



European Securities and
Markets Authority

Final Report

Draft RTS on resolution colleges (Article 4(7) of the CCPRRR)

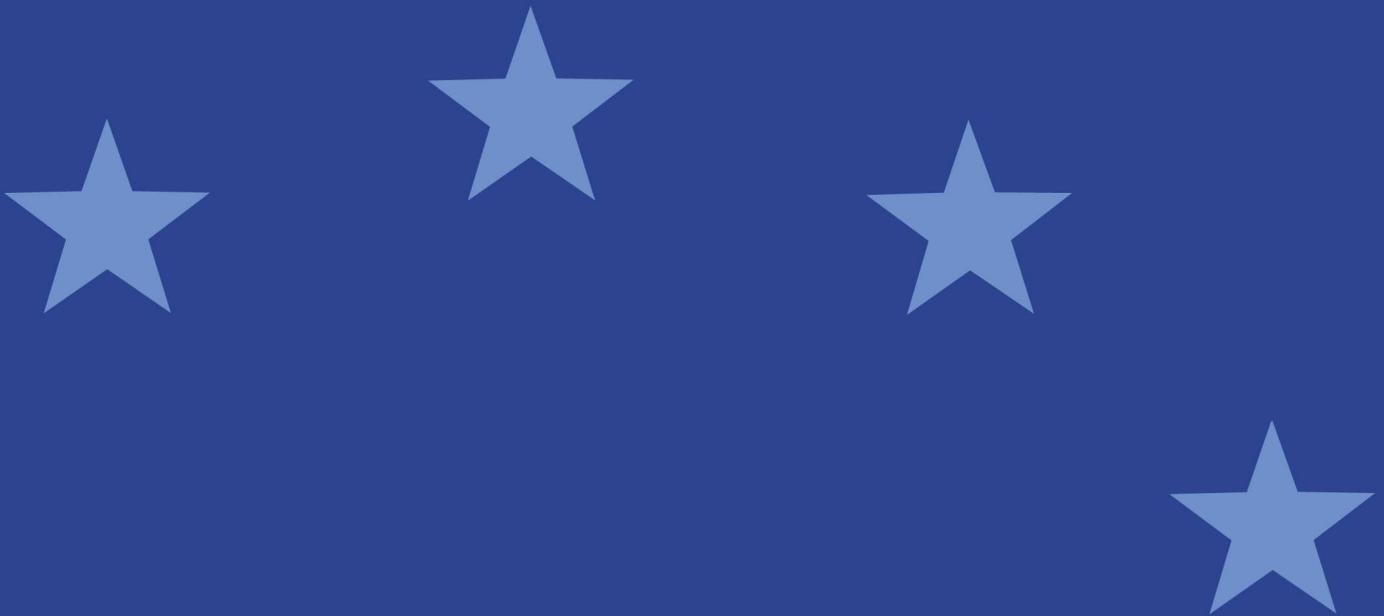


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Executive Summary

Reasons for publication

Article 4 of the CCPRRR foresees the establishment of a resolution college to carry out the tasks referred to in Articles 12, 15 and 16 of CCPRRR and ensures cooperation and coordination with the authorities that are members of the resolution college and, where appropriate, cooperation with third-country competent authorities and resolution authorities. Resolution colleges shall provide a framework for resolution authorities and other relevant authorities to perform the following tasks: (a) exchange information relevant for drawing up resolution plans, including for taking into consideration the systemic impact of the implementation of the resolution plan, for the application of preparatory and preventative measures and for resolution; (b) draw up resolution plans pursuant to Article 12 of CCPRRR; (c) assess the resolvability of CCPs pursuant to Article 15 of CCPRRR; (d) identify, address and remove impediments to the resolvability of CCPs pursuant to Article 16 of CCPRRR; and (e) coordinate public communication about resolution plans and strategies.

Article 4(7) of the CCPRRR mandates ESMA, to develop draft regulatory technical standards specifying the content of the written arrangements and procedures for the functioning of the resolution colleges. For the purposes of preparing those regulatory standards, ESMA shall take into account the relevant provisions of the delegated acts adopted on the basis of Article 88(7) of BRRD.

ESMA shall submit those draft regulatory technical standards to the Commission within 12 months after the CCPRRR entry into force i.e., by 12 February 2022.

ESMA published the Consultation Paper with its draft RTS under Article 4(7) of CCPRRR on 18 November 2021. The consultation ended on 24 January 2022. ESMA also held a public hearing on the Consultation Paper (along with other consultation papers issued by ESMA under CCPRRR) on 14 January 2022.

ESMA has also sought advice from the Securities and Markets Stakeholder Group. The Final Report (and the accompanying draft RTS) assesses and takes, where suitable, into account the feedback provided by the respondents to the consultation.

This Final Report provides the draft RTS on the content of the written arrangements and procedures for the functioning of the resolution colleges.

Contents

This Final Report presents the draft regulatory technical standard specifying the content of the written arrangements and procedures for the functioning of the resolution colleges.

In particular, in Section 4, section 4.1 covers the general considerations, section 4.2 focuses on the operational organisation of the resolution colleges and section 4.3 on resolution

planning joint decisions. Section 5 contains the Annexes: the summary of questions (Annex I), the mandate (Annex II), the cost-benefit analysis (Annex III), and the draft RTS (Annex IV).

Next Steps

ESMA will submit the Final Report and draft regulatory technical standards to the European Commission. The Commission has three months to decide whether to adopt the regulatory technical standards (in the form of a Commission Delegated Regulation). Following the adoption, the regulatory technical standards are then subject to non-objection by the European Parliament and the Council.

1 Legislative references and abbreviations

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. ¹
EMIR	European Market Infrastructures Regulation – Regulation (EU) No 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ² .
Bank recovery and resolution directive (BRRD)	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 ³ .
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 ⁴ .
BRRD RTS 2016/1075	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

¹ OJ L 331, 15.12.2010

² OJ L 201, 27.7.2012

³ OJ L 173, 12.6.2014

⁴ OJ L 22, 22.1.2021

plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges ⁵.

RTS 876/2013

Commission Delegated Regulation (EU) No 876/2013 of 28 May 2013 supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties ⁶.

Abbreviations

CCP	Central Counterparty
CP	Consultation Paper
CPMI	Committee on Payments and Market Infrastructures
EBA	European Banking Authority
ESMA	European Securities and Markets Authority
OJ	The Official Journal of the European Union
OTC	Over-the-counter
RTS	Regulatory Technical Standards

Definitions

Unless otherwise specified, the terms used in this Final Report have the same meaning as in ESMA Regulation, CCP RRR, EMIR, BRRD, BRRD RTS 2016/1075 and RTS 876/2013.

⁵ OJ L 184, 8.7.2016

⁶ OJ L 244, 13.9.2013

2 Background

1. The objective of a credible recovery and resolution framework is to ensure, to the greatest extent possible, that EU CCPs set out measures to recover from financial distress, to maintain the critical functions of a CCP which is failing or likely to fail while winding up the remaining activities through normal insolvency proceedings, to preserve financial stability and to avoid a significant adverse effect on the financial system and its ability to serve the real economy while minimising the cost of a CCP failure to taxpayers.
2. The recovery and resolution framework bolsters the preparedness of CCPs and authorities and provides authorities with powers to prepare for the potential resolution of a CCP and deal with the declining health of a CCP in a coordinated manner, thus contributing to the smooth functioning of financial markets.
3. The Council and the European Parliament adopted CCPRRR on the 16 December 2020 and it entered into force 12 February 2021.
4. CCPRRR establishes a framework for the recovery and resolution of CCP and provides a common resolution regime in the Union that allows authorities to deal with failing entities as well as ensuring cooperation between home and host authorities in the process of resolution planning.
5. Article 4(1) of the CCPRRR introduces a requirement for national resolution authorities of CCPs to establish, manage and chair a resolution college to carry out the tasks referred to in Articles 12, 15 and 16 of CCPRRR and ensure cooperation and coordination with the authorities that are members of the resolution college and, where appropriate, cooperation with third-country competent authorities and resolution authorities. Resolution colleges shall provide a framework for resolution authorities and other relevant authorities to perform the following tasks:
 - (a) exchange information relevant for drawing up resolution plans, including for taking into consideration the systemic impact of the implementation of the resolution plan, for the application of preparatory and preventative measures and for resolution;
 - (b) draw up resolution plans pursuant to Article 12 of CCPRRR;
 - (c) assess the resolvability of CCPs pursuant to Article 15 of CCPRRR;
 - (d) identify, address and remove impediments to the resolvability of CCPs pursuant to Article 16 of CCPRRR; and
 - (e) coordinate public communication about resolution plans and strategies.
6. Article 4(7) of the CCPRRR mandates ESMA to develop draft regulatory technical standards (RTS) specifying the content of the written arrangements and procedures for the functioning of the resolution colleges. For the purposes of preparing those regulatory

technical standards, ESMA shall take into account the relevant provisions of the delegated acts adopted on the basis of Article 88(7) of BRRD.

7. ESMA noted that sustainability aspects are not expressly included in the mandate in relation to resolution colleges. ESMA considered that it would not be relevant to include sustainability factors when specifying their functioning and the content of the written agreement as this mandate relates to administrative set-up and thus are not significantly relevant to sustainability further than what would be applicable to any corporate entity.
8. The requirement for national resolution authorities of CCPs to establish, manage and chair a resolution college may be compared to the requirement under EMIR for national competent authorities to establish, manage and chair a college to facilitate the exercise of the tasks referred to in Articles 15, 17, 30, 31, 32, 35, 49, 51 and 54, in accordance with Article 18 of EMIR. Furthermore, ESMA has noted that banking regulation (BRRD) does contain a similar requirement in its Article 88(7) which was complemented by BRRD RTS 2016/1075 in its Articles 50 onwards. ESMA thus has taken into account, as much as possible, the corresponding elements when they were suitable for this purpose and to only depart when there were clear grounds for doing so as described in the following sections.
9. On 18 November 2021, ESMA launched a public consultation on the draft RTS with the deadline for consultation responses on 24 January 2022. ESMA also held a public hearing on the Consultation Paper (along with other consultation papers issued by ESMA under CCPRRR) on 14 January 2022.
10. The public consultation aimed at receiving stakeholders' feedback on a list of questions and on the draft RTS. This Final Report, and the accompanying draft RTS, takes into account the feedback provided by the respondents to the consultation. ESMA has also sought advice from the Securities and Markets Stakeholder Group.
11. This Final Report (and the accompanying draft RTS) introduces a number of relevant elements to further specify the content of the written arrangements and procedures for the functioning of the resolution colleges.

3 Scope of the mandate

12. CCPRRR introduces, as a device for effective cooperation among competent authorities and resolution authorities within supervisory and resolution colleges, notably at the preparatory stages of recovery and resolution, a resolution college gathering all relevant competent authorities of the CCP, its parent undertaking, its clearing members, linked trading venues and CSDs, interoperable CCP(s), the relevant members of the European System of Central Banks, central bank of issue relevant Union currencies of the financial instruments cleared, the relevant ministry and the ESAs. The aim is to cover all Member States where the CCP provides services, or which could see their financial stability impacted by the resolution of the CCP. Similarly, in order to ensure a regular exchange

of views and coordination with relevant third-country authorities, these should be invited to participate in resolution colleges as observers where necessary.

13. In accordance with Article 4(1) of the CCPRRR, the resolution college shall perform the following tasks:
 - (a) exchange information relevant for drawing up resolution plans, including for taking into consideration the systemic impact of the implementation of the resolution plan, for the application of preparatory and preventative measures and for resolution,
 - (b) draw up resolution plans pursuant to Article 12,
 - (c) assess the resolvability of CCPs pursuant to Article 15;
 - (d) identify, address and remove impediments to the resolvability of CCPs pursuant to Article 16; and
 - (e) coordinate public communication about resolution plans and strategies
14. As per Article 4(7) of the CCPRRR, ESMA has a mandate to develop regulatory technical standards specifying the content of the written arrangements and procedures for the functioning of the resolution colleges. For the purposes of preparing those regulatory technical standards, ESMA shall take into account the relevant provisions of the delegated acts adopted on the basis of Article 88(7) of BRRD.

4 Content of the written arrangements and procedures for the functioning of the resolution colleges

4.1 General considerations

15. Resolution planning is an essential element of effective resolution. In this context, the draft RTS elaborate provisions that ensure that resolution authorities have all the information necessary to identify, assess and ensure the continuance of a CCP's critical functions in the event it meets the conditions for resolution, through the development of a resolution plan and the performance of a resolvability assessment. Resolution authorities are also expected to assess the potential impact of any measures to address substantive impediments to resolvability, not only on the CCP, but also on the financial stability in the Member States where it operates and, on the Union as a whole.
16. Given the potential impact of a failing institution on the financial system and economy of a Member State, CCPRRR aims at introducing a transparent process for establishing a resolution framework where intended resolution actions or measures can be shared in a resolution college.

17. The draft RTS provide a coordinated and structured approach to resolution college functioning, allowing members and observers to be involved in the resolution college tasks necessary for regular information exchange and appropriate resolution planning, with consistent joint decisions of its members and clear actions in the case of a resolution.
18. ESMA took as a general principle, that these draft RTS encourage and expect resolution authorities to make use of the work already performed under the auspices of the supervisory college to take into account information that competent authorities already have at their disposal in order to avoid unnecessary duplication of efforts and requests for information to the supervised CCP as well as leverage on the extensive work conducted when drafting the BRRD RTS 2016/1075.
19. The draft RTS has benefited from the relevant policy work performed in the area of CCP colleges and BRRD resolution colleges on organisational aspects of the resolution college work which are expected to facilitate both the establishment and functioning of the resolution college, especially with regard to the performance of the mapping exercise for identifying resolution college members and possible observers; performing the assessment of the confidentiality provisions of third country resolution authorities; and developing and maintaining the written arrangements and procedures which also cover the terms and conditions of observers' participation in the resolution college tasks and activities.
20. Insofar as possible under the legislative framework established by CCPRRR ESMA has chosen to stick to the principles laid down in the BRRD RTS 2016/1075 and to depart from them only to the extent that the difference between the CCP and banks nature or resolution regime required it. ESMA took into account the RTS 876/2013 on supervisory colleges under Article 18 of EMIR and the Guidelines on written agreements between members of CCP colleges⁷ where considered appropriate.
21. The main differences between the CCPRRR and BRRD regimes, which led to changes throughout the draft RTS are:
 - (a) for banks the resolution authority is an EU agency, the Single Resolution Board (for the banks within the banking union), working with the national resolution authorities within the Single Resolution Mechanism whereas the resolution authority for an EU CCP is a national resolution authority and there is no direct resolution power at EU level;
 - (b) the difference in size of the resolution colleges between the CCP and the bank ones. Based on the extensive drafting of Article 4(2) and 4(4) of CCPRRR, all relevant authorities are already in the CCP resolution college which makes it unlikely to have to consult/inform authorities outside of it unlike for a bank resolution college;

⁷ [ESMA70-151-3431](#) Guidelines on written agreements between members of CCP colleges

- (c) the need to consider the different levels of resolution authorities i.e. the group level resolution authority and the entity level resolution authority, in the case of CCPs is far less relevant than for the banking sector where BRRD articulates clearly the group level and the entity level. In CCPRRR the only relevant resolution authority contemplated is the CCP national resolution authority.

It is important to note that some CCPs also have a banking licence in which case they will be taken out of the BRRD's scope. Furthermore, today there is no group headed by a credit institution and containing a CCP in the EU so there is no need to anticipate the intervention of the group level resolution authority. Yet the situation when the CCP is part of a corporate group which contains (an)other CCP(s) should be considered to ensure a discussion on the draft resolution plans and resolvability assessments between both resolution authorities of each CCP is envisaged.

- (d) CCPRRR limits the amount of information on the resolution plan that the CCP can get from the resolution authority only to a summary of the key elements of the plan, distinguishing between default events, non-default events and a combination of the two pursuant to Article 12(8) of CCPRRR which possibly limits the scope of interaction of the college/resolution authority and the CCP;
- (e) The observers may be involved only to the extent possible according to the conditions set out in Article 4(4) of CCPRRR (such as they "*may be limited to the discussion of select cross-border enforcement issues*").

- 22. Those differences and their implementation throughout the draft RTS compared to the BRRD RTS 2016/1075 are taken as working assumptions and therefore will not be repeated for each section of this Final Report.
- 23. Please also note that having regards to the recent COVID 19 pandemic, the increasing use of ITC solutions for meetings and the substantiality cost of travelling, the reference to physical meetings has been removed.

4.1.1 Summary of consultation responses

- 24. There was only one respondent to the consultation. In relation to question 1 the respondent notes it agrees with the approach and the fact that different composition of CCP resolution colleges and the specific challenges in CCP resolution are taken into account. This support applies to the full draft RTS.
- 25. The respondent raised a general comment that clearing participants, whose participation and cooperation will be crucial during resolution, will not receive any information whereas in order for the resolution objectives to be met, it deems it important that all stakeholders, including market participants, have information about the goals and the tools utilised in resolution to enable them to adapt their activity accordingly. The respondent also advocates for the involvement of the clearing members and clients in the drawing up a

resolution plan and the corresponding discussions of the draft joint decision and the summary of the resolution plan to the CCP.

4.1.2 ESMA's feedback

26. ESMA has indeed taken into account the specific challenges related to CCP resolution when adapting the existing references texts.
27. Regarding the need for clearing members and clients to be provided with the relevant information to adapt their activity and scenario accordingly and be involved in the elaboration of the resolution plan, ESMA notes that this point is not part of the mandate at stake which only covers the specification of the content of the written arrangements and procedures for the functioning of the resolution colleges. It is interesting to note however that ESMA has another mandate, set out under Article 12(9) of CCPRRR, which is to develop a draft RTS further specifying the content of the resolution plan in accordance with Article 12(7) of CCPRRR. Article 17 of the current draft RTS which cross refers to with point (p) of paragraph 7 of Article 12 of CCPRRR foresees a communication plan vis a vis the media and the public to be as transparent as possible which should cater for the respondent's comment.

4.2 Operational organisation of resolution colleges

28. Regarding the operational organisation of the resolution college the draft RTS covers the same items as for the BRRD RTS 2016/1075 i.e.:
 - (a) Identification of resolution college members and potential observers
 - (b) Third-country authorities as observers in the resolution college
 - (c) Communication with the CCP
 - (d) Establishment and update of contact lists
 - (e) Elements of written arrangements and procedures for the functioning of the resolution college
 - (f) Establishment and update of written arrangements and procedures for the functioning of the resolution college
 - (g) Operational aspects of college meetings and other activities
 - (h) Exchange of information
 - (i) Communication policy
 - (j) Coordination of external communication

(k) Emergency situations

29. Regarding point (f) above on establishment and update of written arrangements and procedures for the functioning of the resolution college, ESMA took into account the principles set out in BRRD RTS 2016/1075 and RTS 876/2013 which describe in more details how the comments of college members should be considered and the conditions and moment in which the written arrangement becomes binding.
30. Regarding point (g) above on the operational aspects of college meetings and other activities, the provisions have been complemented to reflect Article 4(6) of CCPRRR explicit mentioning of the right of the resolution college members to participate to the elaboration of the meeting agenda and to ensure the resolution authority covers a minimum set of items to have effective meetings and Article 4 of RTS 876/2013 which states the basic functions of the chairing authority of a college.

4.3 Resolution planning joint decisions

4.3.1 Joint decision process on resolution plan and resolvability assessment

31. Regarding the resolution planning decision, the draft RTS covers the same items as for the BRRD RTS 2016/1075 i.e.:
 - (a) Planning of the steps of the joint decision process
 - (b) Elements of the joint decision timetable
 - (c) Preliminary dialogue on resolution strategy
 - (d) Information from the CCP
 - (e) Transmission of information from the resolution authority
 - (f) Development and circulation of the draft resolution plan and resolvability assessment
 - (g) Consultation outside of resolution college
 - (h) Discussion with the CCP
 - (i) Dialogue on the draft resolution plan and resolvability assessment
 - (j) Drafting of the joint decision on resolution plan and resolvability assessment
 - (k) Reaching joint decision on the resolution plan and resolvability assessment
 - (l) Communication of the joint decision and summary of the resolution plan to the CCP

32. All modifications to this section of the draft RTS compared to BRRD framework are related to the points described in section 4.1 on General considerations.

4.3.2 Process in the absence of joint decision on resolution plan and resolvability assessment

33. This section of the draft RTS only contains the elements of communication of decisions by the resolution authority of the CCP. All modifications to this section of the draft RTS compared to BRRD RTS 2016/1075 are related to the points described in section 4.1 on General considerations (e.g., no need to cover partial disagreement and communication of individual decision as it is not relevant here).

4.3.3 Joint decision on measures to address substantive impediments to resolvability

- (a) Suspension of the joint decision process on the resolution plan and resolvability assessment
- (b) Planning of the steps of the joint decision process on measures to address substantive impediments to resolvability
- (c) Consultation and communication of the report to the CCP
- (d) Submission of observations of the CCP and consultation with the authorities
- (e) Drafting the joint decision on measures to address substantive impediments to resolvability
- (f) Reaching the joint decision
- (g) Communication of the joint decision
- (h) Monitoring the application of the joint decision

34. All modifications to this section of the draft RTS compared to BRRD RTS 2016/1075 are related to the points described in section 4.1 on General considerations.

4.3.4 Process in the absence of joint decision on measures to address substantive impediments to resolvability

35. This section of the draft RTS only contains the elements of communication of decisions by the resolution authority of the CCP. All modifications to this section of the draft RTS compared to BRRD RTS 2016/1075 are related to the points described in section 4.1 on General considerations (e.g., no need to cover partial disagreement and communication of individual decision as it is not relevant here).

5 Annexes

Annex I - Legislative mandate to develop technical standards

Article 4(1)

1. The resolution authority of the CCP shall establish, manage and chair a resolution college to carry out the tasks referred to in Articles 12, 15 and 16, and ensure cooperation and coordination with the authorities that are members of the resolution college and, where appropriate, cooperation with third-country competent authorities and resolution authorities.

Resolution colleges shall provide a framework for resolution authorities and other relevant authorities to perform the following tasks:

(a) exchange information relevant for drawing up resolution plans, including for taking into consideration the systemic impact of the implementation of the resolution plan, for the application of preparatory and preventative measures and for resolution;

(b) draw up resolution plans pursuant to Article 12;

(c) assess the resolvability of CCPs pursuant to Article 15;

(d) identify, address and remove impediments to the resolvability of CCPs pursuant to Article 16; and

(e) coordinate public communication about resolution plans and strategies

[...]

Article 4(7)

7. In order to ensure the consistent and coherent functioning of resolution colleges across the Union, ESMA shall develop draft regulatory technical standards in order to specify the content of the written arrangements and procedures for the functioning of the resolution colleges referred to in paragraph 1.

For the purposes of preparing those regulatory standards, ESMA shall take into account the relevant provisions of the delegated acts adopted on the basis of Article 88(7) of Directive 2014/59/EU.

ESMA shall submit those draft regulatory technical standards to the Commission by 12 February 2022.



The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Annex II – Cost-benefit analysis

1. Introduction

Pursuant to the fourth subparagraph of paragraph 7 of Article 4 of CCPRRR the Commission is empowered to adopt a delegated act to supplement the CCPRRR by further specifying the content of the written arrangements and procedures for the functioning of the resolution colleges in accordance with paragraph 1 of Article 4.

ESMA shall develop draft regulatory technical standards in order to specify the content of the written arrangements and procedures for the functioning of the resolution colleges and ESMA shall submit those draft regulatory technical standards to the Commission by 12 February 2022.

In carrying out a cost benefit analysis on the draft regulatory technical standards it should be noted that:

- The main policy decisions have already been taken under the primary legislation (CCPRRR) and the impact of such policy decisions have already been analysed to some extent by the Impact Assessment by the European Commission⁸;
- ESMA must act in accordance with the specific mandate provided in the legislation;
- ESMA policy options should be of a purely technical nature and not contain strategic decisions or policy choices and their content is limited by the legislative acts on which they are based.

2. Background

Article 4(7) of the CCPRRR mandates ESMA to develop draft regulatory technical standards (RTS) specifying the content of the written arrangements and procedures for the functioning of the resolution colleges. For the purposes of preparing those regulatory technical standards, ESMA shall take into account the relevant provisions of the delegated acts adopted on the basis of Article 88(7) of BRRD.

3. Cost-benefit analysis

Considering the empowerment to ESMA to further specify the content of the written arrangements and procedures for the functioning of the resolution colleges, the variable on which ESMA can complement is fairly limited and the actual policy option is to provide a well-considered range of elements further assisting the resolution college(s) to function as efficiently as possible to perform its tasks.

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2016%3A0368%3AFIN>

ESMA has considered how to further specify the written arrangements and procedures and identified two main options in relation to the granularity as the mandate and the articles cross-referred to are already very detailed under CCPRRR.

different corresponding policy options with regards to the granularity of such elements are detailed below.

Specific objective	To specify the content of the written arrangements and procedures to ensure the consistent and coherent functioning of resolution colleges across the Union in order for the resolution college to carry out the tasks referred to in Articles 12, 15 and 16 of CCPRRR and ensure cooperation and coordination with the authorities that are members of the resolution college and, where appropriate, cooperation with third-country competent authorities and resolution authorities.
Policy option 1	The written arrangements and procedures for resolution colleges provided in the draft RTS prescribe in a detailed manner the functioning rules of the college and its members.
How would this option achieve the objective?	Specific rules would ensure that the roles and responsibilities of the resolution college members and observers and corresponding processes are precisely defined and that the overall objectives of the resolution college are met in a clear manner.
Policy option 2	The written arrangements and procedures for resolution colleges provided in the draft RTS should remain flexible on the working rules of the college.
How would this option achieve the objective?	A more flexible approach would enable the resolution college to decide on the most appropriate way to address its functioning and achieve the tasks of the resolution college.
Which policy option is the preferred one?	A more precise approach, as described in option 1, is preferred to ensure all resolution colleges are clearly set up and organised to efficiently and consistently achieve the overall objectives of the resolution college.
Is the policy chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to	The preferred policy option is the chosen within the responsibility of ESMA.

be informed or consulted?	
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Impacts of the proposed policies:	
Policy option 1	The written arrangements and procedures for resolution colleges under draft RTS prescribe in a detailed manner the working rules of the resolution college and its members.
Benefits	Ensures that the working rules and practices of resolution colleges across the EU are harmonised.
Regulator's costs	There may be costs involved of producing specific documentation to the resolution college if requested and specified in the draft RTS but it will be a one-off cost for all resolution colleges they participate in if the draft RTS is very prescriptive.
Compliance costs	For the CCPs the compliance costs should be very low as the obligation lies on the resolution authorities and resolution college members. There may be costs involved for the CCPs of producing specific information to the respective resolution college if so prescribed in the draft RTS.
Policy option 2	The written arrangements and procedures for resolution colleges under the draft RTS should remain flexible on the working rules of the resolution college.
Benefits	Enables resolution colleges to decide on the most appropriate way to function and perform its tasks.
Regulator's costs	There will be costs and risks involved in producing ad-hoc procedures and documentation in relation to the resolution college if not specified in the draft RTS.
Compliance costs	For the CCPs the compliance costs should be very low as the obligation lies on the resolution authorities and resolution college members. There may be costs involved for the CCPs of producing ad-hoc information to the respective resolution college if so is prescribed in the draft RTS.

5.1.1 Summary of consultation responses

There was only one respondent to the consultation and such respondent agrees with the cost-benefit analysis provided by ESMA and supports the conclusion of ESMA, that the benefits of having those RTS to prescribe in a detailed manner the working rules of the resolution college and its members outweigh the costs, which results in the preferable choice of Option.

5.1.2 ESMA's feedback

ESMA notes that the Option 1 is supported.



Annex III – Advice of the Securities and markets Stakeholder Group

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

Annex IV - Draft RTS

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

supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of the written arrangements and procedures for the functioning of the resolution colleges

of []

(text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties, and in particular Article 4(7), fourth subparagraph, thereof,

Whereas:

- (1) In order to ensure a consistent and coherent functioning of the resolution colleges referred to in Article 4 of Regulation (EU) No 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties⁹ across the Union, it is necessary to specify the content of the written arrangements and procedures for their functioning.
- (2) The resolution colleges should facilitate cooperation among competent authorities and resolution authorities, notably at the preparatory stages of recovery and resolution, by gathering all relevant competent authorities, the relevant members of the European System of Central Banks, central banks of issue of the relevant Union currencies of the financial instruments cleared, the relevant ministry, the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA).
- (3) The written arrangements and procedures of the resolution college should include the necessary organisational provisions to ensure efficient and effective decision making, information exchange processes and cooperation among the authorities. In particular, the resolution college should recognise the need for establishment of flexible substructures

⁹ OJ L 22, 22.1.2021, p. 1.

within the resolution college to carry out its functions and ensure that members are able to contribute in an appropriate manner in relation to the various activities of the college.

- (4) The written arrangements and procedures of the resolution college should also include the necessary operational provisions to ensure that they enable the resolution authorities to both, coordinate their input to the supervisory college established pursuant to Article 18 of Regulation (EU) No 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories which is covering the day-to-day operation of CCPs as opposed to the specific cases of extreme financial distress of the CCP and to organise the analysis, consideration and evaluation of the input that the resolution authorities receive from the supervisory college. Written arrangements should, therefore, ideally include a process of communication between the supervisory and the resolution college.
- (5) To ensure that operational procedures are effective to address a case of emergency, the resolution authority should undertake appropriate tests for the readiness of the resolution college to act and respond in such scenario.
- (6) Timely and realistic planning for all joint decision processes is necessary to ensure smooth and efficient decision taking. Every authority involved in these processes should provide to the resolution authority its contribution in relation to the respective joint decision in a timely and efficient way and in accordance with the timetables agreed for the respective joint decision.
- (7) It is necessary to ensure that joint decisions are taken swiftly and in a timely manner. This is particularly important for decisions on resolution but is also relevant for resolution planning and resolvability assessment. At the same time, it should be ensured that all authorities involved in the joint decision-making process are provided with adequate time to express their views. The steps for reaching any joint decision should be set out, recognising that some of these steps may be performed in parallel and others sequentially.
- (8) In order to ensure comparability of processes and outcomes, and therefore achieve convergence across different resolution colleges, this Regulation should set out uniform rules on the process and documentation required for the joint decision making within the resolution colleges.
- (9) It is furthermore necessary to set out procedural framework for the resolution authority and the other authorities to strive for efficient and workable resolution planning even in the absence of joint decisions.
- (10) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (11) In accordance with Article 10 of 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)¹⁰, ESMA has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

¹⁰ OJ L 331, 15.12.2010, p. 84.

SECTION I: Operational organisation of resolution colleges

Article 1

Identification of resolution college members and potential observers

1. The resolution authority of the CCP shall identify the resolution college members referred to in Article 4(2) of Regulation (EU) 2021/23 and shall identify the observers referred to in Article 4(4) of Regulation (EU) 2021/23 pursuant to the procedure set out in Article 2 of this Regulation.
2. The resolution authority of the CCP shall communicate the list of members and potential observers and any changes thereto to the resolution college.
3. The resolution authority of the CCP shall review and update the list of members and potential observers at least annually and in any case whenever there is a change in the relevant authorities.

Article 2

Third-country authorities as observers in the resolution college

1. Upon receipt of a relevant request to participate in the resolution college from the competent or resolution authority of clearing members established in third countries or the competent or resolution authority of third-country CCPs with which the CCP has established interoperability arrangements as referred to in Article 4(4) of Regulation (EU) 2021/23, or when planning to invite them to attend in the resolution college, the resolution authority of the CCP shall communicate the plan or the request to the resolution college.
2. The communication shall be accompanied by all of the following:
 - (a) the opinion of the resolution authority of the CCP, also having regard to point (b) of this paragraph, on the equivalence of the confidentiality regime applicable to the candidate observer;
 - (b) the terms and conditions for the participation of observers in the resolution college that shall be included in the written arrangements and procedures as proposed by the resolution authority of the CCP;
 - (c) the view of the resolution authority of the CCP as to the significance of the exposure of the relevant third-country clearing members or interoperable CCPs;
 - (d) the setting of a time limit, upon the expiration of which consent shall be assumed: within that time limit any disagreeing authorities referred to in Articles 4(2)(b) and (c) of Regulation (EU) 2021/23

may express its fully reasoned objection to the opinion of the resolution authority of the CCP referred to in point (a) of this paragraph.

3. When an objection is expressed, the resolution authority of the CCP shall take it into account before making its final decision. Its decision shall be fully reasoned and communicated to all resolution college members and shall, if relevant, reflect the reasons for not taking into account certain views.
4. When the resolution authority of the CCP makes the decision to invite an authority of a third country, as foreseen in Article 4(4) of Regulation (EU) 2021/23, it shall send an invitation to the potential observer. The invitation shall be accompanied by the terms and conditions of participation as an observer set out in the written arrangements. The potential observer receiving the invitation shall be considered an observer upon acceptance of the invitation, which shall be deemed as acceptance of the terms and conditions of participation.
5. Following acceptance, the resolution authority of the CCP shall transmit an updated version of the list referred to in Article 1 of this Regulation to the resolution college.

Article 3

Communication with the CCP

1. The resolution authority of the CCP shall ensure regular interaction with the CCP to enhance the efficient and effective functioning of the resolution college.
2. The resolution authority of the CCP shall communicate to the CCP the establishment of the resolution college and a list of its members and observers, if any, as well as any change to this list.

Article 4

Establishment and update of contact lists

1. The resolution authority of the CCP shall maintain and share with the resolution college the contact details of persons appointed by each member for the purpose of performing resolution college tasks as well as contact details of persons appointed by the observers.

The contact details shall also include out-of-hours contact details to be used for emergency situations.

2. All resolution college members and observers shall ensure that the resolution authority of the CCP receives all contact details of the relevant contact persons and is informed without undue delay of all relevant changes.

Article 5

Elements of written arrangements and procedures for the functioning of the resolution college

1. The written arrangements and procedures pursuant to Article 4(5)(a) of Regulation (EU) 2021/23 shall include at least the identification of the resolution college members and observers and shall set out a framework for cooperation between resolution college members and coordination of activities and tasks.
2. The framework for cooperation and coordination shall include all of the following:
 - (a) the resolution college governance, its working language and voting procedures;
 - (b) the tasks and decisions to be undertaken by the resolution college, including the right of the resolution college to form committees and the procedures to obtain agreement on the formation of such committees and the delegation of tasks to them, together with any applicable conditions;
 - (c) the responsibilities of the chair in relation to the tasks and decisions referred to in point (b) of this paragraph;
 - (d) the structure of the resolution college, in particular any committees formed under point (b) of this paragraph and the identification of the resolution college members participating in such committees and observers admitted to such committees;
 - (e) the terms and conditions of the participation of members of the resolution college, including their involvement in the tasks and decisions identified in point (b) of this paragraph;
 - (f) the terms and conditions for the participation of observers of the resolution college, including their involvement in the dialogues and activities of the resolution college as well as their rights and obligations regarding exchanging information, having regard to Articles 4, 8 and 80 of Regulation (EU) 2021/23. For this purpose, the resolution authority of the CCP shall ensure that the terms and conditions for the participation of observers are not more favourable than terms and conditions set out for resolution college members;
 - (g) day-to-day, as well as emergency situation communication, cooperation and coordination arrangements, such as regular updates on the corporate structure and business activities of the CCP, including the type of services it provides, the products, asset classes and types of transactions it clears, the CCPs, trading venues, payment systems and central securities depositories and securities settlement systems to which it is linked and the geographical mix of direct and significant indirect participants known to the CCP;
 - (h) procedures for the adoption of joint decisions as far as this is not covered by Regulation (EU) 2021/23 and procedures to reach a common understanding where joint decision is not required

but such a common understanding within the resolution college or within any of its committees appears necessary;

- (i) arrangements for exchanging information, whether confidential or not, including the relevant scope and frequency of such exchange and the communication channels to be used, having regard to Articles 8, 73 and 80 of Regulation (EU) 2021/23 and to the role of the resolution authority of the CCP as the coordinator for collecting and disseminating information amongst the resolution college members and observers, where applicable;
- (j) a description of relevant information to be shared with resolution college members and observers in particular in relation to resolution planning, resolvability assessment and other tasks referred to in Article 4 of Regulation (EU) 2021/23 having regard to Articles 8, 73 and 80 of Regulation (EU) 2021/23 and to the role of the resolution authority of the CCP;
- (k) arrangements for the treatment of confidential information having regard to Articles 8, 73 and 80 of Regulation (EU) 2021/23;
- (l) procedures for convening and holding regular and ad hoc meetings;
- (m) arrangements relating to the interaction between the resolution college and the CCP supervisory college referred to in Article 2(24) of Regulation (EU) 2021/23, including the coordination of inputs from resolution college members and the communication of such input to the supervisory college where required for the purposes of exercising their tasks under Regulation (EU) 2021/23;
- (n) procedures in relation to the communication policy referred to in Article 9 of this Regulation;
- (o) any other agreement concerning the functioning of the resolution college; and
- (p) any provisions covering amendment and discontinuance arrangements.

Article 6

Establishment and update of written arrangements and procedures for the functioning of the resolution college

1. The resolution authority of the CCP shall prepare its proposal for the written arrangements and procedures for the functioning of the resolution college in accordance with Article 5 of this Regulation.
2. The resolution authority of the CCP shall communicate its proposal to the resolution college for consultation, inviting the members to provide their opinion and indicating the deadline for the submission of such opinions.

3. Where the members of the resolution college referred to in paragraph 2 do not express any comments within the deadline, the resolution authority of the CCP shall proceed with the adoption of the written arrangements by the resolution college.

Where the members of the resolution college express comments regarding the proposal for the written arrangements circulated pursuant to paragraph 2, they shall submit those comments together with a thorough explanation to the resolution authority of the CCP within the deadline.

4. The resolution authority of the CCP shall consider the opinions of the members of the resolution college and reason its decision when it does not take those opinions into account and proceed with the adoption of the written arrangements by the resolution college.

5. Upon finalisation, the resolution authority of the CCP shall communicate the written arrangements and procedures for the functioning of the resolution college to the members of the resolution college.

6. Written arrangements and procedures for the functioning of the resolution college shall be reviewed and updated, in particular after any substantive changes in the composition of the resolution college.

7. While updating the written arrangements and procedures for the functioning of the resolution college, the resolution authority of the CCP and the other members of the resolution college shall follow the procedure set out in paragraphs 1 to 5.

8. All members of the resolution college shall be bound by the written arrangements and procedures adopted in accordance with this Article.

Article 7

Operational aspects of resolution college meetings and other activities

1. The resolution college shall convene at least one meeting per year. The resolution authority of the CCP with the consent of all members of the resolution college, having taken into account the specificities of the CCP, may determine a higher frequency of meetings of the resolution college having regard to the CCP's size, nature, scale and complexity, the systemic implications of the CCP across jurisdictions and currencies, the potential impacts of the activities of the CCP, external circumstances and potential requests by the resolution college members.

2. The resolution authority of the CCP shall organise ad-hoc meetings or other forms of activities between resolution college members and observers, in particular where a dialogue between resolution college members and observers is required.

3. The resolution authority of the CCP shall prepare and communicate to the resolution college the agenda, objectives of meetings and other activities. The resolution authority of the CCP shall communicate the draft agenda to the members of the resolution college for consultation in advance of the meeting, inviting them to contribute to it and add points within an indicated timeline.

4. All resolution college members and observers shall ensure that appropriate representatives from their respective institutions, in view of the objectives of the meeting and other activities of the resolution college, participate in the resolution college meetings and other activities. These representatives shall be empowered to commit, to the maximum extent possible, their authorities to decisions taken in these meetings or other activities.
5. The resolution authority of the CCP shall endeavour to ensure that relevant documents are circulated at least five business days in advance before a particular meeting or activity of the resolution college, or within any other timeframe agreed by the resolution college, to ensure an efficient meeting or activity.
6. Outcomes and decisions of resolution college meetings or other activities shall be documented in writing and the resolution authority of the CCP shall endeavour to ensure that they are communicated to resolution college members and observers, to the extent relevant to their participation in the meeting, within 15 business days after the meeting/activity or within any other timeframe agreed by the resolution college.
7. The resolution authority of the CCP shall at least ensure that:
 - (a) the annual resolution college meetings decide on the resolution plan of the CCP for the preceding resolution cycle and discuss the progress made towards resolvability of the CCP.
 - (b) the resolution college meetings or activities remain effective, while ensuring that all resolution college members and observers are fully informed of the resolution college activities that are relevant to them.
 - (c) the activities of the resolution college are regularly reviewed and remedial action is taken if the resolution college is not operating effectively.
8. To ensure the efficiency and effectiveness of the resolution college, the resolution authority of the CCP shall act as a central point of contact for any matter related to the practical organisation of the resolution college.

Article 8

Exchange of information

1. Subject to Articles 8, 73 and 80 of Regulation (EU) 2021/23, the resolution authority of the CCP and the members and observers of the resolution college shall ensure that they exchange all essential information received from any source and relevant to the resolution college.
2. That information shall be adequate and accurate, as well as shared in a timely manner to enable and facilitate the efficient, effective and full performance of the tasks of resolution college members in both going concern and emergency situations.

3. Subject to Articles 8, 73 and 80 of the Regulation (EU) 2021/23, for the purpose of effective and efficient coordination between the supervisory college and the resolution college, the resolution authority of the CCP and the competent authority referred to in Article 2(7) of Regulation (EU) 2021/23 shall exchange all information required to ensure that both colleges fulfil their role set out in Article 18 of Regulation (EU) No 648/2012 and Article 4 of Regulation (EU) 2021/23.
4. The resolution authority of the CCP receiving information referred to in paragraphs 1 and 2 shall transmit it to the resolution college, subject to Articles 8, 73 and 80 of the Regulation (EU) 2021/23.
5. Where the college is organised in different committees, the resolution authority of the CCP shall keep all resolution college members fully informed, in a timely manner, of the actions taken or the measures carried out in those committees.
6. Unless otherwise provided, the resolution college may use any means of communication. Confidential and sensitive information shall be communicated using secure means as far as possible. Regarding publicly available information, it shall be sufficient that the resolution authority of the CCP provides the reference to such information.
7. Where a secure resolution college website exists, the use of this website shall be the main means of communication.
8. This Regulation shall not affect the information gathering powers of the competent or resolution authorities of the CCP.

Article 9

Communication policy

The resolution authority of the CCP shall be the authority responsible for communication with the CCP and with the competent authority referred to in Article 2(7) of Regulation (EU) 2021/23, where the latter is different from the resolution authority.

Article 10

Coordination of external communication

For the purpose of coordination of the external communication, as far as practicable, the resolution authority of the CCP shall inform the resolution college at least on the following:

- (a) the coordination of external communication and public statements during a going concern situation, in a situation where the CCP is considered as failing or likely to fail, and in a resolution situation;
- (b) the level of information to be disclosed.

Article 11

Emergency situations

1. The resolution authority of the CCP shall establish and regularly, at least annually, test operational procedures for the functioning of the resolution college in emergency situations, in particular systemic ones, which may pose threats to the viability of the CCP.
2. Operational procedures referred to in paragraph 1 shall cover at least the following elements:
 - (a) secure means of communication to be used;
 - (b) set of information to be exchanged;
 - (c) relevant persons to be contacted;
 - (d) communication procedures to be followed by the relevant resolution college members and observers.

SECTION II

Resolution planning and resolvability joint decisions

Subsection 1

Joint decision process

Article 12

Planning of the steps of the joint decision process

1. Prior to the start of the joint decision process regarding the resolution plan in accordance with Article 14(2) of Regulation (EU) 2021/23, the resolution college shall agree on a timetable of steps to be followed in that process ('joint decision timetable').

In case of a failure to agree on that timetable, the resolution authority of the CCP shall set the joint decision timetable after considering the views and reservations expressed by the resolution college members.

2. The joint decision timetable shall be updated at least annually and shall include all of the following steps to be implemented in a sequence agreed by the resolution college:

- (a) preliminary dialogue at the resolution college on the resolution strategy of the CCP, in preparation of the joint decision on the resolution plan and resolvability assessment;
- (b) request from the CCP of information necessary for the drawing up of the resolution plan in accordance with Article 12 of Regulation (EU) 2021/23 and the performance of the resolvability assessment in accordance with Article 15 of Regulation (EU) 2021/23;
- (c) submission of the information requested in point (b) of this paragraph directly to the resolution authority of the CCP;
- (d) transmission of the information that the resolution authority of the CCP receives to the resolution college and indication of a time limit for any additional information requests;
- (e) submission of contributions for the development of the resolution plan and the resolvability assessment by the resolution college to the resolution authority of the CCP;
- (f) submission of the draft resolution plan and the draft resolvability assessment from the resolution authority of the CCP to the resolution college;
- (g) submission of possible comments on the draft resolution plan and on the draft resolvability assessment from the resolution college members to the resolution authority of the CCP;
- (h) discussion with the CCP on the draft summary of the resolution plan and its resolvability assessment, where it is deemed appropriate by the resolution authority of the CCP;
- (i) dialogue at the resolution college on the draft resolution plan and the resolvability assessment;
- (j) circulation of the draft joint decision document on the resolution plan and on the resolvability assessment by the resolution authority of the CCP to the resolution college;
- (k) dialogue on the draft joint decision document on the resolution plan and on the resolvability assessment where it is deemed necessary by the resolution authority of the CCP;
- (l) reaching of the joint decision on the resolution plan and on the resolvability assessment;
- (m) communication of the conclusion of the joint decision to the CCP along with the summary of the key elements of the resolution plan.

3. The timetable shall:

- (a) reflect the scope and complexity of each step of the joint decision process;

- (b) take into account the timetable of other joint decisions organised within the resolution college;
- (c) take into account, to the extent possible, the timetable of other joint decisions organised within the relevant supervisory college, in particular the timetable of the joint decision on the review and assessment of the recovery plan in accordance with Article 10 of Regulation (EU) 2021/23.

Article 13

Planning of the steps of the joint decision process

1. When drafting the joint decision timetable, the authorities involved or the resolution authority of the CCP when acting alone shall take into account Article 16(2) of Regulation (EU) 2021/23 on the need for simultaneous assessment of resolvability and suspension of the process to address substantive impediments and shall ensure that the relevant time limits provided in the joint decision timetable are adjusted accordingly.
2. When drafting the joint decision timetable, the resolution authority of the CCP shall have regard to the terms and conditions for the participation of observers as set out in the resolution college written arrangements and in Article 4(4) of Regulation (EU) 2021/23.
3. The following aspects of the timetable shall be communicated from the resolution authority of the CCP to the CCP:
 - (a) an estimated date when the request of the information necessary for drawing up the resolution plan and performing the resolvability assessment is expected to be made in accordance with Article 12(2)(b) of this Regulation and the time limit for submission of that information in accordance with Article 12(2)(c) of this Regulation;
 - (b) an estimated date for the organisation of the discussion referred to in Article 12 (2)(h) of this Regulation, where relevant;
 - (c) an estimated date for the communication referred to in Article 12(2)(m) of this Regulation.

Article 14

Preliminary dialogue on the resolution strategy

The resolution authority of the CCP shall organise a preliminary dialogue with the relevant resolution college members and observers to perform all of the following:

- (a) discuss a preliminary proposal on the resolution strategy for the CCP;

- (b) verify whether any of the information necessary for the development of the resolution plan and the resolvability assessment is already available to any of the competent authorities, and share this information in accordance with Article 14 of Regulation (EU) 2021/23;
- (c) determine the additional information to be requested from the CCP;
- (d) agree on any contributions needed from the relevant authorities, whether resolution authorities or not, to the resolution authority of the CCP for the development of the resolution plan and the performance of the resolvability assessment.

Article 15

Information from the CCP

1. The resolution authority of the CCP shall request from the CCP all the necessary information in accordance with Article 13 of Regulation (EU) 2021/23, taking into account the outcome of the dialogue provided for in Article 14 of this Regulation.
2. The resolution authority of the CCP shall communicate to the CCP the time limit for the provision of such information.
3. The CCP shall provide the information requested to the resolution authority of the CCP in a timely manner, but no later than within the time limit specified under paragraph 2.

Article 16

Transmission of information from the resolution authority

1. The resolution authority of the CCP shall, without undue delay, transmit information received in accordance with Article 15 and subject to Article 8 of this Regulation to the resolution college members and shall invite them to provide comments on whether additional information is required within a specific timeframe.
2. Any resolution college member receiving information may request additional information from the resolution authority of the CCP within the timeframe specified under paragraph 1, where the receiving authority deems the additional information to be relevant to the development and maintenance of the resolution plan or to the performance of the resolvability assessment. In such case, the relevant provisions of Article 15 of this Regulation shall apply accordingly.
3. The transmission of information from the resolution authority of the CCP to the resolution college members referred in paragraph 2 shall not be deemed complete until the actual transmission of both the initial and the subsequent information.

4. The resolution authority of the CCP shall, taking into account paragraph 3, communicate to the resolution college the starting date of the four-month period for reaching the joint decision on the resolution plan and resolvability assessment in accordance with Article 14(2) of Regulation (EU) 2021/23.

5. The resolution college members and observers shall exchange additional information necessary to facilitate the drawing up of the resolution plan and the performance of the resolvability assessment, subject to the confidentiality requirements laid down in Articles 8, 73 and 80 of Regulation (EU) No 2021/23.

Article 17

Development and circulation of the draft resolution plan and resolvability assessment

1. All resolution college members and observers shall provide the resolution authority of the CCP with their contributions to the resolution plan and resolvability assessment in a timely manner and in any event by the time limit specified in the joint decision timetable pursuant to Article 12(2)(e) of this Regulation.

2. The resolution authority of the CCP shall develop the draft resolution plan in accordance with Article 12 of Regulation (EU) 2021/23, taking into account any contributions submitted by the relevant resolution college members and observers.

3. The resolution authority of the CCP shall circulate the contributions referred to in paragraph 1, the draft resolution plan and resolvability assessment to the resolution college members in a timely manner, however no later than within the time limit specified in the relevant step of the joint decision timetable.

Article 18

Discussion with the CCP

When the resolution authority of the CCP organises a discussion with the CCP on the key elements of the draft resolution plan, based on the opinion received by the CCP in accordance with Article 12(8) of Regulation (EU) 2021/23, and resolvability assessment with the CCP pursuant to Article 12(2)(h) of this Regulation it shall do so in a timely manner and in any event within the time limits specified in the relevant step of the joint decision timetable. The resolution authority of the CCP shall communicate to the resolution college any observations submitted by the CCP regarding the main elements of the resolution planning, including in relation to the resolvability assessment, during this consultation.

Article 19

Dialogue on the draft resolution plan and resolvability assessment

1. The resolution authority of the CCP shall organise a dialogue on the draft resolution plan and resolvability assessment with the resolution college members in a timely manner pursuant to Article 12(2)(i) of this Regulation, however no later than within the time limit specified in the joint decision timetable.

When the CCP is part of a corporate group which contains (an)other CCP(s) the resolution authorities of the CCP shall organise amongst themselves a discussion on the draft resolution plans and resolvability assessments.

2. Based on the dialogue referred to in paragraph 1, the resolution authority of the CCP shall finalise the corresponding CCP resolution plan and the performance of the resolvability assessment.

3. Where substantive impediments to resolvability are identified Article 24(1) of this Regulation applies.

Article 20

Drafting of the joint decision on resolution plan and resolvability assessment

The resolution authority of the CCP shall prepare a draft joint decision on the resolution plan and resolvability assessment of the CCP. The draft joint decision shall set out all of the following:

- (1) the names of the resolution authority of the CCP and the authorities in the resolution college reaching the joint decision on the resolution plan and resolvability assessment;
- (2) the names of the observers where those observers were involved in accordance with the terms and conditions for the participation of observers as set out in the written arrangements;
- (3) a summary of the views expressed by the authorities consulted in the joint decision process on the resolution plan and its resolvability assessment;
- (4) the measures that the CCP might already be taking to address impediments to resolvability;
- (5) the references to the applicable Union and national law relating to the preparation, finalisation and application of the joint decision on the resolution plan and resolvability assessment;
- (6) the date of the adoption of the joint decision on the resolution plan and resolvability assessment, and of any relevant update thereof;
- (7) the resolution plan and resolvability assessment including any measures to address or remove substantive impediments to resolvability in accordance with Articles 15 and 16 of Regulation (EU)

2021/23, subject to which the joint decision is taken. Where the CCP is in the process of implementing those measures, then information on the timeline for their implementation shall be also provided.

Article 21

Reaching joint decision on the resolution plan and resolvability assessment

1. The resolution authority of the CCP shall send the draft joint decision on the resolution plan and resolvability assessment to the resolution college members without undue delay setting a time limit for the resolution college members to provide their written agreement to that joint decision, in accordance with Article 8(6) of this Regulation.
2. Upon their receipt of the draft joint decision the resolution college members with voting rights not disagreeing shall transmit their written agreement to the resolution authority within the time limit specified under paragraph 1.
3. The final joint decision shall consist of the joint decision document drafted in accordance with Article 20 of this Regulation, the written agreements referred to in paragraph 2 of this Article and the agreement of the resolution authority of the CCP and shall be provided to the resolution college members.
4. The resolution authority of the CCP shall communicate the joint decision on the resolution plan and resolvability assessment to the resolution college.

Article 22

Communication of the joint decision and summary of the resolution plan to the CCP

1. The resolution authority of the CCP shall communicate the joint decision and a summary of the key elements of the resolution plan, including of the resolvability assessment, to the management body of the CCP in a timely manner and in any event by the time limit specified in the joint decision timetable.
2. The resolution authority of the CCP shall inform the resolution college about that communication.
3. The resolution authority of the CCP may discuss and explain the main elements of the joint decision on the resolution plan and the resolvability assessment with the CCP.

Subsection 2

Process in the absence of joint decision on resolution plan and resolvability assessment

Article 23

1. In the absence of a joint decision between the resolution college members within four months from the date of transmission of the draft resolution plan in accordance with Article 14(2) of Regulation (EU) 2021/23, the decision taken by the resolution authority of the CCP on the resolution plan and resolvability assessment shall be communicated to the resolution college by means of a document containing all of the following items:

- (a) the name of the resolution authority of the CCP;
- (b) the name of the CCP;
- (c) references to the applicable Union and national law relating to the preparation, finalisation and application of the decision;
- (d) the date of the decision;
- (e) the resolution plan and resolvability assessment including any measures to address or remove substantive impediments to resolvability in accordance with Articles 15 and 16 of Regulation (EU) 2021/23, subject to which the decision is taken. Where the CCP is in the process of implementing those measures, the timeline for their implementation shall be also provided;
- (f) the names of the resolution college members involved in the joint decision process on the resolution plan and resolvability assessment, along with a summary of the views expressed by those resolution college members and information on issues leading to disagreement;
- (g) comments of the resolution authority of the CCP on the views expressed by the resolution college members, in particular on issues leading to disagreement and the possibility for any of the voting members concerned to refer that matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

Subsection 3

Joint decisions on the identification of substantive impediments to resolvability and on measures to address substantive impediments to resolvability

Article 24

Suspension of the joint decision process on the resolution plan and resolvability assessment

1. When the resolution authority of the CCP, in cooperation with the resolution college, identifies substantive impediments to resolvability or assents to an opinion on identified substantive impediments expressed by any resolution college member or observer on the resolution plan and resolvability assessment, it submits a report in accordance with Article 16(1) of Regulation (EU) 2021/23. The resolution authority of the CCP shall thereby indicate the suspension of the joint decision process in accordance with Article 16(2) of Regulation (EU) 2021/23.
2. The resolution authority of the CCP shall start re-conducting the joint decision process on the resolution plan, including the performance of its resolvability assessment, as soon as the joint decision processes referred to in Article 17(3) and (4) of Regulation (EU) No 2021/23 on measures to address or remove substantive impediments to resolvability either proposed by the CCP in accordance with Article 16(3) of Regulation (EU) 2021/23 or alternative measures from the resolution authority pursuant to Article 16(3) of Regulation (EU) 2021/23 have been completed.

Article 25

Planning of the steps of the joint decision processes on the identification of substantive impediments to resolvability and on measures to address substantive impediments to resolvability

1. Prior to the start of the joint decision processes on identification of substantive impediments to resolvability and measures to address or remove them in accordance with Articles 17(2) to (4) of Regulation (EU) 2021/23, the resolution college members shall agree on a timetable of steps to be followed in that process ('joint decision timetable').

In case of a failure to agree on that timetable, the resolution authority of the CCP shall set the joint decision timetable after considering the views and any reservations expressed by the resolution college members.

2. The joint decision timetable shall include the following steps:

- (a) preparation and circulation of the report on the substantive impediments identified in accordance with Article 16(1) of Regulation (EU) 2021/23 by the resolution authority of the CCP in consultation with the competent authority of the CCP;
 - (b) submission of the report pursuant to Article 16(1) of Regulation (EU) No 2021/23 from the resolution authority of the CCP to the CCP and the resolution college;
 - (c) date when the CCP submits to the resolution authority of the CCP its observations and alternative measures to remedy the substantive impediments, if any, in accordance with Article 16(3) of Regulation (EU) 2021/23;
 - (d) dialogue between the resolution authority of the CCP and the resolution college members and observers on any observations or alternative measures to remedy the substantive impediments proposed by the CCP pursuant to Article 16(3) of Regulation (EU) 2021/23, as appropriate;
 - (e) development of the draft joint decisions on the identification of substantive impediments to resolvability and measures to address or remove them pursuant to Article 17(1)(a) to 17(1)(c) of Regulation (EU)2021/23;
 - (f) finalisation of the joint decisions on the identification of substantive impediments to resolvability and measures to address or remove them pursuant to Article 17(1)(a) to 17(1)(c) of Regulation (EU)2021/23; and
 - (g) communication to the CCP of the joint decisions on the identification of substantive impediments to resolvability and measures to address or remove them pursuant to Article 17(1)(a) to 17(1)(c) of Regulation (EU)2021/23.
3. The joint decision timetable shall be reviewed and updated by the resolution authority of the CCP in order to reflect the extension of the joint decision process where the CCP submits observations and proposes any alternative measures to address or remove substantive impediments to resolvability in accordance with Article 16(3) of Regulation (EU) 2021/23.
4. When drafting the joint decision timetable, the resolution authority of the CCP shall have regards to the terms and conditions for the participation of observers as set out in the resolution college written arrangements and in Article 4(4) of Regulation (EU) 2021/23.
5. The resolution authority of the CCP shall communicate to the CCP those aspects of the joint decision timetable that envisage the involvement of the CCP.

Article 26

Consultation and communication of the report to the CCP

1. The resolution authority of the CCP shall prepare a draft report on substantive impediments to resolvability in accordance with Article 16(1) of Regulation (EU) 2021/23 and shall transmit it to the competent authority of the CCP and to ESMA.
2. Comments and views received shall be considered by the resolution authority of the CCP for the purposes of the finalisation of the report.
3. Upon finalisation, the report shall be provided to the CCP and to the resolution college.
4. The resolution authority of the CCP shall communicate to the resolution college the start of the four-month period pursuant to Article 16(3) of Regulation (EU) 2021/23 for the CCP to propose measures to address substantive impediments to resolvability.

Article 27

Submission of observations of the CCP and consultation with the authorities

1. Where the CCP proposes to the resolution authority of the CCP, within four months of the date of receipt of the report in accordance with Article 16(3) of Regulation (EU) 2021/23, alternative measures to remedy the substantive impediments to resolvability, the resolution authority of the CCP shall forward those measures to the resolution college without undue delay and in any case within 10 business days.
2. While circulating the alternative measures submitted by the CCP, the resolution authority of the CCP shall set a time limit for submission of comments by the resolution college members.
3. Where resolution college members do not provide their comments by the time limit referred to in paragraph 2, the resolution authority of the CCP shall presume that these authorities do not have any comments on the alternative measures submitted by the CCP and shall proceed further.
4. The resolution authority of the CCP shall circulate without undue delay any comment submitted by a resolution college member or observer to all the resolution college and shall discuss with them the proposed measures submitted by the CCP to address substantive impediments to resolvability.
5. The resolution authority of the CCP and resolution college members shall duly discuss and consider the potential impact of the proposed measures on the CCP, on all the Member States where the CCP operates, and on the Union as a whole.

Article 28

Drafting the joint decisions on identification of substantive impediments to resolvability and measures to address or remove substantive impediments to resolvability

1. The resolution authority of the CCP shall, taking into account the outcome of the dialogue under Article 27(5) of this Regulation, as appropriate, prepare draft joint decisions on the identification of substantive impediments to resolvability and measures to address or remove them.
2. Each draft joint decision shall set out all of the following items:
 - (a) the name of the CCP to which the joint decision relates and applies;
 - (b) the names of the resolution authority of the CCP and the resolution college members reaching the joint decision;
 - (c) the names of the observers where those observers were involved in accordance with the terms and conditions for the participation of observers as set out in the written arrangements;
 - (d) a summary of views expressed by the authorities consulted in the joint decision process;
 - (e) the references to the applicable Union and national law relating to the preparation, finalisation and application of the joint decision;
 - (f) the date of the joint decision;
 - (g) the identification of the material impediments to resolvability;
 - (h) the assessment of the measures proposed by the CCP pursuant to Article 16(3);
 - (i) the measures pursuant to Article 16(4) and listed in Article 16(7) of Regulation (EU) 2021/23 agreed by the resolution authority of the CCP and the resolution college and the time period within which the respective entities shall address these measures;
 - (j) where the measures proposed by the CCP are not accepted or are partially accepted, an explanation of how the measures proposed by the CCP are assessed as not fit to remove the substantive impediments to resolvability and how the measures referred to in point (h) of this paragraph would effectively reduce or remove the substantive impediments to resolvability.

Article 29

Reaching the joint decisions

1. The resolution authority of the CCP shall send the draft joint decisions on the identification of the material impediments to resolvability, and on the measures to address substantive impediments to resolvability described in Article 17(1)(a) to (c) of Regulation (EU) 2021/23 to the resolution college members without undue delay setting a time limit for the resolution college members with voting rights to provide their written agreement to that joint decision, in accordance with Article 8(6) of this Regulation.
2. Upon receipt of the draft joint decisions the resolution college members with voting rights, not disagreeing with it shall transmit their written agreement to the resolution authority of the CCP within the time limit set out in paragraph 1.
3. Each final joint decision shall consist of the joint decision document drafted in accordance with Article 28 of this Regulation the written agreements referred to in paragraph 2 of this Article and the agreement of the resolution authority of the CCP. It shall be provided to the resolution college members.
4. The resolution authority of the CCP shall communicate the joint decisions on the identification of the material impediments to resolvability and on measures to address substantive impediments to resolvability to the resolution college members and observers.

Article 30

Communication of the joint decisions

1. The resolution authority of the CCP shall communicate the joint decisions to the CCP in a timely manner and in any event by the time limit specified in the joint decision timetable. The resolution authority of the CCP shall inform the resolution college about that communication.
2. Where some of the measures taken in accordance to Article 16(7) of Regulation (EU) 2021/23 are addressed to entities other than the CCP, the resolution authority of the CCP shall ensure that itself or the competent authorities of those entities, provide to the management bodies of those entities under their jurisdiction the respective parts of the joint decision on measures to address substantive impediments to resolvability, in a timely manner and in any event by the time limit specified in the joint decision timetable.
3. The resolution authority of the CCP may discuss details of the content and the application of the joint decisions on the identification of the material impediments to resolvability and on measures to address substantive impediments to resolvability described in Article 17(1)(a) to 17(1)(c) of Regulation (EU) 2021/23 with the CCP.

Article 31

Monitoring the application of the joint decisions

1. The resolution authority of the CCP shall communicate the outcome of the discussion, if any, referred to in Article 30(3) of this Regulation to the resolution college.
2. The resolution authority of the CCP shall communicate the outcome of the discussion, if any, referred to in Article 30(2) of this Regulation to the resolution authority of any other CCP, central securities depositories or credit institutions which is part of the same group or with which the CCP has an interoperability link.
3. The resolution authority of the CCP, and where relevant resolution college members, shall monitor the application of the joint decisions on the identification of the material impediments to resolvability and on measures to address substantive impediments to resolvability that are relevant to each of the entities, referred to in paragraph 2, for which they are respectively responsible, as the case may be.

Subsection 4

Process in the absence of joint decision on the identification of the material impediments to resolvability and on measures to address substantive impediments to resolvability

Article 32

Elements of communication of decisions by the resolution authority of the CCP

1. In the absence of a joint decision on measures to address substantive impediments to resolvability as referred to in Article 17(8) of Regulation (EU) 2021/23, the decision taken by the resolution authority of the CCP shall be communicated without undue delay to the resolution college by means of a document containing all of the following items:
 - (a) the name of the resolution authority of the CCP taking the decision;
 - (b) the name of the CCP and entities to which the decision relates and applies;
 - (c) references to the applicable Union and national law relating to the preparation, finalisation and application of the decision;
 - (d) the date of the decision;
 - (e) the identification of the material impediments to resolvability;

- (f) the measures pursuant to Article 16(7) of Regulation (EU) 2021/23 decided by the resolution authority of the CCP and the time limit within which those measures shall be addressed;
- (g) where the measures proposed by the CCP are not accepted or are partially accepted by the resolution authority of the CCP, an explanation of how the measures proposed by the CCP are assessed as not fit to remove the substantive impediments to resolvability and how the measures set out in point (f) of this paragraph would effectively reduce or remove the substantive impediments to resolvability;
- (h) the names of resolution college members involved in the joint decision process on the identification of the material impediments to resolvability and on measures to address substantive impediments to resolvability along with a summary of the views expressed by these authorities and information on issues leading to disagreement;
- (i) comments of the resolution authority of the CCP on the views expressed by the resolution college members, in particular on issues leading to disagreement;
- (j) The possibility for any of the voting members concerned to refer that matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

Article 33

Entry into force and application

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

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

Done at Brussels, XXX