103. As set out in point (s) of Article 12(7) of CCPRRR, 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”.

Proposed RTS from Consultation Paper

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

¹⁵ 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.

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.

4.20 Summary of consultation responses

104. There is a broad support for the resolution plan and how the detailed draft RTS envisages to further specify the resolution plan, however there are few aspects noted by the respondents and they are set out below.

4.20.1 Article 2: “Summary of the key elements of the resolution plan”

4.20.1.1 Scope of summary

105. There is an overall agreement with the proposed key elements to be contained in the summary of the resolution plan under Article 12(7)(a). There was support for the proposed approach to include a high-level summary of all elements set out in points (b) to (s) under 12(7)(a) of CCPRRR, to be included in the summary of the resolution plan.

106. There are a few respondents noting that for CCPs to be able to produce an informative and valuable opinion on the resolution plan, they should be provided with a comprehensive full summary of the whole resolution plan, instead of one that is limited to the key elements described in the Consultation Paper. Hence, although Article 2(b) of the draft RTS refers to “a short summary of the material key elements”, a more detailed description of the resolvability assessment should, in the respondents’ opinion, also be part of the summary. It is important for the CCP to have access on the resolution authority’s view on this and can help the CCP to set the right priorities to improve its resolvability.

107. Other respondents supported the approach taken by ESMA on the contents of the summary of the resolution plan and with ESMA’s not too prescriptive approach.

108. One respondent proposed that the resolution plans should vary depending on various conditions and the right amount of flexibility when determining the summary of the resolution plan is required while at the same time following an outcome-based approach.



4.20.1.2 Distinguishing between default events and non-default events

109. It is suggested by some respondents that ESMA should further consider distinguishing the various responsibilities amongst different types of non-defaulting events and this is further assessed under Article 10.

4.20.1.3 ESMA's feedback

110. ESMA would overall have sympathy for the aspects raised by the respondents. ESMA notes that the envisaged approach to capture in a high-level summary all elements of points (b) to (s) under 12(7)(a) is supported by some but that other respondents would support at a more detailed description and that in particular, the resolvability assessment should be part of the summary as it is important for the CCP to have access on the resolution authority's view on this and this can help the CCP to set the right priorities to improve its resolvability.

111. Based on this ESMA has concluded that to ensure a good level of information shared with the CCP and to provide flexibility in designing the information relevant for the CCP, would require further detailed work to ensure the summary of information is based on similar principles between the CCPs. However, considering the mandate under Article 12(9) to develop draft regulatory technical standards further specifying the contents of the resolution plan ESMA would prefer to provide the principles for the summary of the resolution plan under the RTS and to provide further details on this summary in Guidelines. ESMA will therefore separately consult on such Guidelines.

112. Based on this ESMA has amended the RTS to ensure the information to the CCP is based on the principles of relevance, and the guiding principle for the summary should not only be the key elements of the plan but the key elements relevant for the CCP. The summary should therefore provide a short succinct, focused but at the same time explanatory summary of the material key elements of the resolution plan in relation to each of the points under points (b) to (s) of Article 12(7)(a) of CCPRRR and be focused on the aspects relevant to the CCP.

113. The summary is thereby making the CCPs aware of key actions the CCP should be ready to perform and data the CCP should be ready to submit, and the summary should focus on where the plan may have a material impact on the CCP's recovery and crisis management planning, where there are expectations of the CCP to cooperate in the resolution and the measures that may affect the CCP's functions. Hence this may require more information to the CCP where it involves or effects the CCP, but less information where the part of the resolution plan is of less relevance to the CCP.

114. ESMA has noted the request to further separate between default and non-default losses and has considered this under Article 11.

4.20.2 Article 3: "Summary of material changes"

115. One respondent agrees with the fact that only *material* changes are considered in Article 3 of the draft RTS. In addition, the respondent would suggest deleting the reference



to the ancillary clearing related services, as these are side services and any changes to them should not, in the respondent's opinion, classify as a *material* change.

4.20.2.1 ESMA's feedback

116. ESMA agrees with this proposal and has amended Article 3 of the RTS accordingly.

4.20.3 Article 5: "Timeframe for implementation"

117. Two respondents propose regarding "timeframe for implementation", that some flexibility should be afforded to CCPs and as such when it comes to the timeframe for implementation of the resolution plan and in particular, in point (b), instead of "allocated times" they would suggest using the wording "allocated timeframes" or "allocated time spectrum".

4.20.3.1 ESMA's feedback

118. ESMA agrees with this proposal and has amended Article 5 of the RTS accordingly.

4.20.4 Articles 6 and 7: Resolvability assessment

119. One respondent notes that, in line with Level 1 text, CCPRRR should complement EMIR whereby all recognised CCPs already comply with the strict standards and legal requirements and as such, the resolvability assessment should be limited in scope and should not supersede EMIR or other regulations CCPs are subject to. Regarding the assessment of resolvability, one respondent notes that the need for the resolution authority to ensure that a CCP's structure and operations maximize resolvability should be balanced against, and take specific account of, the ongoing resilience and risk management requirements applicable to the CCP for authorization and ongoing operations.

120. One respondent notes that with regards to impediments to resolvability, they believe it would be helpful for ESMA to specify an overall time limit by which the national resolution authority/competent authority must prepare a report to the CCP, and also for the CCP to implement changes to remove/remediate these impediments. This is particularly important in the context of the FSB's guidance that CCPs' capital be used in full in resolution (and which relates to national insolvency law related subjects and issues).

4.20.4.1 ESMA's Feedback

121. ESMA notes that resolvability assessment is different from the supervision undertaken under EMIR, and Article 15(2) of CCPRRR states that a CCP shall be deemed resolvable where the resolution authority considers *it feasible and credible* to either liquidate it under normal insolvency proceedings or to resolve it applying the resolution tools and exercising the resolution powers while ensuring the continuity of the CCP's critical functions and avoiding any use of extraordinary public financial support and, to the maximum extent possible, any significant adverse effect on the financial system and the potential for undue

disadvantage to affected stakeholders. Hence, the resolvability assessment is an assessment purely dedicated to assessing the feasibility, i.e. the possibilities to either liquidate or resolve the CCP and should not be linked to the legal requirements applying to a CCP with the aim to ensure a well-functioning CCP and resilient CCP outside resolution.

122. ESMA notes the comments on timeframes for communication to the CCP and for the CCP to implement changes in relation to identified impediments to the resolvability of the CCP but notes that this is outside the scope of the mandates and directs the respondent to Articles 16 and 17 of CCPRRR.

4.20.5 Article 9 “Information requirements”

123. One respondent supports the requirement of reviewing all information at least yearly and also upon request by the resolution authority. This would help the CCP ensuring the resolution authority is using updated information.
124. Whilst ESMA saw benefit in limiting the information that should be kept up to date and available to the resolution authorities at all times to material information, the Article 12(7)(h) would not easily be reconciled with such a division of information, but is referring to the information required pursuant to Article 13, hence the RTS Article 9 has been adjusted accordingly.

4.20.6 Article 10 “How resolution actions could be financed”

125. One respondent requests a clarification that the financial resources envisaged to be needed under the resolution plan would be sourced in line with the provisions included in Level 1.
126. The respondent also suggests deleting the sentence “whether such financial resources or tools would be reserved for resolution or if they would also be available in recovery” in order not to conflate the two different phases.
127. The respondent in addition notes that point (b) states that the resolution authority shall prepare a description of potential sources of resolution funding, including the terms of financing. However, these may be very detailed and very difficult to know in advance and therefore suggest amending point (b) by adding “A description of potential sources of resolution funding, including the terms of financing, *to the extent they are available ex-ante* [...]”.
128. The respondent finally notes that point (c) requests the resolution authorities to analyse the conditions for CCP access to central bank facilities and points out that a recent research paper¹⁶ by EACH analyses the results of surveys conducted internally concerning the CCP access to deposits and liquidity and evidence shows that there is still

¹⁶ EACH Paper – CCP access to Central Banks’ facilities (December 2021): <https://www.eachccp.eu/wp-content/uploads/2021/12/EACH-Note-on-CCP-access-to-Central-Banks-deposits-and-liquidity-December-2021.pdf>

no common approach at European level, and that many CCPs cannot have any access to central banks or only with significant additional hurdles, such as obtaining a banking license. The respondent notes that access to central bank liquidity varies even more at the top level, with CCPs' level of access varying depending on whether it is for intra-day or overnight purposes and that this access is in own currency only, and with no CCP having access in multiple currencies.

4.20.6.1 ESMA's feedback

129. ESMA notes that CCPRRR regulates resolvability and indeed the RTS does not intend to go beyond CCPRRR but to complement CCPRRR in accordance with its mandate.
130. ESMA notes that the intention behind the reference to the measures under recovery, was to take into account the situation where not all contractual obligations and other arrangements have been enforced before the CCP enters into resolution, and for this parameter to be considered under the resolution plan, as the resolution authority would have to take a decision on whether to decide not to pursue those measures in resolution in accordance with Articles 23(1)(a) and 27(3) of CCPRRR. Hence, ESMA has deleted the reference in Article 10(a) of the RTS but inserted a new Article 10(b) to better reflect the aim of the paragraph.
131. ESMA agrees with the change in former Article 10(b) and has amended the paragraph accordingly.
132. ESMA notes the concern of access to central bank facilities but has not amended the RTS based on this comment.

4.20.7 Article 11 “Resolution strategies and scenarios”

4.20.7.1 Resolution Scenarios

133. It is noted that the unpredictable and idiosyncratic nature of a CCP resolution event, increases the need for procedures that allow prompt, targeted action based on facts and circumstances at the relevant time. Such respondent supports ESMA's conclusion that resolution authorities should build each of the scenarios “in a way that best fits the specific characteristics and level of complexity of the CCP.”
134. Some respondents question the need for the resolution plan to reflect at least the nine different types of scenarios described in the Annex. In their view, the scenarios in Annex 1 should only be referred to as examples that may or may not be reflected in the resolution plan based on the case-specific assessment of the resolution authority, in order to identify meaningful resolution scenarios that are appropriate to the specifics of the respective CCP.
135. Such respondents argue that to request nine resolution scenarios in the resolution plan would be an example of a too prescriptive approach which would not enable resolution authorities to select such a set of scenarios that would properly reflect the CCP's

specificities and instead would impose an obligation to introduce the same set of scenarios for different CCPs operating in different markets, clearing different products etc.

136. One respondent supports ESMA's view that resolution plans vary depending on characteristics of the CCP and that a one-size-fits-all approach should not be applied. Such respondents notes that to better provide for the differences among CCPs, ESMA may consider a less prescriptive and more flexible approach to the development of the resolution plan as envisaged in the Level 1 text.
137. It is recommended that Table 1 is not to be adopted and instead ESMA should take a more principles-based approach, whereby the resolution authority identifies scenarios relating to the types of default and non-default events that are relevant to the CCP's offering. However, to the extent this approach is not taken, at a minimum, Table 1 should then be referenced as providing examples and as such, the resolution authority should not have to adopt scenarios using every consideration enumerated.

4.20.7.2 Flexibility and level playing field

138. It is also noted that the work to ensure proportionality and allowing resolution authorities some room of manoeuvre, taking into account the risk and organisational profiles of their supervised CCPs is appreciated. However, such respondent notes that whilst considering that the consultation specifies that the draft RTS should not provide a fixed list of requirements for the resolution authority to include, they believe it needs to be assured that there is a level-playing field between the approaches that will be adopted by the resolution authorities in the various jurisdictions. The aim should be, in this context, to reserve similar treatments to similar CCPs, even though they are located in different jurisdictions.
139. One respondent notes the need for convergence, and that when taking these elements and the differences in CCPs into account, ESMA should ensure that there is a process to check that outcomes are similar across CCPs, and that decisions on scenarios across different CCPs result in a fair and equal treatment.

4.20.7.3 Cooperation with the CCP

140. Several respondents suggest resolution authorities to involve CCPs when preparing the detailed description of the resolution strategies and scenarios. One respondent notes that ultimately, the resolution authorities and CCPs will need to work together in order to identify meaningful resolution scenarios that are appropriate to the specifics of the respective CCP. Resolution strategies and tools may then be developed and prioritised on the basis of such scenarios. The respondent notes that it may not be helpful to burden this process with a fixed list of mandatory scenarios, but rather to allow flexibility for both the resolution authority and the CCP to reflect their individual characteristics.

4.20.7.4 Resolution Strategies

141. One respondent welcomes ESMA's proposal to provide further flexibility in the development of resolution strategies by allowing resolution authorities, if necessary, "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."
142. On the point that resolution authorities "should identify one or two preferred resolution strategies", one respondent notes that the strategies identified should be appropriate for the facts and circumstances of the specific resolution event. The respondent therefore also agrees with the additional point made by ESMA that where a preferred strategy is identified, the resolution authorities "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."
143. General caution is noted against taking a too prescriptive approach to resolution planning given that hypothetical scenarios would not be able to fully reflect the circumstances of an actual CCP resolution event.

4.20.7.5 Non-Default Losses¹⁷

144. One respondent notes that in relation to scenarios covering non-default loss (NDL) events, there are ex ante measures that a CCP can take to mitigate the risk of the NDLs being so severe as to be a trigger for resolution. Such ex-ante measures have been implemented by CCPs in most cases.
145. One respondent suggested that ESMA should further consider distinguishing the various responsibilities amongst different types of non-defaulting events since (i) some might not be the sole responsibility of the CCP and (ii) for some non-default event the responsibility will be shared among different stakeholders (e.g., investment losses or losses caused by the failure of a custodian). Loss allocation mechanisms for non-default losses should be proportional to the level of responsibility and/or benefits extracted from a service of each stakeholder.
146. Another respondent notes that that the description of non-default events takes into due consideration the various responsibilities, distinguishing among different types of non-default events. The respondent noted that in Recital 20 of CCPRRR, loss allocation for non-default losses should be proportional to the level of responsibility and/or benefits extracted from a service of each stakeholder.
- a. Those non-default events that are the sole responsibility of the CCP;

¹⁷ Research noted by the respondents includes:
[LCH, Tilburg University: Why Is a CCP Failure Very Unlikely? – March 2021](#)
[WFE: Guidance on non-default loss – June 2020](#)
[ISDA: CCP Non-Default Losses – July 2020](#)

- b. Non-default event whose responsibility is to be shared among different stakeholders and that occurred despite the CCP complying with all the rules (e.g. investment losses or losses caused by the failure of a custodian).

147. One respondent notes the research done by LCH and Tilburg University that shows that “an NDL loss event which exhausts both the Regulatory Capital held by the CCP and the annual profits held by the CCP has a very rare chance of occurring”. Similarly, based on recent research, one respondent would like to stress the importance of analysing the causes of NDL events to identify the source of the losses to the extent that is relevant to whether the responsibility for those losses is shared with others.

148. In a July 2020 paper on NDLs, the International Swaps and Dealers Association (ISDA) concludes that “in some instances, clearing members and their clients may bear at least a portion of NDL related to custodial risks, settlement bank risks and investment risks.” It is argued that, for example, some CCPs allow clearing members to dictate where their money is invested after deposit at the CCP. In these circumstances, the respondent would expect that clearing members are responsible for the losses, as they managed the decision as to where their money was held.

149. It is a respondent’s view that any resolution scenario should take into account the extent to which responsibility for losses is shared among stakeholders. In that sense, the respondent welcomes ESMA’s proposal in the NDL Scenario – Financial Losses that includes an alternative scenario “where the CCP’s clearing members would also be required to bear losses”.

4.20.7.6 ESMA’s feedback

150. ESMA notes the remarks on at least nine resolution scenarios and can agree that nine is maybe slightly too burdensome, but at the same reducing the list may risk too few scenarios as the aspects listed are important aspects to be considered in designing the resolution plan scenarios. In addition, making them only exemplary would risk a limitation to the envisaged harmonised approach within the Union.

151. ESMA notes that the bottom line is that the resolution plan should contain resolution scenarios *relevant for the CCP and covering the different types of causes and of circumstances* that could be relevant in a resolution situation, hence the coverage of the scenarios should in principle be at least as broad as the scenarios in table 1. Therefore when using table 1, the resolution authority can either use this set of scenarios and design at least 9 scenarios with the addition of scenarios where relevant due to the specificities of the CCP, or the resolution authority can use Table 1 as an overall guidance as to the aspects that needs to be covered by the scenarios and design the scenarios differently than those set out in table 1, but still capturing the width of aspects listed in table 1.

152. The type of scenarios listed are the following separated into three main categories, default events, non-default events and combined ones:

Default Scenarios



- Unsuccessful recovery where the CCP does not have sufficient resources and tools for a successful recovery
- Failure of loss allocation arrangements
- Multiple clearing members do not meet their obligations under the CCP's recovery actions
- Timing of resolution actions

Non-default Scenarios

- Investment risks
- Failure of service providers
- Operational risk events
- Financial losses (Comprehensive loss allocation arrangements for custody and investment losses the CCP incurs as a result of its clearing and settlement activity)

Event(s) causing simultaneous default and non-default losses - 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.

153. This would provide the resolution authority with further flexibility in the designation of the scenarios but protect a unified and harmonised approach of the resolution plans as all (or nearly all when applying the minimum list of 9 scenarios) of the aspects of the scenarios listed in table 1 should be reflected in the designed scenarios but may be included in a different manner. The resolution authority can in addition provide guidance on why a certain aspect is not relevant for their CCP due to product offerings or structure.

154. ESMA also takes note of the comment on division on responsibilities and ESMA has two reservations to implementing such as dividing line of the responsibility in a non-default event. The first reservation is the possibility to allocate responsibilities, such allocation may, in some cases, be impossible to apply in a resolution situation as many aspects and actions may be interlinked and it may be difficult to separate between different effects and causes. The second reservation is the usefulness of such a division under the scenarios, as the resolution scenarios are there to ensure the resolution strategies are well designed and carefully considered based on those made-up scenarios relevant for the CCP. Hence, to start to separate responsibilities would not assist in the design of resolution scenarios and resolution strategies but instead may create a "factual reference frame" for what is considered the responsibility of the CCP and the responsibilities of other entities and this would not be a suitable for the RTS to establish as it would be outside the mandate and would depend on the situation at hand. Based on this, ESMA has not pursued to include a separation and allocation of responsibilities under the non-default events.

155. Article 11 has based on above been slightly amended to reflect some of the comments received.

4.20.8 Article 12 “Critical interdependencies”

156. One respondent request ESMA under point (a) of Article 12, to specify how to define the “material effects” of the resolution authority assessing the critical interdependencies differently from how they have been assessed in the resolution plan.

4.20.8.1 ESMA’s feedback

157. ESMA agrees with this comment and has amended Article 10 of the RTS to improve the drafting.

4.20.9 Article 16 “Impact assessment on employees”

158. One respondent notes that with regards to staff retention, they believe that it is important that any incentive, compensation, and retention structures are assessed in terms of their value/relevance during a resolution phase. Deferred compensation in the form of share schemes may form less of a barrier to exit for staff if the share price has fallen considerably due to the CCP entering resolution. It is also possible that key staff may look to exit the CCP prior to it entering the resolution phase should they be aware of significant issues, in which case the content of the resolution plan will not be relevant.

159. One respondent would suggest deleting point (b) as it appears to be redundant with point (a).

4.20.9.1 ESMA’s feedback

160. ESMA agrees with those reflections and has amended Article 16 of the RTS accordingly, however ESMA does not find 16(b) redundant compared to 16(a) as one is describing the different types of staffs and one is describing how the staff may be impacted, however, ESMA has joined the two aspects into one.



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 Commission¹⁸;
- 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.

¹⁸ <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>Specific objective</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>Policy option 1</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.</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>Policy option 2</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</p>

	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.
How would this option achieve the objective?	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 CCPRRR, hence this option would not meet the requirements under Article 12(9) and has not been pursued by ESMA.
Policy option 3	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.
How would this option achieve the objective?	<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>
Which policy option is the preferred one?	<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 assessed by the resolution authority and be reflected in the resolution plan in accordance with its relevance to the CCP to</p>

	<p>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>
<p>Is the policy chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?</p>	<p>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.</p>

Impacts of the policies:	
Policy option 1	
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.
Policy option 2	
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 possible 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.
Policy option 3	
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.

5.2.1 Summary of responses

There is a broad support for Option 1, however the concerns raised by a few respondents with respect to the approach taken on resolution scenarios is making such respondents prefer Option 2 as this option would provide resolution authorities with more flexibility to align resolution planning with the specifics of a respective CCP.



Such respondents argue that policy Option 2, would provide for more flexibility for resolution authority in drawing up the resolution plan and notes that it is especially in the area of resolution scenarios that the resolution plan lacks sufficient flexibility and that more flexibility would not necessarily introduce CCP tiering but would enable resolution authorities to apply such aspects and considerations that are really relevant for a given CCP. One respondent notes that Option 2 would not seem to have a significant impact in terms of the cost and benefit analysis and instead would provide for additional prudence.

However, one respondent arguing for the benefits of Option 2 also notes that they could support pursuing policy Option 1 which could be helpful in terms of having the elements and contents of the resolution plan aligned and in the same order as the requirements under Article 12(7) of CCPRRR but that this would require a less prescriptive approach of some provisions, such as of RTS Article 11 Resolution strategies and scenarios which requires the introduction of at least nine designated resolution plan scenarios based on the matrix for building the resolution plan scenarios as set out in Annex 1.

5.2.2 ESMA's feedback

ESMA notes the support for Option 1 but at the same time notes that due to the requirement for 9 scenarios under the proposed RTS, Option 2 is considered more appropriate as less details are provided under this opinion but has other draw backs as set out in the assessment and would in ESMA's view not meet the requirements under CCPRRR.

Hence, ESMA would understand that the objection to Option 1 is possibly focusing on the disagreement for mandating 9 scenarios under the proposed RTS rather than the overall approach under Option 1. Therefore, ESMA would understand the request for Option 2 support for the request to not apply the 9 scenarios as mandatory but that otherwise the level of proportionality and the level of detail is supported under Option 1.

Based on this ESMA concludes to keep Option 1 as the most suitable approach and generally supported by the respondents considering the comments received to the consultation but have further considered the request to reduce the number of mandatory scenarios under the section considering Article 11 above.



5.3 SMSG's advice

In accordance with Article 10 of ESMA Regulation, ESMA has requested the advice of the Securities and Markets Stakeholder Group (SMSG). The SMSG has not provided any comment.



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) 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) While all elements specifying the content of the resolution plans should be covered, the resolution authority should ensure that the way these elements are reflected in the resolution plan is suitable for the CCP considering the specificities of the CCP, such as the nature and complexity of the clearing business performed by the CCPs.

(2) The summary of the resolution plan should be succinct, focused but at the same time it should contain sufficient explanations to cover the key elements of the plan that are to be disclosed to the CCP. The summary should make the CCPs aware of key actions they should be ready to perform and data they should be ready to submit. The summary should focus on where the plan may have a material impact on the CCP's recovery and crisis management planning and clarify any expectations from the CCP to cooperate in the resolution and the measures that may affect the CCP's functions.

(3) The resolution plan should contain resolution scenarios and resolution strategies, and the Regulation provides the resolution authority with the tools, in the form of different type of possible scenarios, including combinations thereof, to create relevant and suitable scenarios for the CCP 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.

(4) This Regulation should ensure that 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) 2021/23, during the planning phase of the resolution plan. As this Regulation provides only the elements to be reflected in the resolution plan, this does not affect the required flexibility under Regulation (EU) 2021/23 for the resolution authorities to be able to consider the national legal framework in the area of insolvency law in establishing the resolution plan.

(5) The Regulation further specifies the contents of the resolution plan but does not preclude the resolution authority from determining other aspects to be reflected in the resolution plan.



(6) To facilitate and ensure an effective implementation of the resolution plan, it is essential that where the resolution authority has assessed certain aspects of the CCP differently than to the CCPs own assessment under the recovery plan, this is reflected upon as it may affect how swiftly the resolution plan may be implemented, hence, where any differences are identified, the resolution authority should reflect upon them in the resolution plan and assess them to understand their effect (if any) on the implementation of the resolution plan.

(7) To ensure that resolution plans can be effectively implemented, if necessary, in due time, it is essential that the resolution authorities have “proof tested” the application of the intended resolution plan, to the extent possible, by testing processes and procedures in detail, including by sending e-mails and information to ensure any pre-planned actions on how and when to undertake certain steps and how and when to collect certain information are workable in a stressed situation and that any impediments found are corrected to ensure, to the extent possible, that the estimated timeframes are likely to be upheld.

(8) To ensure that key employees remain at the CCP for the resolution phase, the resolution authority should try to assess and pre-empt incentive structures to be used, possibly not only linked to the CCPs future gains, but also direct remunerations and should reflect how to ensure sufficient staff by considering short term hires, borrowing or lending employees, where relevant, so CCPs have the competence they need.

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

(10) In accordance with Article 12(9) of Regulation (EU) No 2021/23, ESMA has developed the draft technical standards in cooperation with the European Systemic Risk Board and ESMA has also taken into account the relevant provisions of the delegated acts adopted on the basis of Article 10(9) of Directive 2014/59/EU. ESMA has respected the principle of proportionality, by ensuring that the draft technical standards not only provide for a set of elements which the resolution authority should take into account when establishing the resolution plan but also by preserving certain flexibility for the resolution authorities to adapt the final resolution plan to the specificities of the CCP.

(11) 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 the strategies established and the underlying main scenarios under the resolution plan, distinguishing between default events, non-default events and a combination of the two; and
- b) A short summary of the material key elements of the resolution plan in relation to each of the points under points (b) to (s) of paragraph 7 of Article 12 of Regulation (EU) No 2021/23 with a focus on the aspects relevant to the CCP and thereby making the CCP aware of key actions the CCP should be ready to perform, data the CCP should be ready to submit, and on the aspects of the plan that could have a material impact on the CCP.

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 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, investment policies, collateral policies and settlement.
- e) Any material changes to the non-prudential requirements of the CCP, including organisational aspects such as organisational structure, business continuity and outsourcing, as well as material changes to the CCPs conduct of business rules including the composition of the CCPs membership and changes as to segregation and portability.
- f) Any material changes to the structure of the CCP's ownership and managers incentive structures.
- g) Any material 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.

- b) If there are any material differences compared to the recovery plans' list of critical functions and where there are such 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.
- c) 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.
- d) 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 clearing members, 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 clearing members, clients and indirect clients (where identified); and
 - iv. where possible to identify, an evaluation of the price of transfer of such transactions.
- e) 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.
- f) A mapping of critical functions to identified legal entities and to the CCP's core business lines.

Article 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 envisaged steps, with allocated timeframes, to be taken by the resolution authority for implementing each material aspect of the resolution plan and specifying corresponding steps for such implementation, including an estimated timetable to assess each of the resolution strategies and its applicability.
 - c) A description of how replenishment is envisaged under the resolution plan, including where derived from the recovery plan, and the estimated timeframe 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 timeframes 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 taking into account the processes and procedures, including the application of templates.

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 points a to c, under paragraph 1 of Article 15 of Regulation (EU) No 2021/23.
- c) A description of the rationale of the resolution authority for considering the feasibility in 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 details of when and how the resolvability has been assessed most recently by the resolution authority.
- f) A description of the availability of the envisaged assets and rights to the CCP under resolution and if such assets would be available for use in resolution or whether such use or transfer of such assets 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.
- g) A description of each aspect, as set out in Section C 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 method 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.
- b) If the described method under a), materially 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.

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 between the resolution authority and the CCP ensuring access to, and sharing of information, 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 list of the information required pursuant to Article 13 of Regulation (EU) No 2021/23 and a description of how the CCP has envisaged to ensure that such information is kept up to date and available at all times to the resolution authority.

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, clearly separating solvency from liquidity funding needs, including overall descriptions regarding the possible financial resources that are likely to be required in relation to the implementation of the resolution strategy including each relevant resolution scenario.
- b) In the situation where not all contractual obligations and other arrangements have been enforced before the CCP entering into resolution, a pre-assessment of the possible issues with pursuing such obligations and arrangements in relation to resources for financing resolution actions and if such identified issues may negatively affect the possibility to achieve the resolution objectives in a timely manner.

- c) A description of potential sources of resolution funding, including the main terms of financing, material preconditions for their use, the timing of their availability, and any collateral requirements to the extent they are available ex-ante.
- d) 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.
- e) 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. At least, nine designed resolution plan scenarios based on the matrix for building the resolution plan scenarios as set out in Annex 1 or a list of resolution plan scenarios covering all the “Types of scenarios” set out under Annex 1 where relevant to the CCP which may be designed differently.
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 have been designed in the resolution plan.
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 and reflect in the plan 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, whether different timeframes would apply for their implementation, and the key strategic analysis that underlies the different choices of elected resolution strategies.
 - b) A description of how the resolution authority has tested the envisaged strategies of the resolution plan, including how the resilience of the envisaged strategies based on elected scenario has been considered and whether issues or impediments could arise and if so, how they have been mitigated by revising the envisaged strategy, and scenario.
 - c) A detailed description of conditions, to be assessed by the resolution authority in determining an intervention under the resolution strategy, together with envisaged 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, including 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.
- b) If such identified interdependencies set out under a) entail any material 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 consequence on the application of the resolution plan due to the different assessments of critical interdependencies and how this can affect the resolvability of the CCP.
- c) 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 to the resolution procedure.
- d) A description of the assessment of the entities (as identified under (c)) 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.
- e) 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.
- f) A description of how entities identified to have a critical interdependency with the CCP under (a) have been assessed and how any identified risks mitigated and addressed, including legal enforceability and regulatory constraints of arrangements such as set-off and netting, to ensure operational continuity in resolution.
- g) A description of how any material issues due to a potential failure to comply with the obligations under the outsourcing arrangements, by the provider of critical outsourced service arrangements, have been mitigated in the resolution plan.
- h) 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.
- i) A description of possible impacts on other financial market infrastructures linked to the CCP, including 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.

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 group the CCP belongs to and a list of the group entities the CCP has links with, an assessment as to which group entities should be considered as critical intra-group interdependencies, and a description of the intra-group dependencies identified under the resolution plan.

- b) If such identified interdependences entail any material 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 due to the different assessment and how this can affect the resolvability of the CCP, if any.
- 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 intra-group 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 each of the essential operational processes and systems and a description of how to assess and maintain such essential operations and systems by providing identified options of continued access to infrastructures, processes and operational arrangements in order 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 and the key outcomes of the assessment.
- 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 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.
- f) 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 the information and processes for ensuring availability in an appropriate time and manner 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 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.
- d) 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.
- e) 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 details on line-by-line or portfolio-by-portfolio positions, transactions and collateral and the CCPs own capital.
- f) A description of the rules, key methodologies, assumptions and assessments used by the CCP in order to prepare the financial statements and regulatory reporting.
- g) 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, and categorisations of how different types of employees are to be informed and managed in a resolution situation and the estimated impact of the plan on the different types of employees of the CCP.
- b) A description of how to mitigate loss of material employees before the resolution and how to create effective incentives in a resolution to maintain material employees identified based on their value and relevance during a resolution phase. Aspects to bear in mind would include, any regulatory procedures required to be followed in resolution, assessments as to the envisaged effectiveness of incentive structures, the possibility to undertake changes in employment contracts, conditions and organisation during a resolution phase and an estimate of any associated costs of maintaining material employees or recruiting, including an assessment of any associated costs taking into account relevant national rules for compensation and reimbursements during resolution.
- c) A description of the plan for communication with employees, including a description of envisaged procedures to consult with employees 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 operational arrangements and procedures of the communication plan, the criteria for applying the communication strategy, the adequacy of the communication plan and how the plan achieves the aim of ensuring that the CCP's communication and disclosure plan manages to meet the objective 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 has assessed possible material negative market reactions of communicating resolution of a CCP and how the plan envisages to mitigate such 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.
- b) If the identified operations and systems are materially different from the essential operations and systems identified under the recovery plan, a detailed description of the main reasons for which the resolution authority has assessed the essential operations and systems differently and any material effects due to the different assessment and how this can affect the resolvability of the CCP.
- c) 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 successfully.
- 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.

Article 21

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

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

Done at Brussels, XXX

ANNEX 1

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))
Default Scenario – 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.
Default Scenario - 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.
Default Scenario - 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.
Default Scenario – 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.
Non-default Scenario - 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.
Non-default Scenario - 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.
Non-Default Scenario - 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.
Non-Default Scenario - 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.

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>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>Event(s) causing simultaneous default and non-default losses - <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>