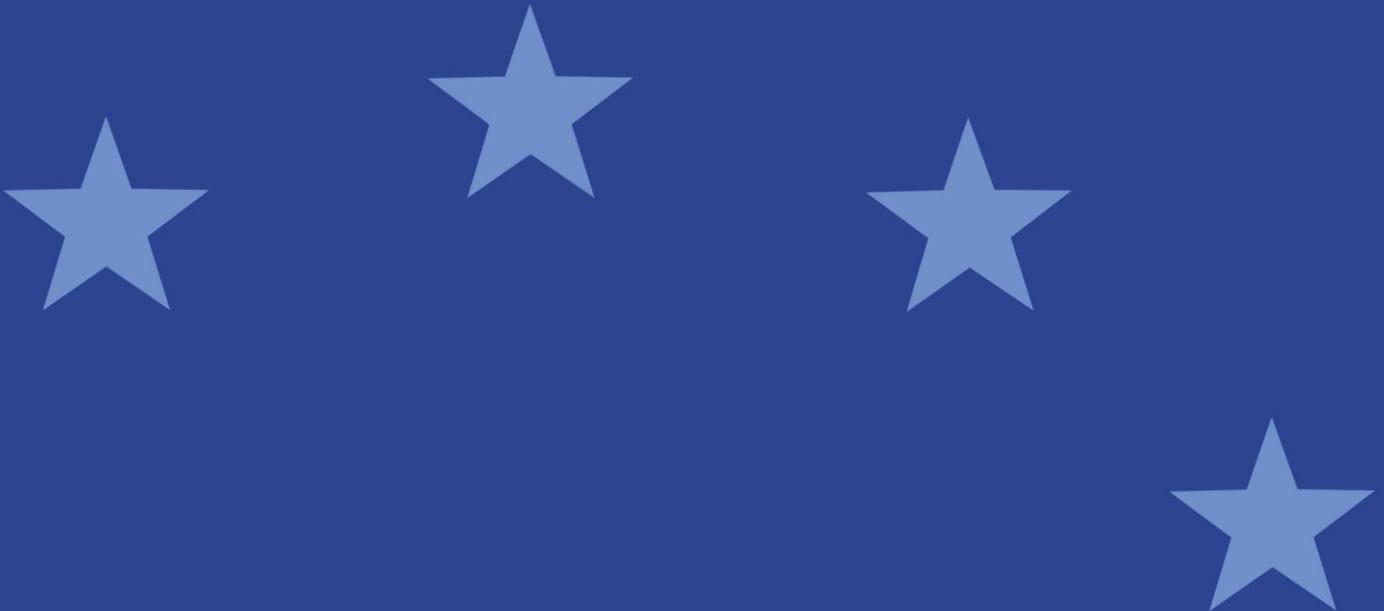




European Securities and
Markets Authority

Consultation Paper

**Draft Guidelines on the summary of resolution plans (Article 12(7)(a) 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 3. 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 [Legal Notice](#).

Who should read this paper?

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

Table of Contents

| | |
|---|----|
| Executive Summary | 4 |
| I. Background..... | 5 |
| II. Scope of the Guidelines | 6 |
| III. Content of the Guidelines | 8 |
| III.1 Guideline 1: General considerations of relevance and proportionality | 8 |
| III.2 Guideline 2: Default and non-default events scenarios..... | 9 |
| III.3 Guideline 3: Content of the summary – Key elements | 9 |
| IV. Annexes | 10 |
| IV.1 Annex 1 – Legislative provisions | 10 |
| IV.2 Annex 2 – Cost and benefit analysis | 11 |
| IV.3 Annex 3 – Summary of questions..... | 16 |
| IV.4 Annex 4 – Draft Guidelines..... | 17 |
| IV.4.1 Guideline 1: General considerations of relevance and proportionality | 23 |
| IV.4.2 Guideline 2: Default and non-default events scenarios..... | 23 |
| IV.4.3 Guideline 3: Content of the summary – key elements..... | 24 |
| IV.4.4 Annex A – To the Guidelines: Template of Summary of the Resolution Plan... | 24 |

Legislative references

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|-----------------|--|
| 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 ¹ |
| EMIR | European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories ² |
| 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. ³ |

Abbreviations

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

Definitions

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

¹ OJ L 22, 22.1.2021, p. 1

² OJ L 201, 27.7.2012, p. 1

³ OJ L 331, 15.12.2010, p. 84–119

Executive Summary

Reasons for publication

The resolution plan shall provide for the resolution actions that the resolution authority may take where the CCP meets the conditions for resolution referred to in Article 22 of CCPRRR. However, the key elements of the plan shall be disclosed to the CCP through a summary of the resolution plan.

In accordance with Article 12(7) (a) of CCPRRR the resolution plan shall include a summary of the key elements of the plan, distinguishing between default events, non-default events and a combination of the two. In accordance with Article 12(8) of CCPRRR the information in the summary shall be disclosed to the CCP concerned. The CCP may express its opinion in writing on the resolution plan to the resolution authority and that opinion shall be included in the plan.

These Guidelines provide resolution authorities with guidance as to the type of information that should be included in the summary (and a template of the summary) that would be shared with the CCP in accordance with Article 12(8) of the CCPRRR.

These Guidelines are based on Article 16 of Regulation (EU) No 1095/2010 (ESMA Regulation) according to which ESMA shall, with a view of to establishing consistent, efficient and effective supervisory practices within the European System of Financial Supervision (ESFS), and to ensuring the common, uniform and consistent application of Union law, issue guidelines addressed to all competent authorities or all financial market participants.

Contents

Section I of the report contains the background of the proposed Guidelines, Section II contains the scope and Section III contains the Content of the proposed Guidelines. Sections 4 entails the Annexes, the relevant legislative provisions (Annex 1), the cost and benefit analysis (Annex 2) the summary of questions (Annex 3) and the draft Guidelines (Annex 4) including a template for the summary of the resolution plan (Annex A).

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.

I. Background

1. The objective of the resolution framework is to ensure that CCPs maintain the continuity of the critical functions of a CCP which is failing or likely to fail while avoiding a significant adverse effect on the stability of the financial system and its ability to serve the real economy and ultimately minimising the cost of a CCP failure to taxpayers.
2. The Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties⁴ ('CCPRRR') was published in the OJ on 22 January 2021 and it entered into force on 12 February 2021.
3. Resolution is covered under several articles under CCPRRR, and Article 12 of CCPRRR contains the requirements for resolution plans and Article 12(7) of CCPRRR states in point (a) to (s) the elements the resolution plan shall contain.
4. As stated by the mandate in paragraph 9 of Article 12 of CCPRRR, ESMA shall further specify the content of the resolution plans in draft regulatory technical standards on the content of Resolution Plans⁵, in accordance with paragraph 7 of Article 12 of CCPRRR.
5. The CCP should be aware of the key elements of the plan to ensure an effective cooperation, and to have an overview of the resolution authority's intentions with regard to the different resolution scenarios and strategies envisaged to be applied in a resolution, what aspects are planned to be addressed and how this may affect the continuity of the CCP's critical functions.
6. The summary of the key elements is for the CCP to be informed of the key aspects of the plan that may have an impact on the CCP or is otherwise relevant for the CCP to be aware of when ensuring crisis management preparedness. Article 12(8) of CCPRRR provides that the summary, referred to in point (a) of paragraph 7 of Article 12 of CCPRRR, shall be disclosed to the CCP and the summary shall contain the key elements of the resolution plan. The summary shall distinguish between default events, non-default events and a combination of the two. The summary should therefore provide a set of elements that enable the CCP to understand the resolution plan and should contain essential information that is constructive for the CCP.

⁴ 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).

⁵ Draft RTS on the content of CCP resolution plans (Article 12(9) of the CCPRRR) submitted to the European Commission for endorsement.

7. Paragraph 8 of Article 12 of CCPRRR further provides that the CCP may express its opinion in writing on the resolution plan to the resolution authority. That opinion shall be included in the plan.

Article 12(7)

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

Article 12(8)

*The information referred to **in point (a) of paragraph 7 shall be disclosed to the CCP concerned. The CCP may express its opinion in writing on the resolution plan to the resolution authority. That opinion shall be included in the plan.***

II. Scope of the Guidelines

8. While there is no specific mandate in the CCPRRR requiring ESMA to further specify the content nor a template for the summary of the resolution plan, according to Article 16(1) of ESMA Regulation⁶, ESMA shall, with a view of to establishing consistent, efficient and effective supervisory practices within the European System of Financial Supervision (ESFS), and to ensuring the common, uniform and consistent application of Union law, issue guidelines addressed to all competent authorities or all financial market participants.

Article 16

Guidelines and recommendations

1. *The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines addressed to all competent authorities or all financial market participants and issue recommendations to one or more competent authorities or to one or more financial market participants.*

9. The summary should not contain information that is not helpful, needed or relevant to the CCP as the resolution planning undertaken by the resolution authority is another process very distinct from the CCP's own management plans. The resolution of a CCP is activated once the conditions set out under Article 22(1) of CCPRRR are fulfilled, pointing to a very severe situation where the CCP is failing or is likely to fail. Where the CCP's plans have

⁶ 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

either failed or are otherwise considered not efficient enough or suitable, the resolution plan may be activated in accordance with CCPRRR, with the aim to maintain the critical functions of a CCP which is failing or likely to fail in order to preserve financial stability and avoid a significant adverse effect on the financial system and its ability to serve the real economy while minimising the cost to taxpayers of a CCP failure.

10. These Guidelines aim to establish a common framework indicating the principles and the format of the summary of the resolution plan by providing a template for the summary of the resolution plan. This will enable resolution authorities responsible for drafting the resolution plan to share, in accordance with Article 12(8) of CCPRRR, the information in the plan in a manner that provides the CCP with the information of the key elements as envisaged under Article 12(7) (a) of CCPRRR.
11. It is noted that the aim of the Guidelines is not to prescribe the information to be considered key elements of the plan but to provide guidance to the resolution authority on what could be considered key elements of the plan and hence be included in the summary, and to ensure that a convergent approach in sharing information with the CCPs is achieved by providing principles and templates to be used in the drafting of the summary.
12. The Guidelines aim to simplify coordination and ensure efficiency in the resolution planning. It is, however, the resolution authority that will determine what are the specific key elements of the plan to be shared with the CCP.
13. In developing the draft RTS, ESMA has to ensure, in accordance with Article 12 (9) of CCPRRR to respect the principle of proportionality when developing the draft regulatory technical standards by further specifying the contents of the resolution plan.
14. Hence, to ensure that the principle of proportionality, the proposed Guidelines will not provide a fixed list of aspects to be covered by the summary as such a list would not be able to ensure the resolution authority the flexibility it needs to ensure the summary is reflecting the resolution plan for the CCP at hand as the content of the resolution plan will depend on the CCP's risk and organisational profile, products cleared, business model and membership.
15. ESMA has considered that the proposed Guidelines should, as drafted, provide sufficient flexibility to ensure the summary is suitable for the CCP's profile, including its risk profile and also the nature and complexity of the CCP and hence meeting the requirement on proportionality.
16. The summary is part of the resolution plan, hence follows the same decision procedure as the resolution plan as provided by Article 14 of CCPRRR. The information on the key elements of the plan to be shared with the CCP under the summary (part of the resolution plan) is the decision of the resolution authority after consultation with the competent authority and in coordination with the resolution college.

III. Content of the Guidelines

III.1 Guideline 1: General considerations of relevance and proportionality

17. The addressee of the summary of the resolution plan is, in accordance with Article 12(8) CCPRRR, the CCP, and the summary should therefore be visually clear and concise for the CCP without having access to the full resolution plan, thereby allowing the CCP to easily understand what the key elements of the resolution plan are, as well as the core strategies of the resolution plan.
18. The summary shall contain the key elements in relation to the different scenarios distinguishing between default events, non-default events and a combination of the two. In addition, all the key elements to be found under the points (b) to (s) under paragraph 7 of Article 12 CCPRRR should be included in the summary, however, only with the level of details relevant for the CCP to understand the key features of the resolution plan. Therefore, the summary should not include a comprehensive description of the whole resolution plan.
19. Hence, the summary needs to be succinct, to respect the fact that only the key elements are disclosed, but at the same time explanatory, so that the resolution plan is understandable. To this end, it is preferable that comments or explanations regarding key elements are brief and give way to an overview of what aspects have been taken into account in developing the CCP's resolution plan.
20. The proposed Guidelines allow resolution authorities to adapt the summary to the conditions and organization of each particular CCP. The Guidelines presents a list that the resolution authority should at least consider in establishing the summary of the resolution plan. The list under the Guidelines is not an exhaustive list, hence the resolution authority may add aspects considered material and relevant for the CCP.
21. Therefore, the proposed Guidelines contain guidance in view of establishing an appropriate summary of the key elements of the resolution plan. At the same time sufficient flexibility is left to the resolution authorities so that the summary can be tailored to each CCP in a proportionate manner bearing in mind the specificities of the concerned CCP.
22. See proposed Guideline 1 in Annex 4.

Question 1: Do you agree with the general considerations in establishing the summary of the resolution plan in Guideline 1? If not, please explain why.

Question 2: Do you agree with ESMA's proposal of establishing a harmonised template of the summary of the resolution plan? If not, how would you suggest the summary to look like? Please provide details.

Question 3: Do you agree with how the principle of proportionality has been considered for the purpose of the summary of the resolution plans? If not, please explain why.

III.2 Guideline 2: Default and non-default events scenarios

23. Pursuant to point (a) of paragraph 7 of Article 12 of CCPRRR, the summary of the resolution plan shall contain a distinction between default events, non-default events and a combination of the two, in order to classify them according to the definition in Article 2(8) and (9) CCPRRR.
24. For this purpose and to ensure transparency towards the CCP, ESMA proposes that the summary should contain the key aspects of the scenarios depending on whether they are derived from default or non-default events or a combination of both.
25. The template summary contains a new column for each scenario that is to be completed with the key aspects of each of the scenarios as they have been adopted to fit the concerned CCP.
26. See proposed Guideline 2 in Annex 4.

Question 4: Do you agree with Guideline 2 on the key aspects of the default and non-default scenarios that should be included in the summary of the resolution plan? Please provide details.

III.3 Guideline 3: Content of the summary – Key elements

27. In order to comply with the legal requirements of Article 12(8) CCPRRR, ESMA proposes that, according to the list of elements that the plan should contain in Article 12(7), the elements included in Guideline 3 as key elements that should be considered for the summary of the resolution plan, quantified whenever appropriate and possible.
28. See proposed Guideline 3 in Annex 4.

Question 5: Do you agree with Guideline 3 on the key aspects that should be included in the summary of the resolution plan? Please provide details.

IV. Annexes

IV.1 Annex 1 – Legislative provisions

Article 12(7) CCPRRR

7. The resolution plan shall specify the circumstances and different scenarios for applying the resolution tools and exercising the resolution powers. It shall clearly distinguish, in particular through different scenarios, between failure caused by default events, non-default events, and a combination of both, as well as between different types of non-default events. The resolution plan shall include the following, quantified whenever appropriate and possible:

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

Article 12(8) CCPRRR

8. The information referred to in point (a) of paragraph 7 shall be disclosed to the CCP concerned. The CCP may express its opinion in writing on the resolution plan to the resolution authority. That opinion shall be included in the plan.

IV.2 Annex 2 – Cost and benefit analysis

1. Introduction

In accordance with Article 12(8) of CCPRRR the summary, referred to in point (a) of paragraph 7 of Article 12 of CCPRRR, shall be disclosed to the CCP and the summary shall contain the key elements of the resolution plan. While there is no specific mandate in the CCPRRR requiring ESMA to further clarify the content or to create a template for the summary of key elements of the resolution plan, the objective of these Guidelines, in accordance with Article 16 of ESMA Regulation is to establish consistent, efficient and effective supervisory practices within the ESFS, and to ensure the common, uniform and consistent application of Union law, by providing guidance to resolution authorities in the process of drawing up the summary of the resolution plan.

To this end, Article 16 of the ESMA Regulation 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.

2. Cost-benefit analysis

Below are detailed the different policy options considered on how to promote convergence of supervisory and resolution practices regarding the summary of resolution plan that is to be disclosed to the CCP, according to Article 12(8) of CCPRRR.

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| Specific objective | <p>The resolution authority should ensure that transparency towards the CCP is respected and that a summary of the resolution plan is disclosed to that CCP, as required by Article 12(8).</p> <p>The Guidelines shall promote convergence of supervisory and resolution practices regarding the summary of the resolution plan that must be disclosed to the CCP.</p> |
| Policy option 1 | <p>To provide guidance through principles and guidance as to the relevant content of the summary and by including templates of the summary of key elements of the resolution plan.</p> |
| How would this option achieve the objective? | <p>This option would meet the objective as it would promote convergence of supervisory and resolution practices regarding the transparency towards the CCP. It would indeed create a good level of convergence as the content and the format of the summary</p> |

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| | would be similar between resolution authorities, avoiding therefore different approaches in the European Union. Option 1 also adhere to the principle of proportionality by providing the resolution authority the means to decide on the overall level of details in the summary driven by relevance and usefulness to the overall resolution process. |
| Policy option 2 | To provide guidance on a list of principles and objective elements the relevant authority should consider in determining the content and the format of the summary of the resolution plan with the aim to promote the convergence of supervisory and resolution practices. |
| How would this option achieve the objective? | This option would meet the requirements of ESMA's objective of ensuring the consistent application of resolution practices, however, it would most likely create a lower level of convergence since resolution authorities would have greater decision-making discretion when assessing the elements to be included in the content of the summary and the format of it, which could lead to a divergence of approaches applied by the different resolution authorities. |
| Policy option 3 | To establish a detailed description of the elements and specificities the resolution authority should reflect in the summary of the resolution plan with the aim to promote a high level of convergence of supervisory and resolution practices. |
| | This option could meet the requirements of ESMA's objective of ensuring the consistent application of resolution practices. However, such a prescriptive and detailed list may not be considered as proportionate. This would require the resolution authority to implement and establish for each CCP a very detailed list, potentially providing information on less relevant or even irrelevant aspect for the CCP and probably with an unproportionate degree of details not justified by the CCP's clearing services provided. Consequently, such a proposal could be seen as unnecessary burdensome on the resolution authority, with the potential risk of sharing too detailed information with the CCP, not taking its specificity into account and as a result not adjusted to the concerned CCP. As a result, this could lead to possibly less relevant summary of key elements of resolution plans for the CCP, which could affect the CCP preparations and awareness on resolution planning and its preparedness for resolution. |

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| Which policy option is the preferred one? | Option 1, given that Option 2 could be seen as too vague and may fall short of the aim in ensuring convergence in the assessments around the resolution plan and given that Option 3 would risk to be too burdensome and could fall short of the overall aim to ensure relevant information is shared with the CCP. |
| Is the policy chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted? | ESMA is responsible for issuing the Guidelines and has consulted ESRB in the development of the Guidelines as the Guidelines are very closely linked to the draft RTS to be developed by ESMA in accordance with Article 12 (9) of CCPRRR ⁷ , in cooperation with the ESRB, aimed to further specify the contents of the resolution plan. |

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| Impacts of the proposed policies: | |
| Policy option 1 | |
| Benefits | It will provide clear guidance on the specific content and format of the resolution plan's summary. |
| Regulator's costs | Reasonably low costs are envisaged since the resolution authority would already have the elements that make up the content and format of the summary, avoiding further research and monitoring related costs. |
| Compliance costs | No compliance costs envisaged for the CCP. |
| Policy option 2 | |
| Benefits | Option 2 would give the resolution authority sufficient flexibility to set the content and format of the summary in its own way. |
| Regulator's costs | Moderate costs for establishing the summary of the resolution plan as well as research and discussion on its content and format. |
| Compliance costs | No compliance costs envisaged for the CCP. |
| Policy Option 3 | |

⁷ Draft RTS on the content of CCP resolution plans (Article 12(9) of the CCPRRR) submitted to the European Commission for endorsement.

| | |
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| Benefits | Option 3 would create expectation upon the resolution authority to implement the framework as designed by the Guidelines. |
| Regulator's costs | Medium costs are envisaged since the resolution authority would already have the elements that make up the content and format of the summary, however, due to the detailed approach additional costs could emerge in the implementation of the Guidelines. |
| Compliance costs | No compliance costs envisaged for the CCP. |
| Conclusion | <p>The costs will in any case be reasonably moderate or even low, while the benefits of establishing guidance to support resolution authorities in building up the resolution plan summary in a similar way will result in a convergent application of EU law.</p> <p>On the basis of the analysis above, ESMA concludes that the benefits of issuing these Guidelines outweigh the costs.</p> |
| Proportionality-related aspects | <p>In assessing the overall proportionality of the proposal, ESMA notes that the proposed Guidelines are proportionate as they are not too prescriptive, ensuring a sufficient degree of flexibility and not unduly burdensome on the resolution authorities. The obligation to establish the summary is already set by Article 12(8) of CCPRRR. Thus, these Guidelines would in addition ensure clarity and consistent application in relation to the transparency towards the CCPs and increase their visibility on what to expect to receive in the summary reflecting the key elements under the summary and the overall guiding principles for establishing the summary.</p> <p>ESMA therefore understands that these Guidelines establishing the principles for the implementation of a summary of the resolution plan to be provided to CCPs respects the principle of proportionality.</p> <p>Indeed, the proposed Guidelines allow resolution authorities to adapt to the conditions and organization of each particular CCP. Therefore, these Guidelines include the necessary tools and guidance to build an appropriate summary of the resolution plan, while at the same time ensuring that resolution authorities have sufficient degree of flexibility so that each summary can be tailored to the specific CCP in a proportionate manner.</p> |

Question 6: Do you agree with the proposed Option 1? If not, please explain. If yes, have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 1)?

Question 7: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

IV.3 Annex 3 – Summary of questions

Question 1: Do you agree with the general considerations in establishing the summary of the resolution plan in Guideline 1? If not, please explain why.

Question 2: Do you agree with ESMA’s proposal of establishing a harmonised template of the summary of the resolution plan? If not, how would you suggest the summary to look like? Please provide details.

Question 3: Do you agree with how the principle of proportionality has been considered for the purpose of the summary of the resolution plans? If not, please explain why.

Question 4: Do you agree with Guideline 2 on the key aspects of the default and non-default scenarios that should be included in the summary of the resolution plan? Please provide details.

Question 5: Do you agree with Guideline 3 on the key aspects that should be included in the summary of the resolution plan? Please provide details.

Question 6: Do you agree with the proposed Option 1? If not please explain. If yes, have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 1)?

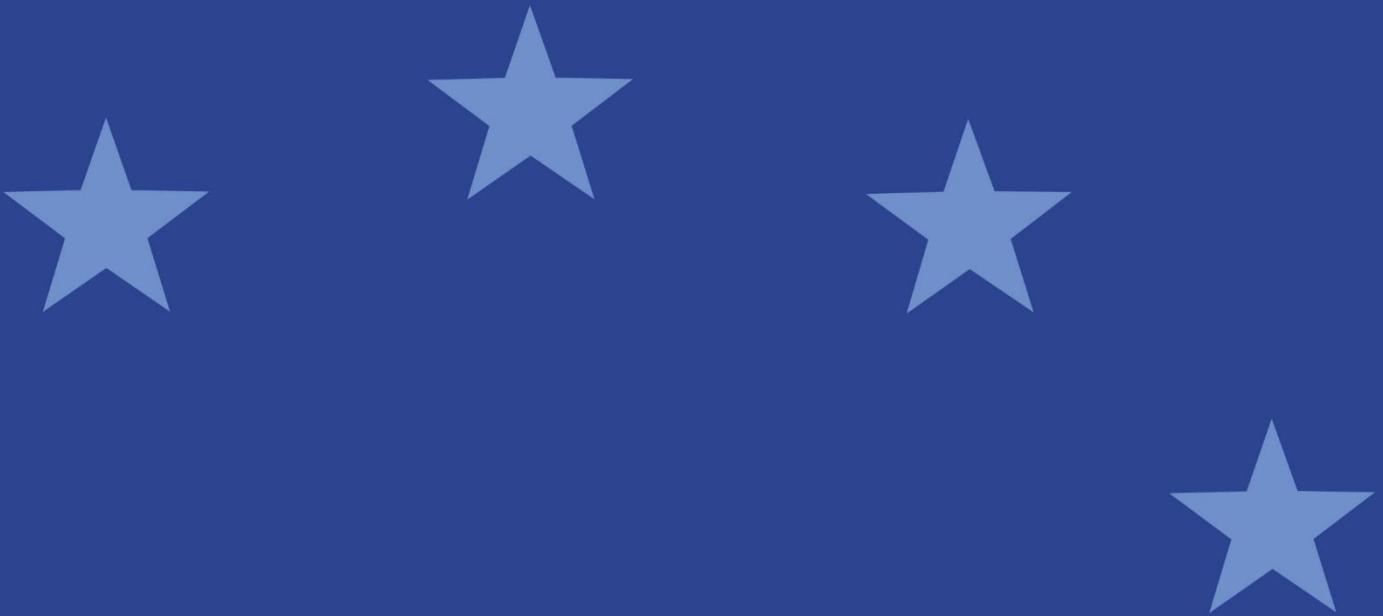
Question 7: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.



IV.4 Annex 4 – Draft Guidelines

Guidelines

on the summary of resolution plans (Article 12(7)(a) of CCPRRR)



1. Scope

Who?

1. These Guidelines apply to “resolution authorities”, designated in accordance with Article 3 of CCPRRR.

What?

2. These Guidelines will apply in relation to Article 12(8) of CCPRRR and in relation to the information referred to in point (a) of paragraph 7 of Article 12 CCPRRR which shall be disclosed to the CCP.

When?

3. These Guidelines apply from two months after the date of publication on ESMA’s website in the official languages of the European Union.

2. Legislative references, abbreviations and definitions

Legislative references

CCPRRR

Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132⁸.

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/EC⁹

EMIR

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories Text with EEA relevance¹⁰

Abbreviations

CCP

Central Counterparty

⁸ OJ L 22, 22.1.2021, p. 1

⁹ OJ L 331, 15.12.2010, p. 84.

¹⁰ OJ L 201, 27.7.2012, p. 1–59



| | |
|-------------|---|
| <i>CP</i> | Consultation Paper |
| <i>EC</i> | European Commission |
| <i>EEA</i> | European Economic Area |
| <i>ESFS</i> | European System of Financial Supervision |
| <i>ESMA</i> | European Securities and Markets Authority |
| <i>EU</i> | European Union |
| <i>RTS</i> | Regulatory technical standard |

Definitions

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

3. Purpose

5. Given the need to provide guidance on the summary of the resolution plan to be disclosed to CCPs in resolution under Article 12(8) of CCPRRR, ESMA has decided to issue Guidelines under Article 16(1) of ESMA Regulation, in line with which ESMA may issue guidelines with a view here to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and consistent application of Article 12(7)(a) and Article 12(8) of CCPRRR.
6. In particular, they aim is to provide further details on the key elements referred to in Article 12(7)(a) of CCPRRR of the resolution plan that should be included in the summary and disclosed to the CCP. ESMA has therefore provided a template in Annex A to these Guidelines for the template summary to be used by the resolution authorities in creating the summary of the resolution plans under Article 12(8) of CCPRRR.
7. Clarifying the aspects that the resolution authorities should consider in identifying the key elements of the summary of the resolution plan to be disclosed to the CCP, will help resolution authorities to draft the summaries of resolution plans in a common and harmonised manner.
8. The proposed Guidelines allow resolution authorities to adapt the summary to the conditions and organization of each particular CCP. The Guidelines presents a list that the resolution authority should at least consider in establishing the summary of the resolution plan. The list under the Guidelines is not an exhaustive list, hence the resolution authority may add aspects considered material and relevant for the CCP.
9. The proposed Guidelines contains guidance to build an appropriate summary of the key elements of the resolution plan, while at the same time ensuring the resolution authorities have a sufficient degree of flexibility so that each summary can be tailored to each CCP in a proportionate manner bearing in mind the specificities of the concerned CCP.

4. Compliance and reporting obligations

4.1 Status of the guidelines

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

4.2 Reporting requirements

12. Within two months of the date of publication of the Guidelines on ESMA's website in all EU official languages, resolution 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.
13. In case of non-compliance, resolution 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.
14. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.

5. Guidelines on the Summary of Resolution Plans

IV.4.1 Guideline 1: General considerations of relevance and proportionality

Guideline 1

The summary of the key elements of the plan referred to in Article 12(7)(a) of CCPRRR should be drafted respecting the following principles on relevance:

The summary should inform the CCP of the key elements and should provide the CCP with an **overview** of the plan, in particular with a view to share information in relation to the following: (i) the different resolution scenarios and strategies envisaged to be applied in a resolution, (ii) what resolution actions are planned to be taken and how they may affect the CCP, (iii) where there are expectations of the CCP to cooperate in the resolution process and (iv) how the resolution measures may affect the continuity of the CCP's functions.

The summary should make the CCPs aware **of key actions a CCP should be ready to perform** and of the data a CCP should be ready to submit.

The summary of the resolution plan should focus on the essential information that is **likely to have a material impact on the CCP's recovery and crisis management planning**.

The summary should be succinct with a focus on the key elements clarified above. At the same time the summary should be explanatory enough presenting the **key elements** of the aspects that have been taken into account in developing the CCP's resolution plan.

The key elements in the summary should accurately reflect the relevant elements of the resolution plan for the CCP based on its risk and organisational profile, including in view of the products cleared, business model and memberships.

The summary should take account of the specificities of the CCP, of the complexity of the resolution plan and of the level of detail of information considered necessary to be shared to achieve the aim of the summary to inform the CCP of the key elements of the plan that are relevant to the CCP.

IV.4.2 Guideline 2: Default and non-default events scenarios

Guideline 2

When drafting the summary of the resolution plan, the resolution authority should use the template contained in Annex A Part 1 including information on the key aspects of the scenarios and indicating whether they are derived from default or non-default events or a combination of both.

The resolution authority should, where relevant, fill the column for each scenario in the template summary as contained in Annex A with the key aspects of each of the scenarios including the details of how the scenarios have been tailored to the CCP. For this purpose, the resolution authority may consider the CCP’s business structure, its risk, its complexity, the clearing services it provides, its clearing members (and their clients) and its overall ownership and group organisation.

IV.4.3 Guideline 3: Content of the summary – key elements

Guideline 3

When drafting the summary of resolution plans the resolution authority should use the template contained in in the Annex A, Part 2 of these Guidelines including the information on the “Key elements of the summary of the resolution plan”.

IV.4.4 Annex A – To the Guidelines: Template of Summary of the Resolution Plan

IV.4.4.1 Part 1 – Key elements of the scenarios established by the resolution authority

The Annex below should be completed by the resolution authority in accordance with Guidelines 1 to 2. Where a type of scenario is not used the resolution should mark the table with “N/A”. The assessment that such a scenario is not to be used for the concerned CCP is a decision taken under the resolution plan process in accordance with Article 14 of CCPRRR.

| Types of scenarios (Article 12(3)(a) and 12(7)(j)) | Factors to describe type of scenarios (Article 12(3)(a) and 12(7)(j)) | A description of the key elements of the scenarios established by the resolution authority. |
|--|---|---|
| Default Scenario – Unsuccessful recovery where the CCP does not have sufficient resources | Establish scenario where a CCP has not fully addressed liquidity shortfalls or established loss allocation arrangements that fully address uncovered credit losses. As a result, recovery resources and tools are insufficient to absorb losses and replenish financial resources to minimum regulatory requirements. | |

| Types of scenarios (Article 12(3)(a) and 12(7)(j)) | Factors to describe type of scenarios (Article 12(3)(a) and 12(7)(j)) | A description of the key elements of the scenarios established by the resolution authority. |
|--|---|---|
| and tools for a successful recovery | | |
| Default Scenario - Failure of loss allocation arrangements | Establish scenario where the CCP's loss allocation arrangements set out in the recovery plan do not operate as intended and as a result, the planned resources or tools are not, or not sufficiently, available at the time of recovery. | |
| Default Scenario - Multiple clearing members do not meet their obligations under the CCP's recovery actions | Establish scenario where the multiple clearing members do not meet their obligations under the CCP's recovery actions. If the group of non-performing clearing members is sufficiently large or if their failure to meet obligations leads to a general loss of confidence in the CCP, the CCP may become unable to continue operations. | |
| Default Scenario – Timing of resolution actions | Establish scenario where the relevant authorities determine that resolution should be initiated before some of the arrangements or tools under the CCP's recovery plan are applied. In this scenario, the relevant authorities have determined that applying recovery arrangements or tools in the prevailing market conditions may threaten financial stability and/or the continuity of critical functions. | |
| Non-default Scenario - Investment risks | Establish scenario where losses on investments of initial margin or default fund assets could arise for example if an investment counterparty fails. A CCP may need to bear such losses, if the loss allocation tools in the CCP's rules do not cover them in another manner. Losses could also occur from the investment of a CCP's own financial resources including SITG and SSITG. Investment losses could materialise suddenly. | |
| Non-default Scenario - Failure of service providers | Establish scenario where, as a result of a failure of a custodian, depository, a payment or settlement bank, a payment system, a securities settlement system or other entity providing similar services, the CCP could lose timely access to its assets, become unable to collect margins or become unable to transform non-cash collateral or investments into cash. This could cause liquidity and/or solvency challenges to a CCP, depending on the nature or consequences of the failure and the time it takes to regain access to the assets. | |

| Types of scenarios (Article 12(3)(a) and 12(7)(j)) | Factors to describe type of scenarios (Article 12(3)(a) and 12(7)(j)) | A description of the key elements of the scenarios established by the resolution authority. |
|---|---|---|
| Non-Default Scenario- Operational risk events | Establish scenario where financial losses or liquidity challenges arise from a range of operational failures, such as human error, information technology failure, fraud, cyber incident, or non-performance of vendors or service providers. A CCP can incur operational losses directly (primary losses) or due to the legal actions taken by others affected by the event (secondary losses). Operational risk events can happen suddenly, but certain losses, particularly secondary losses can take years to fully materialise. | |
| Non-Default Scenario - Financial losses (Comprehensive loss allocation arrangements for custody and investment losses the CCP incurs as a result of its clearing and settlement activity) | <p>Establish scenario where the CCP does not have sufficient financial resources or tools to cover non-default losses (including losses deriving from legal risks, including legal, regulatory, enforcement or contractual penalties that could lead to significant losses or uncertainty for the CCP and that can take a long time to materialise). In this scenario, the non-default losses would be larger than the CCP's capital and contingent resources (e.g. insurance, parental guarantees). Alternatively, in a scenario where the CCP's clearing members would also be required to bear losses, the aggregate resources available would be insufficient to cover the losses and/or to replenish capital back to the required minimum.</p> <p>Establish scenario where the CCP's arrangements to cover (specific) non-default losses set out in the recovery plan cannot be used or do not operate as intended. As a result, the planned resources or tools are not, or not sufficiently, available at the time of recovery.</p> <p>Establish scenario where the CCP's clearing members do not meet their obligations under the CCP's recovery actions. In this scenario, clearing members do not meet the applicable loss allocation or replenishment obligations.</p> <p>Establish scenario where the CCP's shareholders do not support the CCP's recovery actions. In this scenario, the CCP's parent company or other shareholders do not cover the CCP's non-default losses that are not allocated elsewhere and/or are unwilling to recapitalise the CCP, irrespective of whether there is a contractual commitment, parental guarantee, or similar arrangement to provide financial resources or not.</p> | |

| Types of scenarios (Article 12(3)(a) and 12(7)(j)) | Factors to describe type of scenarios (Article 12(3)(a) and 12(7)(j)) | A description of the key elements of the scenarios established by the resolution authority. |
|---|--|---|
| | <p>Establish scenario where the relevant authorities determine that resolution should be initiated before some of the recovery arrangements or tools are applied or the CCP is wound down. In this scenario, the CCP's recovery and wind-down arrangements are consistent with the PFMI, but the relevant authorities have determined that applying them in the prevailing market conditions may threaten financial stability and/or the continuity of critical functions.</p> | |
| <p>Event(s) causing simultaneous default and non-default losses - <i>This scenario addresses the situation in which there are concurrent default and non-default losses as a result of a single event or as a result of multiple events that occur in a reduced time span.</i></p> | <p>Establish scenario where there are specific entities that are material sources of both default and non-default losses, specific scenarios analyzing the effects of default events affecting these entities may be relevant.</p> <p>Considering where non-default losses would be borne by clearing members affecting the path of loss propagation and where there are material differences between different combinations of default and non-default events with respect to the available tools, usage of tools, paths of losses or impact on stakeholders.</p> | |

IV.4.4.2 Part 2 – Key elements of the summary of the resolution plan

The Annex below should be completed by the resolution authority in accordance with Guidelines 1 and 3.

| CCPRRR Reference | Aspect | Key elements in Summary | Comments |
|------------------|-----------------------------|----------------------------------|---|
| 12(7)(b) | Summary of material changes | Any material changes to the CCP. | The focus of the summary on material changes should be a short description of the material changes in relation to the CCPs; business, clearing services, interoperability arrangements, service providers, capital structure, methodologies, margin and liquidity risk management frameworks, organisation, |

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| | | | ownership, incentive structures, resolution scenarios and resolution strategies. |
| 12(7)(c) | Critical Functions | <p>A high-level description of the functions defined as critical by the resolution authority.</p> <p>A high-level description of the main dependencies between critical functions and critical interdependencies.</p> | <p>The focus of the summary on critical functions should be to list the functions of the CCP that the resolution authority has deemed critical and the main dependencies identified including the key internal and external arrangements and processes, such as operations, IT procedures, a list of key staff and main service providers that are necessary for the CCP to continue providing its critical functions or any other aspects that may be necessary to consider in view of a possible transfer, if that is part of the proposed resolution strategy.</p> <p>The summary may include a mapping of critical functions to identified legal entities and to the CCP's core business lines.</p> |
| 12(7)(d) | Timeframe for implementation | A high-level description of the key steps with estimated time allocations to implement the key material aspects of the resolution plan. | According to the principle of relevance, the CCP may not receive any information on the timeframe for implementation. If it does, the focus of the summary on the timeframe for implementation should be to give the CCP a general understanding of the timeframe. |
| 12(7)(g) | Determining the value of and marketability of the critical functions and assets | A high-level description of the determined value and the marketability of the critical functions and assets of the CCP. | The focus of the summary on determining the value of and marketability of the critical functions and assets should be to provide the CCP with the main aspects of the determinations on value and marketability of the CCPs critical functions. |
| 12(7)(h) | Information requirements | A description of the relevant information. | The focus of the summary on information requirements should be to inform the CCP of the information required pursuant to Article 13 of CCPRRR to be kept up date and available at all times. . |
| 12(7)(i) | How resolution actions could be financed | A high-level description of the relevant resolution action's types of financing. | The focus of the summary on how resolution actions are financed should be to provide the CCP, where relevant, with an overview of the financing of the relevant resolution actions. |
| 12(7)(j) | Resolution strategies and scenarios | A high-level description of the resolution scenarios elected, as well as a brief description of the elected strategies. | The focus of the summary on the resolution scenarios and strategies should be to provide the CCP with an overview of the designed resolution scenarios and strategies elected, and if several strategies are elected how their application differs, and the main aspects of the strategic analysis that underlies the different |

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| | | | choices of elected resolution scenarios and strategies. |
| 12(7)(k) | Critical interdependencies | A high-level description the critical interdependencies of the CCP. | The focus of the summary on the critical interdependencies should be to provide the CCP with an overview of what the critical interdependencies are in order to ensure the continuity of the CCP's critical functions. Also outsourcing arrangements to critical service providers should be included to the extent that they cover part of the CCP's core business. |
| 12(7)(l) | Critical intra-group interdependencies | A high-level description of the critical intra-group interdependencies of the CCP. | The focus of the summary on the critical intra-group interdependencies should be to provide the CCP with an overview of the interdependencies identified in order to ensure the continuity of the CCP's critical functions. |
| 12(7)(m) | Ensure certain functions of the CCP | A high-level description of essential operational processes and systems and the maintenance of contractual agreements (external and internal). | <p>The focus of the summary of certain functions of the CCP should be to provide the CCP with a description of the essential operational processes and systems for maintaining the continuous functioning of the CCP's operational processes.</p> <p>The summary should also contain a high-level description on how to ensure contractual agreements are maintained (external and internal), including contractual resilience clauses, resolution-proof clauses, limitations of termination rights in resolution and for internal agreements, arms' length contract terms and pricing structures.</p> |
| 12(7)(n) | How to obtain the necessary information to perform the valuation | A high-level description of the type of information that will be requested to perform a valuation. | The focus of the summary on information for valuation should be to provide a description on the information needed to perform the valuation and should provide the CCP with an overview of the type (and the level of detail) of the information that could be requested by the resolution authority in order to take actions under the resolution plan and to ensure a fair, prudent and realistic valuation. |
| 12(7)(o) | Impact assessment on employees | A high-level description on the employees of the CCP and how to retain key staff. | The focus of the summary on the impact assessment on employees should be to provide an overview of the different types of employees of the CCP and especially how it is envisaged to retain key staff during the resolution phase as well as a description of the plan for communication with employees. |

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| 12(7)(q) | Essential operations and systems | A high-level description of the essential operations and systems identified under the resolution plan. | The focus of the summary on essential operations and systems should be to provide the CCP with a description of the essential operations and systems identified under the resolution plan. |
| 12(7)(r) | Notification arrangements to the resolution college | A high-level description of the arrangements for notifying the resolution college | According to the principle of relevance, the CCP may not receive any information on the notification arrangements to the college. If it does, the summary should provide the CCP with a description of the procedures and processes to follow when notifying the resolution college. |
| 12(7)(s) | Measures to facilitate portability of positions and related assets | A high-level description on how the portability of positions and related assets of its members to another CCP can be concretely done. | The focus of the summary on the measures to facilitate portability of positions and related assets should be to provide the CCP with a general overview of the process around the portability of positions and related assets of its members to another CCP and the measures implemented by the CCP that would facilitate the process. |
| 12(7)(p) | Communication plan | A high-level description of the communication plan specifying who informs the media and the public, when they are informed and what is planned to be communicated. | The focus of the summary on the communication plan should be on providing the CCP with a description of how the communication plan is envisaged to be executed and specifying (to the extent possible) who informs the media and the public, when they are informed and what is planned to be communicated. |
| 12(7)(e) | Assessment of resolvability | A description on if the CCP is deemed to be resolvable. | The focus of the summary on the assessment of resolvability should be to provide the conclusion of the assessment of the CCPs resolvability, including at least, whether or not the CCP is deemed resolvable based on the resolution authorities' considerations. |
| 12(7)(f) | Impediments to resolvability | Information on any impediments to resolvability where such has been identified and shared with the CCP in a report in accordance with Article 16(1). | The focus of the summary on impediments to resolvability should refer to the report issued to give an indication to what extent impediments have been identified and where possible, provide some further details on how the process is undertaken to remove such impediments. |