



European Securities and
Markets Authority

Response Form to the Consultation Paper

Draft RTS further specifying the factors that shall be considered by the competent authority and the supervisory college when assessing the CCP recovery plan (Article 10(12) CCPRRR)



Responding to this paper

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

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

ESMA will consider all comments received by **20 September 2021**.

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

Instructions

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_FCTRS_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_FCTRS_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_FCTRS_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on the factors that shall be considered by the competent authority and the supervisory college when assessing the CCP").

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. In particular, this paper may be specifically of interest for EU central counterparties, clearing members and clients of clearing members.

General information about respondent

Name of the company / organisation	Eurex Clearing
Activity	Central Counterparty
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_FCTRS_00>

Eurex Clearing appreciates the opportunity to provide feedback to the Draft RTS further specifying the factors that shall be considered by the competent authority and the supervisory college when assessing the CCP recovery plan.

We agree overall with the proposed factors to be used for the assessment of Recovery Plans and have only some comments in relation to Articles 7, 10(b), 11(b), and 15(a) as well as (b) of the draft RTS asking for clarifications.

Please also note in this context that we provided responses as well to the consultations on the guidelines for recovery plan indicators and scenarios.

We trust our comments are considered a useful contribution to the specification of the new CCP RR regime ensuring an effective implementation. Eurex Clearing remains at the disposal of ESMA for any questions and additional feedback

<ESMA_COMMENT_FCTRS_00>

Questions

Q1 : Do you agree with the proposed list of elements (as further specified in the RTS) to be taken into consideration under point (a) of Article 10(3) of CCPRRR?

<ESMA_QUESTION_FCTRS_01>

We agree that CCPs are able to assess these elements to a certain extent, but we would like to note that CCPs can only do so based on the limited amount of information that other CCPs make publicly available. Regarding lit. a of Article 7 of the RTS, for example, it is of course possible for a CCP to verify against the ESMA register whether other CCPs are authorised or recognised under EMIR to provide equivalent services. However, the mere fact of being authorised or recognised and being involved in the clearing of equivalent products does not mean that another CCP necessarily has the technical and operational capacity to actually take on additional clearing business, and the CCP drawing up its recovery plan would have few other avenues available to it to find this information. We would therefore ask that the requirements in Article 7 be explicitly restricted to information that could reasonably be known by the CCP in question.

<ESMA_QUESTION_FCTRS_01>

Q2 : Would you add any additional elements and/or delete any? If so, please justify.

<ESMA_QUESTION_FCTRS_02>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FCTRS_02>

Q3 : Do you agree with the proposed list of elements (as further specified in the RTS) to be taken into consideration under point (b) of Article 10(3) of CCPRRR?

<ESMA_QUESTION_FCTRS_03>

In relation to Article 10(b), we would ask that ESMA define more precisely what it means by “financial resources exchanged,” as the nature and maturity of these exchanges significantly affect the risks inherent in the links between the CCP and its counterparties. We would also appreciate more precision regarding the types of ‘financial resources’ that should be counted for this purpose. For example, it is unclear to us whether standing credit facilities would be counted by the total available amount from the point where they are opened, even when the outstanding balance is 0, or only when and to the extent that they are drawn, or in some other manner.

Regarding Article 11(b), we would note that CCPs can only do this up to a certain point. A CCP can, of course, design the measures that may have a financial impact on its clearing members in such a way that the clearing member’s potential liability is calculable. In addition, the functioning and triggers for these measures can and should be communicated to the clearing members in a transparent manner, including through the CCP’s rulebook, and a CCP

can also assist its clearing members in communicating this information to their clients. However, once that has been done, it is the responsibility of the clearing members and their clients to ensure that they can meet these pre-defined and transparent obligations. It is also not possible for a CCP to comprehensively analyse whether the application of its recovery tools might impact the stability of its clearing members or their clients, as the CCP does not have complete information on the financial situation of the clearing members or their clients.

<ESMA_QUESTION_FCTRS_03>

Q4 : Would you add any additional elements and/or delete any? If so, please justify.

<ESMA_QUESTION_FCTRS_04>

We would ask that ESMA consider providing some clarifications to these elements; please see our response to Question 3.

<ESMA_QUESTION_FCTRS_04>

Q5 : Do you agree with the proposed list of elements (as further specified in the RTS) to be taken into consideration under point (c) of Article 10(3) of CCPRRR?

<ESMA_QUESTION_FCTRS_05>

Article 15(a) and (b) of the draft RTS refer respectively to 'voluntary contributions' and 'calls for resources, whether voluntary or not'. This has two potential meanings:

(1) That contributions made by clearing members in response to the use of one or more of the recovery tools are voluntary. We would respond that, where a CCP does choose to implement any or all of the recovery tools provided for in the Regulation, the contributions received due to the exercise of those tools would not be 'voluntary': Since any recovery tools a CCP opts to use must be implemented in the CCP's rulebook (Article 9(20)), they are contractual obligations on clearing members and therefore mandatory. (2) That the CCP has the discretion to voluntarily implement any or all of the recovery tools as it sees fit, and that the implementation of the recovery tools is therefore 'voluntary' on the part of the CCP. We would find this meaning problematic, since a requirement for competent authorities to assess a CCP's recovery plan against criteria regarding the implementation of recovery tools puts considerable pressure on the CCP to have implemented those tools. The Level 1 text is clear that the implementation of any or all of the recovery tools provided for in the Regulation is at the discretion of the CCP: Article 9(10) in conjunction with paragraph (4) of Section A of the Annex refers to a number of loss and position allocation tools that CCPs '*may*' implement in their rulebooks, i.e., there is no requirement that CCPs *must* implement any or all of these specific tools in their rulebooks for use in recovery. Regarding the recovery cash calls and VMGH in particular, paragraph 4 states that 'loss allocation actions *may* include recovery cash calls and a reduction in the value of gains payable by the CCP to non-defaulting clearing members'. If a CCP's decision to implement or not implement these tools were to become one of the factors against which its recovery plan is assessed, it would effectively introduce a requirement for CCPs to implement the recovery tools, which we believe is not fully consistent with the Level 1 text.

We would therefore ask ESMA to, first, clarify what it means with the term 'voluntary'. Where the second meaning is intended, we would also ask that ESMA consider slightly rephrasing the requirements so that these criteria are only assessed where and to the extent that a CCP has chosen to implement any or all of the recovery tools, making clear that this requirement of the RTS is not intended to be read as an obligation on CCPs to implement any or all of the recovery tools.

<ESMA_QUESTION_FCTRS_05>

Q6 : Would you add any additional elements and/or delete any? If so, please justify.

<ESMA_QUESTION_FCTRS_06>

Please refer to our response to Question 5.

<ESMA_QUESTION_FCTRS_06>

Cost and Benefit Analysis Questions:

Q7 : Do you agree with the Option 1, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 1)?

<ESMA_QUESTION_FCTRS_07>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FCTRS_07>

Q8 : If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

<ESMA_QUESTION_FCTRS_08>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FCTRS_08>