



European Securities and
Markets Authority

Consultation Paper

Draft Guidelines on the assessment of resolvability (Article 15(5) of CCPRRR)



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex IV. 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 **1 August 2022**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

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

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Executive Summary

Reasons for publication

The resolvability assessment by the resolution authority results in a conclusion that a CCP will be considered to be resolvable, hence an important aspect in the preparation of a CCP's resolution planning. In undertaking the review the resolution authority should, in accordance with Article 15(1) of CCPRRR, assess the extent to which a CCP may be resolved without assuming certain financial supports, such as extraordinary public financial support or central bank assistance. ESMA, in close cooperation with the ESRB, shall issue Guidelines by 12 August 2022 to promote the convergence of the resolution practices regarding the assessment of the 26 matters set out under Section C of the Annex of CCPRRR that the resolution authorities are to consider when assessing the resolvability of a CCP.

The proposed Guidelines issued in accordance with Article 16 of Regulation (EU) 1095/2010 are dedicated to cover the establishment of a common set of aspects to be assessed under Article 15(5) of CCPRRR in order to promote the convergence of resolution practices regarding the application of Section C of the Annex to CCPRRR.

Contents

Section 1 presents the Introduction and Section 2 introduces the scope of the mandate for the Guidelines and Section 3 provides the structure of the Guidelines. Section 4 entails the annexes, where Annex I details the legislative mandate, Annex II provides the cost-benefit analysis and Annex III presents the proposed Guidelines. Finally, Annex IV contains the summary of questions.

Next Steps

ESMA will consider the feedback it receives to this consultation in Q3 2022 and expects to publish the Guidelines and the final report by Q4 2022.

1. Introduction

1.1 Background

1. The objective of the resolvability assessments is to make authorities and supervised entities aware of the implications of resolution for systemic risk, identify factors and conditions affecting the effective implementation of resolution actions and help determine the specific actions necessary to achieve greater resolvability without severe systemic disruption and without taxpayer exposure to losses while protecting systemically important functions¹. Consequently, the assessment of resolvability is a crucial element of resolution planning as it aims to ensure the suitability and effectiveness of the preferred resolution strategy.
2. According to Recital (29) of the Regulation (EU) 2021/23 of the European Parliament and of the Council on a framework for the recovery and resolution of central counterparties² (CCPRRR), the resolvability assessment is the basis on which resolution authorities may require changes to the legal or operational structure and organisation of CCPs.

Recital 29

Resolution authorities, on the basis of the assessment of resolvability, should have the power to require changes to the legal or operational structure and organisation of CCPs directly or indirectly through the competent authority, to take measures which are necessary and proportionate to reduce or remove material impediments to the application of resolution tools and ensure their resolvability. [...]

3. Article 15 of CCPRRR provides the framework for the resolvability assessments. Article 15(2) of CCPRRR states that a CCP is *deemed resolvable* where the resolution authority considers it *feasible and credible to either liquidate the CCP under normal insolvency proceedings or to resolve it by applying the resolution tools and exercising the resolution powers*. Article 15(3)(a) of CCPRRR requires the CCP to demonstrate, upon request by the resolution authority, that there are no impediments to the reduction of the value of instruments of ownership following the exercise of resolution powers.
4. ESMA notes that the resolvability assessment by the resolution authority results in a conclusion on whether or not that CCP will be considered resolvable, hence an important

¹ Key Attributes of Effective Resolution Regimes for Financial Institutions, I Annex 3 Resolvability Assessments, Paragraph 2, p. 37, Financial Stability Board, 15 October 2014.

² Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (Text with EEA relevance) (OJ L 22, 22.1.2021, p. 1).

aspect in the preparation of a CCP's resolution planning. In undertaking the review, the resolution authority should, in accordance with Article 15(1) of CCPRRR, assess the extent to which a CCP may be resolved without assuming certain financial supports, such as extraordinary public financial support or central bank assistance.

5. The resolution authority, in coordination with the resolution college, shall make the resolvability assessment at the same time as drawing up and updating the resolution plan in accordance with Article 12 of CCPRRR under Article 15(6) of CCPRRR. Furthermore, the resolution authority should notify ESMA in a timely manner where it considers that a CCP is not resolvable in accordance with Article 15(2) of CCPRRR.

Article 15(1) of CCPRRR

The resolution authority [...] shall assess the extent to which a CCP is resolvable [...].

Article 15(2) of CCPRRR

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.

The adverse effects referred to in the first subparagraph shall include broader financial instability or system wide events in any Member State.

The resolution authority shall notify ESMA in a timely manner where it considers that a CCP is not resolvable.

6. For the purposes of the resolvability assessment, Article 15(4) of CCPRRR states that the resolution authority should examine the 26 matters specified in Section C of the Annex to CCPRRR when assessing the resolvability of a CCP. These matters encompass the structural, operational, financial, information and cross border aspects of CCP resolvability as well as the credibility aspects of the CCP resolvability assessment.

Article 15(4)

For the purposes of the assessment of resolvability referred to in paragraph 1, the resolution authority shall, as relevant, examine the matters specified in Section C of the Annex.

Section C

Matters that the resolution authority is to consider when assessing the resolvability of a CCP

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

- (1) the extent to which the CCP is able to map core business lines and critical operations to legal persons;*
- (2) the extent to which legal and corporate structures are aligned with core business lines and critical operations;*
- (3) the extent to which the legal structure of the CCP inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;*
- (4) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;*
- (5) the existence and robustness of service level agreements;*
- (6) the extent to which the service agreements that the CCP maintains are fully enforceable in the event of resolution of the CCP;*
- (7) the extent to which the governance structure of the CCP is adequate for managing and ensuring compliance with the CCP's internal policies with respect to its service level agreements;*
- (8) the extent to which the CCP has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;*
- (9) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;*
- (10) the adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;*
- (11) the capacity of the management information systems to provide the information essential for the effective resolution of the CCP at all times even under rapidly changing conditions;*
- (12) the extent to which the CCP has tested its management information systems under stress scenarios as defined by the resolution authority;*
- (13) the extent to which the CCP can ensure the continuity of its management information systems both for the affected CCP and the new CCP in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;*

- (14) *the extent to which any intra-group guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust, where the CCP benefits from or is exposed to such guarantees;*
- (15) *the extent to which any intra-group transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust, where the CCP engages in such transactions;*
- (16) *the extent to which the use of any intra-group guarantees or transactions increases contagion across the group;*
- (17) *the extent to which the resolution of the CCP could have a negative impact on another part of its group, in particular where such group comprises other FMIs, where applicable;*
- (18) *whether third-country authorities have the resolution tools necessary to support resolution actions by Union resolution authorities, and the scope for coordinated action between Union and third-country authorities;*
- (19) *the feasibility of applying resolution tools in such a way which meets the resolution objectives, given the tools available and the CCP's structure;*
- (20) *any specific requirements needed to issue new instruments of ownership as referred to in Article 33(1);*
- (21) *the arrangements and means through which resolution could be hampered in the cases of CCP that have clearing members or collateral arrangements established in different jurisdictions;*
- (22) *the credibility of applying resolution tools in such a way which meets the resolution objectives, given possible impacts on clearing members and, where applicable, their clients, other counterparties and employees and possible actions that third-country authorities may take;*
- (23) *the extent to which the impact of the CCP's resolution on the financial system and on financial market's confidence can be adequately evaluated;*
- (24) *the extent to which the resolution of the CCP could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;*
- (25) *the extent to which contagion to other CCPs or to the financial markets could be contained through the application of the resolution tools and the exercise of the resolution powers; and*
- (26) *the extent to which the resolution of the CCP could have a significant effect on the operation of payment and settlement systems.*

7. ESMA is mandated in Article 15(5) of CCPRRR, in cooperation with the European Systemic Risk Board (ESRB), to issue Guidelines in accordance with Article 16 of

Regulation (EU) No 1095/2010³ ('ESMA Regulation') to promote the convergence of resolution practices regarding the application of Section C of the Annex to CCPRRR.

1.2 Comparison with existing resolvability assessment frameworks

1.2.1 EBA – Resolution planning in relation to resolvability assessments

8. Article 15(5) of CCPRRR is written in a similar manner as Article 15 of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions⁴ (BRRD), regulating resolvability assessments in the context of banking recovery and resolution. There is, however, a difference between Article 15(5) of CCPRRR requiring ESMA to issue Guidelines to *promote the convergence* of resolution practices regarding the application of Section C of the Annex to CCPRRR and Article 15 of BRRD mandating the EBA to develop draft regulatory technical standards to *specify the matters and criteria* for the assessment of the resolvability of institutions or groups. Hence, the mandate to ESMA is different from that of EBA in the sense that it provides for the issuance of Guidelines focusing on ensuring convergence of resolution practices in applying the matters already specified in CCPRRR.
9. EBA issued the draft regulatory technical standards in the content of resolution plans and the assessment of resolvability⁵ on the 19 December 2014 and they were adopted on 23 March 2016 by Commission Delegated Regulation (EU) 2016/1075 (EBA RTS)⁶. Section II of Chapter II of the EBA RTS specifies the requirements regarding the resolvability assessments by defining the stages of assessment and laying down the feasibility and credibility criteria of a resolution strategy.
10. ESMA also notes the work undertaken recently by EBA in their Final Report Guidelines on improving resolvability for institutions and resolution authorities under Articles 15 and 16 of BRRD issued in January 2022⁷ (EBA's Resolution Guidance) that is based on the

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁴ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council Text with EEA relevance (OJ L 173, 12.6.2014, p. 190).

⁵ EBA/RTS/2014/15, 19 December 2014.

⁶ 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 writ-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). OJ L184, 8.7.2016, p.1.

⁷ https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2022/EBA-GL-2022-01%20Guidelines%20on%20resolvability/1025905/Final%20Report%20on%20Guidelines%20on%20improving%20resolvability%20for%20institutions%20and%20resolution%20authorities.pdf

Consultation Paper Guidelines for institutions and resolution authorities on improving resolvability⁸ issued in March 2021 and which was open for a 3-month consultation period⁹.

11. The proposed Guidelines aim to, where suitable, implement existing international standards on resolvability and consider the best practices developed by EU , including, in the areas of *Operational Continuity in Resolution, Access to FMIs, Funding and liquidity in resolution, bail-in execution, business reorganisation and communication*. ESMA has considered the EBA’s Resolution Guidance in the preparation of the Guidelines to ensure a consistent assessment as to resolution plans where suitable.

1.2.2 International work on resolvability assessments

12. The resolution planning has been further assessed and developed in different international fora, such as the Financial Stability Board (FSB). Hence, ESMA has, in the preparation of the Guidelines, also considered the work presented by FSB in the relevant notes and guidance. The Financial Stability Board published in 2014 *Key Attributes of Effective Resolution Regimes for Financial Institutions*, that entails in Annex 3, *Resolvability Assessments*¹⁰ and in 2016 a discussion on *Essential Aspects of CCP’s resolution planning*¹¹ further developing the work done on the *Key Attributes of Effective Resolution Regimes* for financial institutions. There are also other notes or guidance covering resolvability assessments as part of the overall assessment, one of them is the *Guidance on Continuity of Access to Financial Market Infrastructures (“FMIs”) for a Firm in Resolution*¹².

2. Scope of Mandate

13. The mandate to ESMA is set out by Article 15(5) of CCPRRR and focuses on ensuring the convergence of resolution practices regarding the application of Section C of the Annex to CCPRRR.

By 12 August 2022, ESMA, in close cooperation with the ESRB, shall issue Guidelines to promote the convergence of resolution practices regarding the application of Section C of the Annex to this Regulation in accordance with Article 16 of Regulation (EU) No 1095/2010.

⁸ <https://www.eba.europa.eu/eba-consults-its-draft-Guidelines-institutions-and-resolution-authorities-improving-resolvability>

⁹ EBA/CP/2021/12, Consultation paper on Guidelines for institutions and resolution authorities on improving resolvability, 13 March 2021, available at:

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2021/Consultation%20for%20institutions%20and%20resolution%20authorities%20on%20improving%20resolvability/964043/CP%20on%20draft%20GL%20on%20resolvability.pdf

¹⁰ https://www.fsb.org/wp-content/uploads/r_141015.pdf

¹¹ Essential Aspects of CCP Resolution Planning, Discussion Note, Financial Stability Board, 16 August 2016.

¹² <https://www.fsb.org/wp-content/uploads/P060717-2.pdf>

14. The different 26 matters that the resolution authorities are to consider when assessing the resolvability of a CCP are set out in Section C of the Annex to CCPRRR.
15. The proposed Guidelines are dedicated to cover the establishment of a common set of aspects to assess under Article 15(5) of CCPRRR in order to promote the convergence of resolution practices regarding the application of Section C of the Annex to CCPRRR by issuing Guidelines in accordance with Article 16 of Regulation (EU) 1095/2010.
16. The Guidelines are developed bearing in mind international standards on resolvability as well as the best practices developed by EU resolution authorities on resolvability topics within the BRRD framework (as presented above under Section 1.2.1).
17. Different stages can be identified for the preparation and execution of resolution such as (i) resolution planning, (ii) preparation for resolution (iii) the 'resolution weekend'¹³ and (iv) the closing of the resolution. Resolvability assessment is part of the resolution planning stage and is crucial for the CCP's resolvability improvement.
18. ESMA notes that Article 15(2) of CCPRRR states: "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**".
19. In developing the Guidelines, ESMA has focused on the assessment to resolve the CCP rather than to liquidate the CCP, as the resolvability assessment is significantly different from a liquidation assessment which remains subject to national laws. Hence, these Guidelines focus on resolvability assessments and do not generally apply to the liquidation phase of the resolution process.
20. These Guidelines establish generic aspects for the resolution authority to consider. However, some of the aspects presented in the Guidelines may be more relevant for a certain type of resolution tool than others, and the extent of their application to other resolution tools is left to the discretion of the resolution authorities. Nonetheless, the resolution authorities should explain in the resolvability assessment why a Guideline would not be relevant for the CCP to ensure a harmonised application of the Guidelines to the extent possible.
21. As noted above, the Guidelines aim to guarantee common practices by providing the common denominator for the assessment of the resolvability of a CCP. Even if a CCP complies with and is in line with the aspects presented by the Guidelines, this does not necessarily mean that the CCP is resolvable, as it is the resolution authorities which have

¹³ The resolution weekend is the phase, preferably taking place when markets are closed, starting with the determination that a CCP is failing or likely to fail. It encompasses all internal processes needed for the adoption of the resolution scheme by the resolution authority.

the sole responsibility of making the resolvability assessment on the basis of their expert judgment.

22. ESMA however notes that the resolution authority shall assess the extent to which a CCP is resolvable in coordination with the resolution college in accordance with the procedure set out in Article 17 of CCPRRR, and after consultation with the competent authority.
23. ESMA notes that some of the aspects under the Guidelines come close to crisis management plans the CCPs have established under EMIR. Hence, where for example a CCP has a well-defined and well-functioning crisis management plan, this may be something the resolution authority may consider as part of the Guidelines as such preparedness may also assist the CCP in being resolvable.

Question 1: Do you agree with the general approach of the Guidelines and how ESMA has interpreted the mandate and the aim of the Guidelines? If not, please explain why.

3. Structure of the Guidelines

24. The resolution authority shall assess the extent to which a CCP is resolvable and shall examine the matters specified in Section C of the Annex in its assessment. In determining the extent to which a CCP is resolvable, the resolution authority should assess if any shortcomings, uncertainties, restrictions or limitations of the CCP are identified in examining the 26 matters of Section C, and if any such shortcomings, uncertainties, restrictions or limitations may affect the resolvability of the CCP.
25. ESMA's mandate is to promote the convergence of resolution practices regarding the application of Section C of the Annex to CCPRRR. Hence ESMA shall in addition to providing guidance to promote convergence on the 26 matters as set out in Section C of the Annex, also generally promote convergence on resolution practices in relation to those 26 matters.
26. ESMA has carefully considered how to most effectively provide such guidance, whether to provide guidance in relation to each of the matters or to provide guidance on the overall principles that should apply in assessing the 26 matters under Section C. ESMA has concluded that for the Guidelines to be proportionate and effective in promoting the convergence of resolution practices, it would be more suitable to provide for an overall guidance on how to assess the feasibility of resolving a CCP and to determine whether a CCP is deemed to be resolvable in a resolution.
27. ESMA has therefore introduced a Guideline that applies generally to the assessment of the matters under Guideline 1. The aim is not to conclude on the resolvability of the CCP but to guide the resolution authority in its assessment of the matters and to assist in the determination as to the significance of a shortcomings, uncertainties, restrictions or limitations of the CCP are identified in examining the 26 matters of Section C. Once the

significance of an issue is determined it is the resolution authorities which have the sole responsibility of making the resolvability assessment on the basis of their expert judgment.

28. ESMA has further considered the 26 matters and concluded that some of the matters are connected and could be served by a joint Guideline to ensure proportionality and efficiency.
29. However, to ensure the Guidelines provide concise and useful guidance on the relevant matters set out in the list in Section C, several of the matters are considered on an individual basis and covered by a Guideline suitable for the matter.
30. The Guidelines do not cover all topics relevant to the resolvability assessment due to the limitations of the mandate and focuses on providing guidance in relation to list of matters listed under Section C to promote the convergence of resolution practices. However, the aspects provided for the Guidelines to promote convergence in the assessment of the 26 matters are not a closed list and the resolution authority may consider other or additional aspects when assessing the resolvability of the CCP under CCPRRR.

Question 2: Do you agree with structure of the Guidelines? If not, please explain why.

4. Annexes

4.1 Annex I Legislative mandate to develop guidelines

Article 15

Assessment of resolvability

1. The resolution authority, in coordination with the resolution college in accordance with the procedure set out in Article 17, and after consultation with the competent authority, shall assess the extent to which a CCP is resolvable without assuming any of the following:

(a) extraordinary public financial support;

(b) central bank emergency liquidity assistance;

(c) central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

2. 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.

The adverse effects referred to in the first subparagraph shall include broader financial instability or system wide events in any Member State.

The resolution authority shall notify ESMA in a timely manner where it considers that a CCP is not resolvable.

4. For the purposes of the assessment of resolvability referred to in paragraph 1, the resolution authority shall, as relevant, examine the matters specified in Section C of the Annex.

5. By 12 August 2022, ESMA, in close cooperation with the ESRB, shall issue guidelines to promote the convergence of resolution practices regarding the application of Section C of the Annex to this Regulation in accordance with Article 16 of Regulation (EU) No 1095/2010.

6. The resolution authority in coordination with the resolution college shall make the resolvability assessment at the same time as drawing up and updating the resolution plan in accordance with Article 12.

4.2 Annex II - Cost-benefit analysis

Introduction

Pursuant to 15(8) of CCPRRR, ESMA shall, by 12 August 2022, in close cooperation with the ESRB, issue Guidelines to promote the convergence of resolution practices regarding the assessment of the 26 matters set out under Section C of the Annex of CCPRRR that the resolution authorities are to consider when assessing the resolvability of a CCP.

The Guidelines should be issued in accordance with Article 16 of Regulation (EU) No 1095/2010 and this article requires ESMA, where appropriate, to analyse the potential costs and benefits relating to proposed Guidelines. It also states that cost-benefit analyses must be proportionate in relation to the scope, nature and impact of the proposed Guidelines.

The objective of performing a cost-benefit analysis is to assess the costs and benefits of the various policy or technical options which were analysed during the process of drafting the Guidelines.

The Guidelines included in this Consultation Paper are of a mandatory nature, i.e. they are envisaged in CCPRRR in order to ensure uniform, consistent and coherent application of Union law.

In carrying out a cost-benefit analysis on the Guidelines 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 Commission¹⁴.

2. Cost-benefit analysis

Below are detailed the different corresponding policy options on how to promote the consistent application of the triggers for the use of the measures referred to in Article 15(8) of CCPRRR.

The resolvability assessment by the resolution authority results in a conclusion that a CCP will be considered to be resolvable, hence an important aspect in the preparation of a CCP's resolution planning. In undertaking the review the resolution authority should, in accordance with Article 15(1) of CCPRRR, assess the extent to which a CCP may be resolved without assuming certain financial supports, such as extraordinary public financial support or central bank assistance.

¹⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2016%3A0368%3AFIN>

The proposed Guidelines are dedicated to cover the establishment of a common set of aspects to assess under Article 15(5) of CCPRRR to promote the convergence of resolution practices regarding the application of Section C of the Annex to CCPRRR by issuing Guidelines in accordance with Article 16 of Regulation (EU) 1095/2010.

<p>Specific objective</p>	<p>A CCP shall be deemed resolvable where the resolution authority considers it feasible and credible 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.</p> <p>The Guidelines are dedicated to cover the establishment of a common set of aspects to assess under Article 15(5) of CCPRRR to promote the convergence of resolution practices regarding the application of Section C of the Annex to CCPRRR.</p>
<p>Policy option 1</p>	<p>To specify principles as guidelines for the resolution authorities to apply when assessing the extent to which a CCP is resolvable.</p>
<p>How would this option achieve the objective?</p>	<p>This option would likely meet the mandate as it would aim to promote the convergence of resolution practices regarding the application of Section C of the Annex to CCPRRR, it would however create a lower level of convergence as the actual aspects considered by the resolution authority to determine the resolvability would be determined by the resolution authority.</p>
<p>Policy option 2</p>	<p>To provide, in the Guidelines, the main aspects for the resolution authority to consider in determining the CCPs resolvability, but to leave the actual decision model for the resolution authority to determine.</p>
<p>How would this option achieve the objective?</p>	<p>This option would meet the mandate as it would promote the consistent application of the Section C of the Annex to CCPRRR and would create a high level of supervisory convergence as the aspects listed for the resolution authorities to consider would be harmonised.</p>

<p>Policy option 3</p>	<p>To provide, in the Guidelines, the main aspects for the resolution authority to consider in determining the CCPs resolvability as well as a model on how to evaluate the aspects using indicators or a pre-agreed model to conclude on the resolvability of the CCP.</p>
<p>How would this option achieve the objective?</p>	<p>This option would meet the mandate as it would promote the consistent application of the Section C of the Annex to CCPRRR and would create a very high level of supervisory convergence as the aspects listed for the resolution authorities to consider would be harmonised as well as providing clear guidance on how to assess and conclude upon them.</p> <p>This option would in ESMA's view risk to result in an assessment that is not able to consider the CCPs specificities enough and may therefore result in burdensome and too rigid assessment considering the complexity of the resolvability assessment. However, the Guidelines may in the future be complemented with further guidance if a lack of convergence or harmonisation in the resolvability assessment are identified, and hence further guidance on also <i>how</i> the resolution authority assess the resolvability may be provided in the future to enhance convergence.</p>
<p>Which policy option is the preferred one?</p>	<p>Option 2, given that Option 1 could be seen as too vague and may fall short of the aim in ensuring convergence in the assessments on the application of early intervention measures and given that Option 3 would risk leaving too little room for the resolution authority to decide on resolvability considering the CCP being assessed and this detailed approach would likely to be pre-mature at this stage.</p>
<p>Is the policy chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to</p>	<p>ESMA is responsible for issuing the Guidelines and the mandate given to ESMA is of a mandatory nature, i.e. the Guidelines are envisaged in CCPRRR in order to ensure uniform, consistent and coherent application of Union law.</p>

be informed or consulted?	
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Impacts of the proposed policies:	
Policy option 1	
Benefits	It will provide the principles for the resolution authority to determine on resolvability of the CCP.
Regulator's costs	Probably quite high as the competent authority have to create the list of indicators and monitor them.
Compliance costs	For the CCP no compliance costs.
Policy option 2	
Benefits	It will provide the resolution authority with a predetermined list of aspects to consider and monitor and based on this assessment, will lead the resolution authority to determine on the resolvability of the CCP.
Regulator's costs	Moderate costs to monitor the triggers and indicators.
Compliance costs	For the CCP no compliance costs.
Policy option 3	

Benefits	The Guidelines will provide the resolution authority with a predetermined list of aspects to consider as well as with a predetermined methodology on how to assess the aspects listed.
Regulator's costs	Moderate costs to monitor the triggers and indicators.
Compliance costs	For the CCP no compliance costs.
	<p>The costs for Option 2 can be summarised as the cost of the resolution authority to monitor the aspects and to determine on the resolvability of the CCP.</p> <p>The cost of implementing an ongoing monitoring and assessment will vary depending on the nature of existing procedures of the competent authority and a one-off cost may be required to accommodate for those triggers and corresponding indicators to be assessed.</p> <p>ESMA notes that the costs are envisaged for by the CCPRRR.</p> <p>On the basis of the analysis above, ESMA concludes that the benefits of issuing these Guidelines outweigh the costs.</p>

Question 3: Do you agree with the Option 2, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 2)?

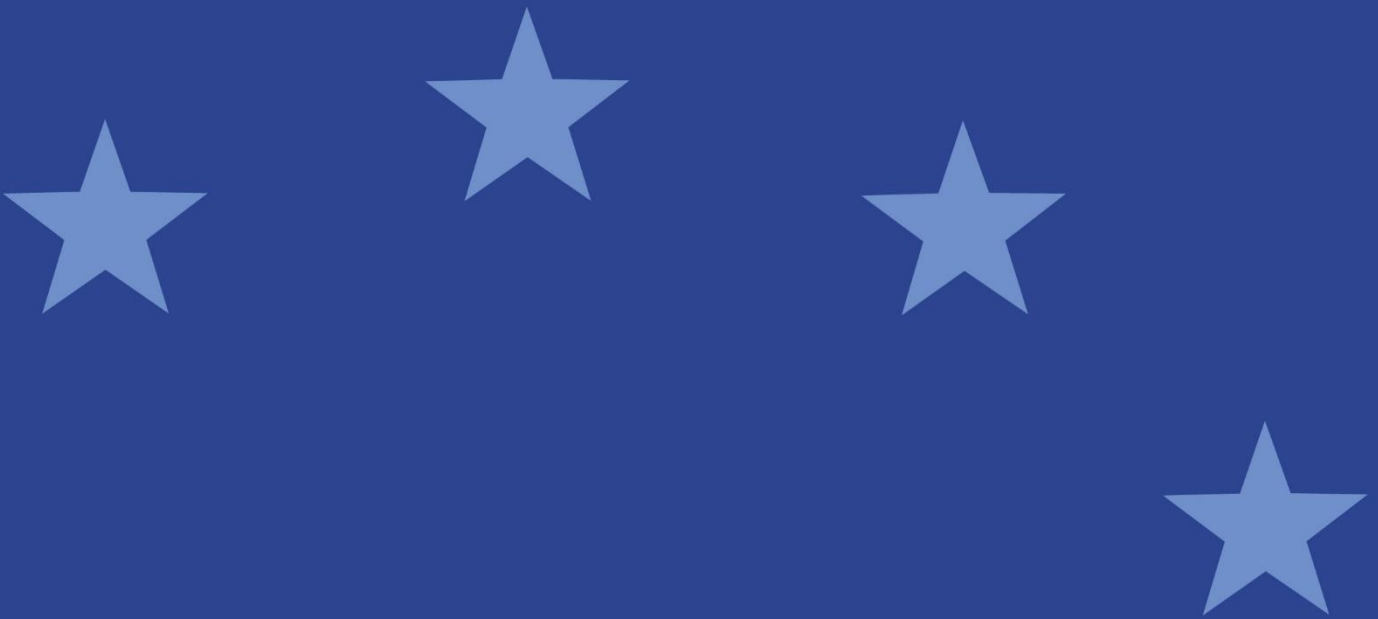
Question 4: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.



4.3 Annex III – Draft guidelines

Guidelines

on the assessment of resolvability (Article 15(5) of CCPRRR)



1. Scope

Who?

1. These Guidelines apply to resolution authorities.

What?

2. These Guidelines apply in relation to Article 15 of Regulation (EU) 2021/23 on CCP resolution and recovery (CCPRRR). These Guidelines establish a common set of aspects for resolution authorities to consider when applying the 26 matters provided in Section C to the Annex of CCPRRR during the conduct of resolvability assessments.

When?

3. These Guidelines apply as from the moment the official translations thereof in EU official languages are published on ESMA's website.

2. Legislative references, abbreviations and definitions

Legislative references

The following legislative references are used in these Guidelines:

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 ¹⁵
EMIR	Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories ¹⁶
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ¹⁷ .

The following abbreviations are used in these Guidelines:

<i>CCP</i>	Central Counterparty
<i>CP</i>	Consultation Paper
<i>EC</i>	European Commission

¹⁵ OJ L 22, 22.1.2021, p. 1–102

¹⁶ OJ L 201, 27.7.2012, p.1

¹⁷ OJ L 331, 15.12.2010, p. 84



<i>EEA</i>	European Economic Area
<i>ESFS</i>	European System of Financial Supervision
<i>ESMA</i>	European Securities and Markets Authority
<i>ESRB</i>	European Systemic Risk Board
<i>EU</i>	European Union

4. Unless otherwise specified, the terms used in this Guideline proposal have the same meaning as in CCPRRR and EMIR.

3. Purpose

5. These Guidelines are based on Article 15(5) of CCPRRR. The objective of these Guidelines is to promote convergence of resolution practices regarding the application of Section C in accordance with Article 16(1) of the Regulation (EU) No 1095/2010.
6. In order to achieve this objective ESMA should in addition to providing guidance to promote convergence on the 26 matters as set out in Section C, also generally promote convergence on resolution practices in relation to those 26 matters. However, even if a CCP complies with and is in line with the aspects presented by the Guidelines, it does not necessarily mean that the CCP is resolvable, as it is the resolution authorities which have the sole responsibility of making the resolvability assessment on the basis of their expert judgment.
7. As the Guidelines establish generic aspects for the resolution authority to consider, some of the aspects presented in the Guidelines may be more relevant for a certain type of resolution tool than others, and the extent of their application to other resolution tools is left to the discretion of the resolution authorities. The Guidelines does not provide an exhaustive list and the resolution authority may consider other or additional aspects when assessing the resolvability of the CCP under Article 15 of CCPRRR.
8. However, in order to ensure a harmonised application of the Guidelines to the extent possible, the resolution authorities should explain in the resolvability assessment why a Guideline would not be relevant for the CCP or if additional aspects are used in the resolvability assessment.

4. Compliance and reporting obligations

Status of the Guidelines

9. In accordance with Article 16(3) of ESMA Regulation, competent authorities (being the resolution authorities designated pursuant to Article 3 of CCPRRR) must make every effort to comply with these Guidelines.
10. Competent authorities to which these Guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate.

Reporting requirements

11. Within two months of the date of publication of the Guidelines on ESMA's website in all EU official languages, competent authorities to which these Guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the Guidelines.
12. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the Guidelines on ESMA's website in all EU official languages of their reasons for not complying with the Guidelines.

5. Guidelines on CCP assessment of resolvability

5.1 Introduction to the Guidelines

ESMA notes that Section C of Annex to CCPRRR contains references to both, 'critical functions and 'critical operations' whereas in the different matters only the latter is mostly used. Considering the definition of critical functions provided under CCPRRR it is understood that critical operation(s) of a CCP form part of the critical functions as defined under CCPRRR.

ESMA further notes the use of the terminology "service level agreement" under matters 5, 7, 8 and the use of "service agreement" under matter 6 and as the term service agreements generally also caters for the service level agreements and the important aspect for the assessment under the Guidelines is to ensure all relevant service agreements (be them under the 'chapeau' of service level agreement or not), are captured. ESMA therefore under the Guidelines 4 and 5, use "service agreement" to cater for both type of agreements, to ensure a content driven assessment focusing on the aim of Guidelines 4 and 5.

5.2 Guideline 1 – Principles for the resolvability assessments

In determining the extent to which a CCP is resolvable, the resolution authority should assess if any shortcomings, uncertainties, restrictions or limitations of the CCP are identified in examining the 26 matters of Section C, and if any such shortcomings, uncertainties, restrictions or limitations may affect the resolvability of the CCP.

ESMA proposes for the resolution authority to use the method with the described elements to guide on the resolvability of the CCP.

Materiality assessment

ESMA notes that for an identified issue in relation to a concern, shortcomings, uncertainty, restriction or limitation to affect the overall assessment of the CCPs resolvability, it would need to result in a material concern i.e. (i) to be of a significant value, (ii) likely to occur (probable) and (iii) the complexity of the issue would likely negative affect the resolvability.

ESMA therefore would suggest the resolution authority to establish an assessment system, using these 3 parameters in assessing the identified shortcoming, uncertainty, restriction or limitation, and to conclude if the issue is of such an overall materiality that it may affect the resolvability of the CCP.

Parameter 1 - Significance of the issue identified

Relevance

ESMA has noted that for an issue to be considered in the resolvability assessment of a CCP, it has to be relevant for the resolvability assessment, i.e., the assessment should consider how the identified shortcoming, uncertainty, restriction or limitation is relevant for the overall assessment.

ESMA notes that, for example, whilst an identified lack of a certain procedure may be an important shortcoming in the overall assessment of the CCPs compliance with procedures, it may be less relevant for the determination on the resolvability of the CCP, hence such a shortcoming would be less relevant in the overall assessment of the CCP's resolvability.

ESMA further notes that whilst an identified shortcoming, uncertainty, restriction or limitation is relevant for the overall assessment it may be in the process of being corrected or mitigated, hence would again be less relevant for the overall resolvability assessment.

The more relevant an identified issue is for the outcome of the resolvability assessment, the higher the significance allocated to the issue. An issue in the process of being corrected or mitigated in a satisfactory manner would be considered as less relevant by the resolution authority.

Size

ESMA has noted that the size of an issue, such as an identified shortcomings, uncertainty, restriction or limitation, has an impact on the significance assessment in the resolvability assessment of the CCP.

ESMA notes that a big issue, may often result in a high significance, however a big issue on a less relevant aspect of the resolvability assessment may also result in a fairly high significance as due to its size, the issue may affect the resolvability to a larger extent. On the contrary, ESMA notes that significance is not always related to size, as a minor issue, such as a shortcoming on a very important aspect in the assessment of resolvability may have a significant impact on the resolvability of the CCP.

The significance is generally related to size, and the bigger an issue is the more likely is it that the identified issue is considered significant for the resolvability assessment. However, where the issue identified is in relation to a very important aspect of the resolvability assessment, also a minor issue may result in a significant risk, as such identified issue may reduce the chances of a resolution being feasible and credible.

Parameter 2 – Probability or certainty

ESMA notes that the **probability of a risk materialising or the certainty of an identified issue**, would both likely result in a higher significance of the issue compared to where the issue is unlikely to materialise or is uncertain.

ESMA notes that for example in relation to certainty, the **certainty of reviewed material may impact the outcome of the assessment**, for example where the resolution authority has identified uncertainties in the material assessed (such as contradicting information, unclear numbers, unclear references and explanations) and where those uncertainties were not able to be corrected within the resolvability assessment, such uncertainties may increase the significance of the issue.

ESMA would therefore consider that a high degree of certainty for example, in the mapping exercise, increases the chances of a successful resolvability assessment. The contrary would also be true, that where there are clear uncertainties in a mapping exercise and this inability to map would prevent the use of a resolution tool or increase the likelihood of difficulties in applying a resolution tool, this lowers the chances of a successful resolution.

The higher the probability of an issue materialising is and the lower the certainty of the issue identified (i.e. the scope of the issue cannot be verified), the higher is the risk that the identified issue is significant to the resolvability assessment, as issues with a high probability and uncertainties in relation to identified issues raises the risk that the use of a resolution tool would not in the end be successful and therefore reduces the chances of a resolution being feasible and credible.

Parmenter 3: Complexity

ESMA has noted that the complexity of an issue, also where in relation to other parts of the CCP or the CCP group, such as an identified shortcoming, uncertainty, restriction or limitation, has an impact on the materiality assessment in the resolvability assessment of the CCP.

ESMA notes that the complexity of an identified issue works in two different ways: complexity in assessment and complexity in the CCP, and both are relevant for the assessment.

Complexity in assessment: Where the issue at hand is not a complex issue, then its significance will depend on other parameters of the assessment, relevance, size and certainty. However, where the issue identified is complex, this may increase the materiality of the issue, as such complexity may at the time of resolvability negatively affect the resolvability even where the issue identified may be minor in size or relevance.

Complexity in the CCP: Where the issue derives from a complexity within the CCP, for example where the mapping of entities within a group or where the preparation to receive certain valuations is complex, this may negatively affect the resolvability of the CCP. Hence where an issue identified derives from the underlying complexity within the CCP (group structure, governance or internal procedures relating to core business lines and critical functions with an entity) this may increase the materiality of the issue in the resolvability assessment.

The more complexity there is in an issue identified or in the CCP's group structure, governance or internal procedures relating to core business lines and critical functions with an entity, the higher the risk that the identified issue is material to the resolvability assessment and reduces the chances of a resolution being feasible and credible.

Guideline 1

In the determination of the CCPs resolvability, the resolution authority should assess if any concerns, shortcomings, uncertainties, restrictions or limitations have been identified in the assessments of the relevant matter and if any of those identified concerns, shortcomings, uncertainties, restrictions or limitations may affect the resolvability of the CCP in a detrimental or negative manner, using the elements listed under this Guideline 1 for this assessment.

The resolution authority would, by assessing the significance, probability and complexity of the identified issue, decide if the identified issue could be considered to have a material negative impact on the resolvability of the CCP.

The resolution authority should use the method outlined in this Guideline 1 to assess, given the specific characteristics of the CCP and the resolution strategies identified in the plan, the impact of an identified issue on the specific resolvability matter based on the materiality assessment, considering in principle three main parameters listed below.

Parameter 1 – Significance

Relevance

The more relevant an identified issue is for the outcome of the resolvability assessment, the higher the significance allocated to the issue. An issue in the process of being corrected or mitigated in a satisfactory manner would be considered as less relevant by the resolution authority.

Size

The significance is generally related to the size, and the bigger an issue is the more likely is it that the identified issue is considered significant for the resolvability assessment. However, where the issue identified is in relation to a very important aspect of the resolvability assessment, also a minor issue may result in a significant risk, as such identified issue may reduce the chances of a resolution being feasible and credible.

Parameter 2 – Probability

The higher the probability of an issue materialising is and the lower the certainty of the issue identified (i.e. the scope of the issue cannot be verified), the higher is the risk that the identified issue is significant to the resolvability assessment, as issues with a high probability and uncertainties in relation to identified issues raises the risk that the use of a resolution tool would not in the end be successful and therefore reduces the chances of a resolution being feasible and credible.

Parameter 3 – Complexity

The more complexity there is in an issue identified or in the CCP’s group structure, governance or internal procedures relating to core business lines and critical functions with an entity, the higher the risk that the identified issue is material to the resolvability assessment and reduces the chances of a resolution being feasible and credible.

Template to assist the resolution authority in their assessment.

	Issue/s detected	Significance (low, medium, high)	Probability ((low, medium, high)	Complexity ((low, medium, high)
GL 2				
GL 3				
GL 4				
[to be completed]				

Question 5: Do you agree with Guideline 1 providing principles on the overall assessment of a CCPs resolvability to ensure convergence to the extent possible. If not, please explain why.

5.3 Guideline 2 - Matters 1-3: Mapping and alignment of core business lines and critical operations

- (1) the extent to which the CCP is able to **map core business lines and critical operations to legal persons**;
- (2) the extent to which **legal and corporate structures are aligned with core business** lines and critical operations;
- (3) the extent to which the **legal structure of the CCP inhibits the application of the resolution tools** as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;

Matters 1 to 3 of Section C to the Annex of CCPRRR cover the aspects in relation to the assessment of a CCPs identified core business lines and critical operations. More specifically, matters 1 to 3 relate to the corporate dimensions of how CCPs core business lines and critical operations are performed, the legal entities composing the group of the CCP or other entities that are involved in operating a core business line or a critical operation of the CCP.

As mentioned above, ESMA notes that whilst 'critical operations' is used under matters 1-3 it is understood that critical operation(s) of a CCP form part of the *critical functions* as defined under CCPRRR.

ESMA would understand that the reference to "legal persons" in matter 1, should include all legal persons either within the CCP group or outside the CCP's group structure, that are important to the CCP, either by providing services or would be otherwise involved with the CCP's core business lines and critical operations or where the CCP is dependent on such legal person in its provision of services in relation to core business lines and critical operations. Hence the assessment under matter 1 should result in an understanding of the mapping undertaken by the CCP and provide information of the identified legal persons which has been mapped to the CCP's core business lines and critical operations and if there are core business lines and critical operations that cannot be mapped to a legal person and the reason for this.

To assess the CCPs resolvability based on this mapping, ESMA would consider that a high degree of certainty in the mapping exercise increases the chances of a successful resolvability assessment as any measures that would have to be taken in relation to such business or service can be pre-assessed and catered for in preparation for resolution.

ESMA would understand matter 2 to be focused on the CCP's legal and corporate structures; i.e. legal entities forming part of the CCP's group and the CCP's internal organisation and group structure, and the aim to assess the extent to which the CCP's legal and corporate

structures are aligned with core business lines and critical operations identified under the resolution plan and used in the mapping under matter 1.

Here the assessment could focus on, for example, whether applying the resolution tools and exercising the resolution powers would be feasible considering how the core business lines and critical operations sit with the CCP or within the group structure. For example, if an identified critical operation of a CCP is supported by different entities within the group, this could make a resolution tool more difficult to apply if the complexity of the structure increases complexity and time delays in the application of a resolution tool. However, it may also simplify the use of a resolution tool depending on how the tool is applied.

Hence, the more reliance and interconnectedness there is within a CCP or its group, the more careful the assessment needs to be to ensure the reliance and interconnectedness is fully explored and understood to assess how the structures are aligned with the CCPs core business lines and critical operations. The more aligned (complex or not) the structure is to a certain aspect of the CCP's business structure, arguably the easier it would be to use a resolution tool that affects this part of the CCP's business.

Matter 3 is closely linked to matter 2, in that this assessment considers similar aspects as under matter 2 but with the difference that here the assessment focuses on the actual risk that the CCP's structure could, and the extent to which it could, prevent the use of resolution tools.

Guideline 2 provides for a common set of aspects the resolution authority should use to assess matters 1 – 3 set out in Section C of Annex to CCPRRR.

Guideline 2

The resolution authority should consider the extent to which (i) the CCP is able to map core business lines and critical operations to legal persons, (ii) corporate structures are aligned with core business lines and critical operations and (iii) the legal structure of the CCP inhibits the application of the resolution tools due to complexity of the group (matters 1-3 of Section C of CCPRRR Annex) by assessing the following aspects:

1. Whether and to what extent the CCP has identified its core business lines and critical operations.
2. Whether and to what extent the CCP has mapped its core business lines and critical operations to legal persons and whether the mapping of the CCP is comprehensive and up-to-date.
3. Whether legal persons, such as critical or essential service providers, have been identified in the mapping and if the mapping describes the scope and provide details

of the core business lines and critical operations mapped to each such identified legal person.

4. Whether the mapping of the core business lines and critical operations against the CCP's legal and corporate structures has identified:
 - a) an alignment between the different clearing services provided by the CCP and how the CCP is organised or if there are no or limited alignments identified;
 - b) that there are several legal persons within the CCP group structure and the extent to which the number of legal persons raises the complexity of the group or if there are other indications that the CCPs structure is overly complex; and
 - c) that the ownership's structure results in complex decision models, reliance on owners or other legal persons within the group for resolution tools, entails complex ownership structures or have owners with complex or public ownerships.
5. Whether the mapping has identified clearing services that could more easily be separated from other clearing services of the CCP, or not.

5.4 Guideline 3 - Matter 4: Arrangements to provide for essential staff, infrastructures and capital

(4) the extent to which there are **arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital** to support and maintain the core business lines and the critical operations;

Matter 4 of Section C to the Annex of CCPRRR covers CCP's arrangements, means and resources through which the CCP may provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the CCP's core business lines and critical operations.

The aim of this Guideline 3 is to provide guidance on how the resolution authority should assess the feasibility, and the credibility of the arrangements the CCP has established to ensure essential staff, infrastructure, funding, liquidity and capital are upheld to support and maintain the core business lines and the critical operations.

The main focus of this Guideline 3 would be to identify risks in the established arrangements where they would be at risk of not being upheld as envisaged in a resolution or where the arrangements are vulnerable to certain measures or events.

Guideline 3 provides for a common set of aspects the resolution authority should use to assess matter 4 set out in Section C of Annex to CCPRRR.

Guideline 3

The resolution authority should consider the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations (matter 4 of Section C of CCPRRR Annex), by assessing the following aspects:

1. Whether the arrangements in place to provide for essential staff to support and maintain the core business lines and the critical operations are adequate and sufficiently robust and if and how such arrangements could be affected by the CCP entering into resolution, for example, by assessing:

- a) what is foreseen by the CCP's staff rules and conditions of employment in case of CCP resolution; and
- b) to which extent essential CCP employees' employment relationships would be upheld in a resolution and to what extent the CCP has obtained legal advice supporting this.

2. Whether the arrangements in place to provide for continued access to vital infrastructures such as premises, telecommunication services, IT, software licenses and other material intellectual property right licenses, hardware, such as servers and other IT equipment, and power are adequate and robust to support and maintain the core business lines and the critical operations of the CCP to allow for the CCP continuing the operations of the core business lines and critical operations.

To assess the robustness of the different infrastructures the assessment would need to cover how the arrangements with such infrastructures could be affected by a resolution. The resolution authority should, for example, assess the following:

- a) the possibility to terminate, suspend or modify the access right to infrastructures provided to the CCP due to the resolution of the CCP;
- b) the continued access to the relevant infrastructures where the CCP may transfer in part or in full the clearing service under the resolution tools; and
- c) the continuity to access vital infrastructures during resolution for a reasonable period of time by the current service provider and under the same terms and conditions.

3. Whether the arrangements in place to provide for funding in supporting and maintaining a core business line or critical operation are adequate and the extent to which such arrangements would remain valid in a resolution and the extent to which they are transferable in case of the sale of business tool or the bridge CCP tool is used. The resolution authority should, for example, assess the following:

- a) the extent to which the CCP has made pre-arrangements for pre-paying the relevant services for a reasonable period; and
- b) whether the funds for such pre-payment are sufficiently protected and ensured via sufficiently liquid assets.

4. Whether the arrangements in place to provide for liquidity to the CCP are well structured to remain valid in a resolution and whether appropriate arrangements have been made (e.g. dedicated cash accounts) by the CCP for a swift and seamless identification of dedicated liquidities to a particular core business line or critical operation of the CCP.

5. Whether the arrangements in place to provide for capital to support the core business lines and the critical operations foresee dedicated funds in the CCP's capital structure and if such capital would likely remain valid in a resolution and whether such arrangements are structured on a per core business line and critical operation basis. The resolution authority should, for example, assess the following:

- a) the extent of the protected dedicated (including uncommitted) funds of the CCP for the support and maintenance of each core business line and critical operation; and
- b) the extent to which the relevant financial resources are held in a segregated way from other group assets.

5.5 Guideline 4 - Matters 5 and 6: Service agreements robustness and enforceability

(5) the **existence and robustness** of service level agreements;

(6) the extent to which the service agreements that the CCP maintains are **fully enforceable** in the event of resolution of the CCP;

Matters 5 and 6 of Section C to the Annex of CCPRRR cover the matters in relation to the existence, robustness and enforceability of the CCP's service agreements in case of CCP resolution.

The aim of this Guideline 4 is to provide guidance on how the resolution authority should assess the feasibility and credibility of the arrangements adopted by the CCP to ensure the robustness and enforceability of the CCP's service agreements in the event of resolution (be them under the "chapeau" of service level agreements or not).

The importance of matters 5 and 6 lies in the necessity that service agreements should be able to survive the event of the CCP's resolution and continue to be enforceable with a view to fulfil CCP resolution's objective, ensuring the continuity of the CCP's critical functions. Therefore, the CCP's service agreements should provide that a CCP's resolution is not a reason for termination.

In addition, appropriate transferability clauses should allow for such service agreements to be transferable (or renewed or restated, as the case may be under the relevant law governing the contract) in case the resolution tools include and would apply, for example, the sale of business tool or of bridge CCP tool.

Therefore, the main focus of this Guideline 4 would be to ascertain the existence of and where identified, the robustness of the service agreements and in addition, whether the CCP's service agreements provide for appropriate arrangements to ensure that the provision of services under the service agreements would not likely be interrupted, terminated or negatively affected by the resolution of the CCP, and would remain fully enforceable in a resolution scenario.

The service agreements, when vital to the provision of clearing services, should also be able to be transferred (or renewed or restated, as the case may be under the relevant law governing the contract) to either the acquirer of the CCPs business or to a bridge CCP in case such resolution tools are used by the resolution authority.

Guideline 4 provides for a common set of aspects the resolution authority should use to assess matters 5 - 6 set out in Section C of Annex to CCPRRR.

Guideline 4

The resolution authority should consider the extent to which service agreements exist, are robust and remain fully enforceable in the event of resolution of the CCP (matters 5 and 6 of Section C of CCPRRR Annex), by assessing the following aspects:

1. Whether the CCP has a record of the different service providers and the service agreements relevant for the CCP to ensure its core business lines and the critical operations.
2. Whether and to what extent, the service agreements relevant for the CCP to ensure its core business lines and the critical operations specifically regulate the situation where the CCP enters into resolution, to what extent the critical operations and core

business lines contain specific arrangements to ensure the service agreements are robust and remain fully enforceable in the CCPs resolution, and whether those specific arrangements would be suitable and efficient to achieve the aim of remaining fully enforceable in the event of resolution of the CCP. The resolution authorities should, for example, assess the following:

- a) The extent to which the service agreements relevant for the CCP covers adequate and sufficiently the main parts of the services needed by the CCP (or part of the CCP) to continue to provide the core business lines and the critical operations,
 - b) The extent to which the service agreements relevant for the CCP contain limitations or restrictions on the applicability and enforceability of certain service agreement or part of service agreements, in the resolution of a CCP,
 - c) The extent to which the terms and conditions (including pricing for the service and other crucial aspects of the agreement) remain unchanged and unaffected by the CCP entering into resolution.
3. Whether a core business line or critical operation is serviced by several legal persons, either within the CCP's group or externally, and if this complexity may affect the robustness or enforceability of the service agreements.

5.6 Guideline 5 - Matters 7 and 8: Adequate governance structure, service agreements

(7) the extent to which the **governance structure of the CCP** is adequate for managing and ensuring **compliance with the CCP's internal policies** with respect to its service level agreements;

(8) the extent to which the **CCP has a process for transitioning the services** provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;

Matters 7 and 8 of Section C to the Annex of CCPRRR refer to how the governance structure of the CCP, is adequate to ensure the internal policies of the CCP are followed when entering into and managing the service agreements to which the CCP is a party and the processes for transitioning the services provided under service agreements to third parties.

Under matter 7, the resolution authorities should ascertain whether the organisational units/persons within the CCP governance structure are adequately involved regarding the management of the service level agreements to ensure compliance with internal policies applicable to the service level agreements, hence whether appropriate checks and balances exist in order to ensure that the service level agreements are entered into and managed in compliance with the CCP's internal policies.

Matter 8 of Section C to the Annex of CCPRRR refers to whether the CCP has a process for transitioning the services provided under its service level agreements to third parties (for example in relation to the sale of a business tool or of bridge CCP tool) in the event of separation of core business lines or critical functions. In case of CCP resolution, the existence of such a transition process will be crucial to the implementation of the sale of business or bridge CCP resolution tool. As noted above, the term “service agreement” will be used in the Guidelines to cover all types of service agreements (be them under the “chapeau” of service level agreement or not).

Guideline 5 provides for a common set of elements and aspects the resolution authority should use to assess matters 7 - 8 set out in Section C of Annex to CCPRRR.

Guideline 5

The resolution authority should consider the extent to which the governance structure of the CCP is adequate for managing and ensuring compliance with the CCP’s internal policies with respect to its service agreements and whether the CCP has a process for transitioning the services provided under service agreements to third parties in the event of the separation of core business lines or critical functions (matters 7 and 8 of Section C of CCPRRR Annex), by assessing the following aspects:

1. Whether the internal guidance on the required content of service agreements in relation to the CCP’s core business lines or critical functions provide adequately clear parameters, quantitative and qualitative, against which the relevant service agreements can be monitored.

2. Whether the arrangements and governance structures in place are adequate to ensure compliance with internal policies for each service agreement, considering for example if:

- a) there is a centralised management function or a dedicated manager of the service agreements within the organisational unit, managing the service agreements in relation to the relevant core business line or critical functions;
- b) the organisational unit and the reporting lines of the designated manager for each service agreement is clearly implemented in the governance or management structure of the CCP; and
- c) legal and/or the compliance functions are involved or consulted to ensure compliance with the internal policies for service agreements.

3. Whether the service agreements are transferable (or renewed or restated, as the case may be under the relevant law governing the contract), including in the situation where the sale of business or the bridge CCP resolution tool are envisaged to be used by the resolution

authority. To assess the transferability, the resolution authority should assess the extent to which:

- a) the service agreements regulate the possibility to transfer a relevant service to a new CCP by the resolution authority in a resolution;
- b) the service agreements provide for support in the transfer or termination of contracts occurring during resolution;
- c) the CCP's migration process arrangements are foreseen in the terms of the service agreements, in case of the CCP's resolution; and
- d) there are impediments of a legal nature to the transition of the services for example in relation to the CCP's client side, such as in relation with personal data protection or repapering requirements.

5.7 Guideline 6 - Matter 9: Contingency plans and continuity of access to payment and settlement systems

(9) the extent to which there are **contingency plans and measures in place to ensure continuity in access to payment and settlement systems**;

Matter 9 of Section C to the Annex of CCPRRR refers to the CCP's contingency plans and the measures it has in place to ensure continuity in access to payment and settlement systems, also covering resolution.

It is essential for the CCP to have procedures and arrangements in place to ensure the continuity of the CCP's critical functions. Furthermore CCPs, payment system operators and settlement system operators should foresee in their contractual relations or operation regulations processes to regulate the terms under which a CCP undergoing resolution may continue accessing such payment and settlement systems.

The resolution authority should assess the feasibility and credibility of the contingency plans ensuring continued access to payment and settlement systems.

Guideline 6 provides for a common set of elements and aspects the resolution authority should use to assess matter 9 set out in Section C of Annex to CCPRR.

Guideline 6

The resolution authority should consider the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems (matter 9 of Section C of CCPRRR Annex), by assessing the following aspects:

1. Whether the contingency plan adequately ensures the continued access to payment and settlement systems and whether the contingency plan foresees the steps to take, in case of the CCP's resolution, to ensure continued access to payment and settlement systems, considering for example:

- a) If the steps under the contingency plans applying in resolution are adequate to ensure continued access to payment and settlement systems to maximise the likelihood of continued service provision to the CCP;
- b) If the contingency plan is detailed enough to cater for different scenarios in accessing payment and settlement systems in a resolution, and if the contingency plan includes details on how changes could impact the access to the systems, such as changing settlement bank and identifying substitutes (from a commercial bank money cash settlement to central bank money settlement) and the timing of such changes (overnight or intra-day);
- c) If the contingency plan also covers external terms and conditions of the payment or settlement systems, including the terms in the payment and/or settlement system operator's rules of operation in the relevant jurisdictions, that would apply in a resolution scenario, such as additional (or extraordinary) financial, information, and operational requirements; and
- d) If the contingency plan also ensures the continuity in access to payment and settlement systems in a situation where the CCP in resolution transfers part of its services, both for the legacy part of the CCP as well as the parts that will be transferred.

5.8 Guideline 7 - Matters 10 to 13: Resolvability from an information related perspective

- (10) the **adequacy of the management information systems** in ensuring that the resolution authorities are able to **gather accurate and complete information** regarding the core business lines and critical operations so as to **facilitate rapid decision making**;
- (11) the **capacity of the management information systems** to provide the information **essential for the effective resolution of the CCP at all times even under rapidly changing conditions**;
- (12) the extent to which the CCP has **tested its management information systems under stress scenarios** as defined by the resolution authority;
- (13) the extent to which the CCP can **ensure the continuity of its management information systems** both for the **affected CCP and the new CCP** in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;

Matters 10 to 13 of Section C to the Annex of CCPRRR refer to the feasibility of resolution from a management information system perspective. The term “management information systems” is used in the EBA’s Resolvability Guidelines in the context of operational continuity where institutions should be able to report to resolution authorities on their provision or receipt of relevant services, with information that is up-to-date and available at all times and contains the necessary information for the successful implementation of the tools envisaged in the resolution scheme.

ESMA agrees on the importance of such management information systems. Accuracy and completeness of information and the continuous flow of information during the resolution process from the CCP to the resolution authority and vice versa are determinant factors for a successful CCP resolution. As a result, CCP’s testing of management information systems under stress scenarios (as these are defined by the resolution authorities) should be taken into account by resolution authorities when assessing the resolvability of a CCP.

Furthermore, the extent to which the continuity of the CCP’s management information systems are upheld in the case where core business lines and critical operations are separated from the rest of the CCP’s operations and business lines, is an important factor indicating the feasibility of using the sale of business tool or the bridge CCP tool.

The resolution authority should assess the adequacy of the CCP’s management information systems to provide accurate and complete information. The capacity of such systems to provide the information is essential for the effective resolution at all times even under rapidly changing conditions, and the extent to which such systems have been tested by the CCP under stress conditions as well as the extent to which the CCP can ensure the continuity of its management information systems in case that the core business lines and critical operations

are separated from the rest of operations and business lines, will have an impact on the resolvability assessment.

Guideline 7 provides for a common set of elements and aspects the resolution authority should use to assess matters 10-13 set out in Section C of Annex to CCPRR.

Guideline 7

The resolution authority should consider the extent to which there are adequate management information systems to ensure that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations to facilitate rapid decision making and that the capacity of the management information systems can provide the information essential for the effective resolution of the CCP at all times even under rapidly changing conditions. The resolution authority should also consider the extent to which the CCP has tested its management information systems under stress scenarios and that the CCP can ensure the continuity of its management information systems both for the affected CCP and the new CCP in the case that the critical operations and core business lines are separated from the rest of the operations and business lines (matters 10 to 13 of Section C of CCPRRR Annex). The resolution authority should consider this by assessing the following aspects:

1. Whether the information contained in the management information system(s) is adequate and contains relevant, adequate and sufficiently comprehensive information regarding the core business lines and critical operations (including information on ownership of assets and infrastructure, pricing, contractual rights and agreements as well as outsourcing arrangements) to ensure informed rapid decision making.
2. Whether the CCP's management information systems:
 - a) are adequately set up and well designed to provide accessible, relevant, accurate and complete information regarding the core business lines and critical operations;
 - b) applies processes to ensure the information collected and stored in the management information system(s) is focused, well structured, tiered and labelled to ensure the information is organised to ensure relevant information can be identified in an effective and rapid manner in times of rapid decision making or rapidly changing conditions;
 - c) applies search functions that cover different management information systems to ensure availability of relevant information at a short notice;

- d) are managed to ensure the information is reliable and clear and that the information is easy to retrieve in a readable format and that different information can be used together in an efficient manner, is compatible between different systems, and can be easily converted into a format that can be shared for rapid decision making, are automated and the extent to which straight through processing and automated arrangements are in place for the collection of data and the extent to which data inputs may be done manually;
 - e) uses real-time information flows or whether there are delays before the information can be recorded into the CCP's management information systems;
 - f) provides a comprehensive and searchable repository of the service agreements and provides adequate information on (i) the type of service provided under the agreement and whether the service agreement is needed to perform critical functions and core business lines, (ii) the type of providers (intra-group, outsourced or bought in service) and which legal persons provide and which legal person receive the services, and (iii) the service agreements identified to assist in the drawing-up of transitional service agreements in cases where they would be affected by a resolution tool, such as the sale of business or bridge CCP resolution tool;
 - g) are up-to-date to ensure information is updated either continuously or in pre-defined intervals, less often in a BAU mode, more often in a recovery situation and measures to keep the information up to date at a continuous basis in a resolution phase;
 - h) applies an adequate categorisation of the information according to its usefulness in a resolution, where information essential to a successful resolution such as information in relation to the election, activation and use of resolution tools should be updated in priority to other types of information to ensure the relevance, adequacy and accessibility of relevant information in a resolution;
 - i) has the capacity to provide the information essential for the effective resolution of the CCP at all times even under rapidly changing conditions including information on the amount and location within its systems of clearing member and/or client positions per financial instrument cleared as well as the amount of the corresponding margins and financial collateral arrangements posted; and
 - j) is structured in a way to ensure (where suitable) the continuity of information sharing and storing within the management information systems in a resolution, where for example the resolution tools may result in (i) critical operations and core business lines are separated from the rest of the operations and business lines, (ii) a new CCP, (iii) bridge CCP or (iv) any other result of the resolution tool applied.
3. Whether the resolution authority will have relevant access to management information systems and information necessary to take the appropriate decisions and

to apply resolution powers; in particular the extent to which the resolution authority has:

- a) full access to the information useful, necessary or crucial to take the appropriate decisions and to apply resolution powers;
 - b) independent access to management information systems through internet portals during resolution;
 - c) the extent to which there are applied limitations of external access to such management information systems and whether certain information can only be accessed at the premises of the CCP; and
 - d) the possibility for the resolution authority to share the information within the authority, to independent valuers appointed under CCPRRR and other entities in the application of the resolution tools, for example the extent to which information can be managed, downloaded and shared both within the system as well as outside the system, as the possibility to share information where needed may be of crucial importance in a time constrained resolution situation.
4. Whether the CCP has tested the CCP's management information systems under stress scenarios as defined by the resolution authority, and whether such testing includes the frequency of such tests and scope of such tests, and how any shortcomings or identified limitations are registered and followed up on and that also the information in the management information system is adequately tested, monitored and quality checked on a reoccurring basis.
5. Whether the CCP can ensure continuity of its management information systems in relation to its core business lines and critical operations to both the CCP under resolution as well as other entities involved through the application of resolution tools. In undertaking this assessment the resolution authority should assess:
- a) the extent to which the CCP's management information system(s) allows for a separation of information depending on whether it is in relation to a certain part of the CCP's core business lines or critical operations from the rest of the operations and business lines;
 - b) the extent to which the CCP maintains back-up management information systems as part of a redundancy protocol for business continuity purposes and to which extent such systems could be used in a situation where core business lines and/or critical operations are separated from the rest of the operations and business lines;

- c) whether, to allow for the sale of business tool or the bridge CCP tool to be implemented, any software or IP licenses would need to be duplicated, amended or renewed by the CCP; and
- d) the extent to which the management information system allows for a continuous flow of information between the rest of the CCP's operations and business lines and any separated critical operations and core business lines, if needed, in order to ensure continuity of the CCP's critical functions.

5.9 Guideline 8 - Matters 14 to 17: Intra-group guarantees or transactions

- 14) the extent to which any **intra-group guarantees are provided at market conditions** and the **risk management systems** concerning those guarantees are robust, where the CCP benefits from or is exposed to such guarantees;
- (15) the extent to which any **intra-group transactions are performed at market conditions** and the **risk management systems** concerning those transactions practices are robust, where the CCP engages in such transactions;
- (16) the extent to which the use of any intra-group guarantees or transactions **increases contagion** across the group;
- (17) the extent to which the **resolution of the CCP could have a negative impact on another part of its group**, in particular where such group comprises **other FMIs**, where applicable;

Matters 14 to 17 of Section C to the Annex of CCPRRR focus on intra-group contractual relations of the CCP and the other legal entities of the group to which the CCP belongs (i.e. CCP group) and to the impact of intra-group guarantees and any other intra-group transactions to the CCP's resolvability as well as the extent to which such intra-group agreements increase contagion across the group, in case of CCP resolution.

The aim of Guideline 8 is to provide guidance on how the resolution authority should assess the risks in a resolution stemming from the intragroup relationships (guarantees and transactions) and ascertain if the CCP's resolution is feasible in light of such intragroup relationships. ESMA notes that it seems envisaged that the intra-group guarantees should be assessed both ways, provided by and provided to the CCP.

Guideline 8 provides for a common set of elements and aspects the resolution authority should use to assess matters 14-17 set out in Section C of Annex to CCPRR.

Guideline 8

The resolution authority should consider the extent to which there are intra-group guarantees provided or received or intra-group transactions entered into at market conditions and that the risk management systems concerning those guarantees are robust, the extent to which the use of any intra-group guarantees or transactions increases contagion across the group and could have a negative impact on another part of its group, in particular where such group comprises other FMIs in the resolution of the CCP (matters 14 to 17 of Section C of CCPRRR Annex), by assessing the following aspects:

1. Whether (i) intra-group guarantees or (ii) intra-group transactions, are performed at market conditions, and in undertaking this assessment the resolution authority should consider the following:
 - a) the extent to which intra-group guarantees are entered into on arm's length market conditions, considering the price and terms of the guarantee;
 - b) the extent to which intra-group transactions are entered into on arm's length market terms, considering the price and terms of the transaction;
 - c) the extent to which the use of any intra-group guarantees or transactions increases contagion across the group, considering aspects such as allocation of obligation and losses with the group; and
 - d) the extent to which the resolution of the CCP could have a negative impact on another part of its group, in particular where such group comprises other FMIs, considering aspects such as if intra-group guarantees or transactions are entered into on favourable terms and how this may have an impact in a resolution.
2. Whether the CCP's risk management systems covers such intra-group guarantees and if the system is adequate and robust, and this may be assessed by considering how the risk management system quantifies and illustrates the risk stemming from such guarantees in cases where the CCP (i) is the guarantor or (ii) benefits from such an intra-group guarantee, and what type of arrangements there are in place to manage risks under such intra-group guarantees and whether these arrangements are centralised at group level and if such guarantees could constitute a material wrong-way risk.
3. Whether the CCP's risk management systems cover such intra-group transactions and if the system is adequate and robust, this may be assessed by considering how the risk management system quantifies and illustrates the amount of liabilities and exposures which are likely to stem from any intra-group transactions.

5.10 Guideline 9 - Matters 19 and 22: Application of resolution tools

(19) the **feasibility of applying resolution tools** in such a way which **meets the resolution objectives**, given the **tools available and the CCP's structure**;

(22) the **credibility of applying resolution tools** in such a way which **meets the resolution objectives**, given possible **impacts on clearing members** and, where applicable, their clients, other counterparties and employees and possible actions that third-country authorities may take;

Matters 19 and 22 of Section C to the Annex of CCPRRR refer to the feasibility and credibility of applying resolution tools in such way that it meets the resolution objectives given the tools available, the CCP's structure and impact on clearing members and other relevant counterparties. The importance of being able to apply the appropriate resolution tool in order to meet the CCP's resolution objectives is of paramount importance for an effective resolution.

The aim of Guideline 9 is to provide guidance on how the resolution authority should assess the feasibility of CCP resolution considering the ability and credibility to use the resolution tools as envisaged under the resolution plan.

Guideline 9 provides for a common set of elements and aspects the resolution authority should use to assess matters 19 and 22 set out in Section C of Annex to CCPRR.

Guideline 9

The resolution authority should consider the feasibility and credibility of applying resolution tools in such a way that meets the resolution objectives, given the tools available, the CCP's structure and the possible impacts on clearing members and, where applicable, their clients, other counterparties and employees and possible actions that third-country authorities may take (matters 19 and 22 of Section C of CCPRRR Annex), by assessing the following aspects:

1. Whether the resolution tools are suitable to the CCP.
2. The extent to which the envisaged application of the resolution tools would be able to ensure the resolution objectives set out under Article 21 of CCPRRR;
3. Whether implementing the chosen resolution tool(s) would raise the clearing costs of or reduce the availability of clearing services for clearing members and indirectly their clients.

4. Whether third-country authorities may take actions such as to freeze assets of the CCP or financial collateral arrangements or oppose to their transferability in case the sale of business tool or the bridge CCP tool are used.

5.11 Guideline 10 - Matter 20: Issuance of new instruments of ownership

(20) any specific **requirements needed to issue new instruments of ownership** as referred to in Article 33(1);

Matter 20 of Section C to the Annex of CCPRRR refers to the need for requirements to issue new instruments of ownership. Article 33(1) of CCPRRR refers to instances where the resolution authority is applying the write-down and conversion tool and in this regard the Article requires that the resolution authority applies such tool in accordance with the priority of claims applicable under normal insolvency proceedings.

Matter 20 might also have cross border dimensions in cases where foreign shareholders, established in third country jurisdictions are involved and additional requirements may need to be considered.

The aim of Guideline 10 is to provide guidance on the feasibility and credibility of a potential new issuance of instruments of ownership in compliance with the no creditor worse off principle as embedded in Article 33(1) of CCPRRR and if any specific requirements are needed.

Guideline 10 provides for a common set of elements and aspects the resolution authority should use to assess matter 20 set out in Section C of Annex to CCPRR.

Guideline 10

The resolution authority should consider any specific requirements needed to issue new instruments of ownership as referred to in Article 33(1) of CCPRRR (matter No 20 of Section C of CCPRRR Annex), by assessing the following aspects:

1. Whether the CCP's current ownership structure could be the source of contagion risk in case issuance of new instruments as referred to in Article 33(1) of CCPRR is decided, and more specifically whether credit institutions, clearing members of the CCP or other financial institutions are among the qualifying shareholders.
2. Whether the extent at which the CCP is owned by its clearing members and more specifically any statutory exceptions from the priority of claims that may be foreseen in the applicable

national law where the new issuance of ownership is used as a resolution tool as well as any contagion risk that may arise from using such tool.

3. Whether statutory exceptions from the priority of claims exist in the laws of any relevant third-country jurisdiction (e.g. for foreign investors/shareholders or foreign/foreign owned clearing members) and where this might raise conflict of law issues and thus increase the legal risk aspects in the issuance of new instruments as referred to in Article 33(1) of CCPRRR.

4. Whether compliance with requirements applicable to initial public offerings impact the timing of issuing new instruments of ownership and the timely paying-up of such instruments in the accounts of the CCP, account taken of the resolution's timeline and milestones.

5.12 Guideline 11 - Matters 18 and 21: Resolvability from a cross border perspective

(18) whether **third-country authorities have the resolution tools necessary to support resolution** actions by Union resolution authorities, and the **scope for coordinated action** between Union and third-country authorities;

(21) the arrangements and means through which **resolution could be hampered in the cases of CCP that have clearing members or collateral arrangements established in different jurisdictions**;

Matters 18 and 21 of Section C to the Annex of CCPRRR refer to resolvability assessment from a cross-border dimension. Particularly, matter 18 refers to the cross-border issues which may affect the feasibility of resolution and more specifically, whether the relevant third country jurisdictions' legal frameworks provide the necessary support for the application of resolution tools by Union resolution authorities and the scope for coordinated action between Union and third country authorities. Matter 21 focuses on the arrangements and means through which resolution could be hampered in the cases where the CCP under resolution has clearing members or financial collateral arrangements established in jurisdictions different from the CCP's home jurisdiction.

The aim of Guideline 11 is to provide guidance on how the resolution authority should assess the feasibility of CCP resolution from a cross border perspective. In this context the resolution authority should assess the feasibility and credibility of the arrangements of the CCP in a cross-border context and more specifically the extent to which decisions made for the purposes of resolution may be recognised and enforced in other jurisdictions and notably in third countries.

Guideline 11 provides for a common set of elements and aspects the resolution authority should use to assess matters 18 and 21 set out in Section C of Annex to CCPRR.

Guideline 11

The resolution authority should consider whether third-country authorities have the resolution tools necessary to support resolution actions, the scope for coordinated action with third-country authorities and if there are arrangements and means through which resolution could be hampered where the CCP has clearing members or collateral arrangements established in different jurisdictions (matters 18 and 21 of Section C of CCPRRR Annex), by assessing the following aspects:

1. Whether the third country has a framework that contains the possibility to recognise the application of resolution tools and enforce resolution actions taken by resolution authorities in the EU where such an action is affecting persons or entities in such third country.
2. Whether the law in the relevant third country jurisdiction can impede resolution actions taken under CCPRRR, such as where the third country may challenge the right the resolution authority has to terminate some or all contracts of the CCP under resolution or the application of VMGH in resolution.
3. Whether the CCP's agreements governed by the laws of a third country are clearly identified in a list mentioning the identity of the CCP's counterparty.
4. Whether there exist adequate processes for coordination and communications and assurances on actions to be taken between the resolution authority of the CCP and the third-country authority involved due to establishment of clearing members, clients, service providers or due to the location of assets either invested or posted as collateral under financial collateral arrangements.
5. Whether there exist adequately means for recognition and enforcement in a third country of the resolution decisions taken by resolution authorities in the EU.
6. Whether the laws of the relevant third country jurisdiction(s) foresee indemnification for expropriation or other remedy protecting the right to property in cases of write-down and/or conversion powers are implemented in the context of resolution.

5.13 Guideline 12 - Matters 23 to 26: Impact on the financial systems, market confidence and payment and settlement systems

(23) the extent to which the **impact of the CCP's resolution on the financial system and on financial market's confidence can be adequately evaluated;**

- (24) the extent to which the resolution of the CCP **could have a significant direct or indirect adverse effect** on the financial system, market confidence or the economy;
- (25) the extent to which **contagion to other CCPs or to the financial markets could be contained** through the application of the resolution tools and the exercise of the resolution powers; and
- (26) the extent to which the **resolution of the CCP could have a significant effect on the operation of payment and settlement systems.**

Matters 22 to 26 of Section C to the Annex of CCPRRR refer to the credibility assessment of the CCP resolution and more specifically its likely impact to the financial system and the real economy of any Member State of the Union. For this reason, matters 22 to 26 focus on different aspects of the impact the CCP's resolution could have, spanning from the impact to the CCP's clearing members and, where applicable, their clients, any significant effect on the operation of payment and settlement systems, the impact on the financial system and on financial market confidence, market confidence in general or the economy as a whole. These aspects are of utmost importance for resolution authorities to be able to successfully fulfil the objectives of CCP resolution, especially when conducting the assessment of resolvability of the CCP.

The aim of Guideline 12 is to provide guidance on how the resolution authority should assess the credibility of CCP resolution. In this context the resolution authority should assess, to the extent possible and to the best of the resolution authority's knowledge, the impact of CCP resolution actions to the CCP's providers, clients and stakeholders, payment and settlement systems, financial markets, the financial system and the economy in general.

Guideline 12 provides for a common set of elements and aspects the resolution authority should use to assess matters 23 – 26 set out in Section C of Annex to CCPRR.

Guideline 12

The resolution authority should consider the extent to which (i) the impact of the CCP's resolution on the financial system and on financial market's confidence can be adequately evaluated, (ii) the resolution of the CCP could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy, (iii) contagion to other CCPs or to the financial markets could be contained through the application of the resolution tools and the exercise of the resolution powers; and (iv) the resolution of the CCP could have a significant effect on the operation of payment and settlement systems (matters 23 to 26 of Section C of CCPRRR Annex), by assessing, to the extent the resolution authority has information and data, the following aspects:

1. Whether the resolution of the CCP could have a significant effect, adverse, direct or indirect, on the financial system, market confidence, the economy or the operation of payment and settlement systems. This may be where such measures may

negatively affect or constrain the normal functioning of financial markets, and/or other financial market infrastructures (serviced or not by the CCP), or the financial system as a whole. This may also be where a generalised suspension of trading and clearing or limitations on trading derivatives cleared by the CCP in resolution may be imposed.

2. Whether the CCP's resolution may trigger any potential material disturbance of the financial markets' functioning or significantly negatively impact the financial market transaction costs.
3. Whether the likely negative effect of the application of the CCP's resolution tools on the financial systems, real economies or the operation of payment and settlement systems of any Member State or of the Union identified, could restrict the possibility to apply a certain resolution tool.
4. Where the application of resolution tools is likely to affect the financial system and the financial markets' confidence, whether the effects can be adequately evaluated, by establishing scenarios, methodologies and indicators.
5. Whether the application of the CCP's resolution tools may impact the real economy, and the availability of financial services in the short to medium term, locally or globally for a particular class of derivatives or with respect to all of the CCP's core business lines where that CCP is in a situation of de facto monopoly or oligopoly.
6. Whether adequate ring-fencing of any interoperability arrangements in place between the CCP undergoing resolution and other CCPs may limit any adverse effects of applying the resolution tools and manage aspects of contagion.
7. Whether the likely contagion to other CCPs or to the financial markets may be able to be contained by applying the envisaged resolution tools and exercise the resolution powers. The likely impact of the CCP's resolution on the Securities Settlement System Operator and the Payment System Operator servicing the CCP and more specifically whether the involved payment and/or settlement systems could suffer losses stemming from CCP resolution and the amount of such losses.

Question 6: Do you agree with Guidelines 2 to 12 providing the resolution authority with guidance on what to consider when assessing a CCPs resolvability. If not, please explain why. Please provide comments by referring to the Guideline you are providing comments on.

4.5 Annex IV - Summary of questions

Question 1: Do you agree with the general approach of the Guidelines and how ESMA has interpreted the mandate and the aim of the Guidelines? If not, please explain why.

Question 2: Do you agree with structure of the Guidelines? If not, please explain why.

Question 3: Do you agree with the Option 2, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 2)?

Question 4: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details

Question 5: Do you agree with Guideline 1 providing principles on the overall assessment of a CCPs resolvability to ensure convergence to the extent possible. If not, please explain why.

Question 6: Do you agree with Guidelines 2 to 12 providing the resolution authority with guidance on what to consider when assessing a CCPs resolvability. If not, please explain why. Please provide comments by referring to the Guideline you are providing comments on.