

# Response Form to the Consultation Paper

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



## Responding to this paper

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

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

ESMA will consider all comments received by **24 January 2022**.

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

### Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_RSPL\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_RSPL\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_RSPL\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” → “Consultation on the content of CCP resolution plans”).

## **Publication of responses**

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

## **Data protection**

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

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

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

## General information about respondent

Name of the company / organisation	CCP12 - The Global Association of Central Counterparties
Activity	Central Counterparty
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	International

## Introduction

*Please make your introductory comments below, if any*

<ESMA\_COMMENT\_RSPL\_00>

The Global Association of Central Counterparties (“CCP12”) appreciates the opportunity to comment on the European Securities Markets Authority’s (“ESMA”) Consultation Paper on draft RTS on the content of CCP resolution plans.

### **About CCP12**

CCP12 is the global association for CCPs, representing 41 members who operate around 60 individual central counterparties (CCPs) globally across the Americas, EMEA and the Asia-Pacific region.

CCP12 promotes effective, practical, and appropriate risk management and operational standards for CCPs to ensure the safety and efficiency of the financial markets it represents. CCP12 leads and assesses global regulatory and industry initiatives that concern CCPs to form consensus views, while also actively engaging with regulatory agencies and industry constituents through consultation responses, forum discussions and position papers.

For more information, please contact the office by e-mail at [office@ccp12.org](mailto:office@ccp12.org) or through our website by visiting [ccp12.org](http://ccp12.org).

## CCP12 Members



<ESMA\_COMMENT\_RSPL\_00>

## Questions

Q1 : Do you agree with how ESMA has enabled sufficient flexibility and ensured proportionality in the draft RTS? If not, please explain?

<ESMA\_QUESTION\_RSPL\_01>

CCP12 welcomes that ESMA intends to ensure flexibility and proportionality with its proposed standards and agrees 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, among other factors. 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.

In terms of proportionality, CCP12 also agrees with ESMA's conclusion in Section 3.2 that 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.

In the context of flexibility, we question the merit of requiring resolution authorities to reflect a given set of nine resolution scenarios in the resolution plan. This 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.

Notwithstanding the above, we would like to stress the importance of resolution plans including a clear definition of the point of resolution which would follow after the CCP has had the opportunity to fully exhaust the arrangements and tools provided for under its recovery plan and rulebook. This would prevent confusion or uncertainty for CCPs and their participants and diminish the risk of early intervention which should be a last resort measure. For more details on the above please refer to our responses to the ESMA consultation papers on recovery-related draft RTS and Guidelines (especially draft Guidelines on the consistent application of the triggers for the use of Early Intervention Measures (Article 18(8) CCPRRR))<sup>1</sup>.

<ESMA\_QUESTION\_RSPL\_01>

Q2 : Is there any aspect from the BRRD RTS that is not included in the draft RTS, but should be? If yes, please specify and explain why?

<ESMA\_QUESTION\_RSPL\_02>

CCP12 is of the opinion 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. This happens in two ways: the application of BRRD already should – and does –

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<sup>1</sup> CCP12, Responses to ESMA's seven Consultation Papers on CCP Recovery and Resolution Regime (CCPRRR), available at [Link](#)

consider continuity of access of a failing bank to FMIs, and conversely, a CCP recovery or resolution plan affects its members, some of whom are banks. In this respect, banks' business with the CCPs should – and already is – reflected in their capital and liquidity planning. An additional link exists in the case of some CCPs which are subject to the BRRD when they have to hold a banking licence under their local rules.

It is important to note, however, that bank resolution regimes may only serve as a starting point for ESMA's consideration. In this context, CCP12 would like to emphasise that 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.

<ESMA\_QUESTION\_RSPL\_02>

Q3 : Do you agree with how the draft RTS envisages to further specify the resolution plan? If not, please explain?

<ESMA\_QUESTION\_RSPL\_03>

CCP12 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. To better provide for the differences among CCPs, CCP12 recommends that ESMA considers a less prescriptive and more flexible approach to the development of the resolution plan as envisaged in the Level 1 text.

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.

Regarding the assessment of resolvability, 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. EMIR is a very strict and comprehensive regulation and thus CCPs authorized under EMIR meet the highest standards of risk management and fulfil other prudential requirements. CCP compliance with these standards and legal requirements is tested and supervised on a regular basis (through internal and external stress-tests, competent authorities' assessments etc.). That is why the resolvability assessment's scope should be limited and should not contravene or supersede the requirements laid out in EMIR or other applicable CCP requirements. 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.

Regarding resolution strategies and scenarios, the legislation should ensure that resolution authorities are able to plan for scenarios which are by definition extraordinary, and that flexibility is retained. In particular, we do not like the prescriptiveness of having at least 9 sets of scenarios. In cooperation with the CCP, the resolution authority should establish meaningful

scenarios based on a CCP's specific characteristics. For some CCPs, the recovery tools and wind-down approach do not change based on the scenario.

Consequently, CCP12 would recommend that Table 1 should not 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 be referenced as providing examples and as such, the resolution authority should not have to adopt scenarios using every consideration enumerated.

<ESMA\_QUESTION\_RSPL\_03>

Q4 : In particular, do you agree with the content of the summary of the resolution plan (Article 12(7)(a))? Is there any aspect missing? If yes, please specify and explain why?

<ESMA\_QUESTION\_RSPL\_04>

CCP12 agrees that the summary of the resolution plan should contain the key elements in relation to the different scenarios distinguishing between default events, non-default events and a combination of the two. For CCPs to be able to produce an informative and valuable opinion on the resolution plan, however, 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.

<ESMA\_QUESTION\_RSPL\_04>

Q5 : Do you agree with the Option 1, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 1)?

<ESMA\_QUESTION\_RSPL\_05>

No, CCP12 would prefer policy Option 2, which would provide for more flexibility for resolution authority in drawing up the resolution plan. As per our comments above, it is especially in the area of resolution scenarios that the resolution plan lacks sufficient flexibility. It 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.

In our opinion, 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.

Alternatively, we 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 the CCPRRR but 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.

<ESMA\_QUESTION\_RSPL\_05>



Q6 : If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

<ESMA\_QUESTION\_RSPL\_06>

Please refer to our previous response regarding Option 2.

<ESMA\_QUESTION\_RSPL\_06>