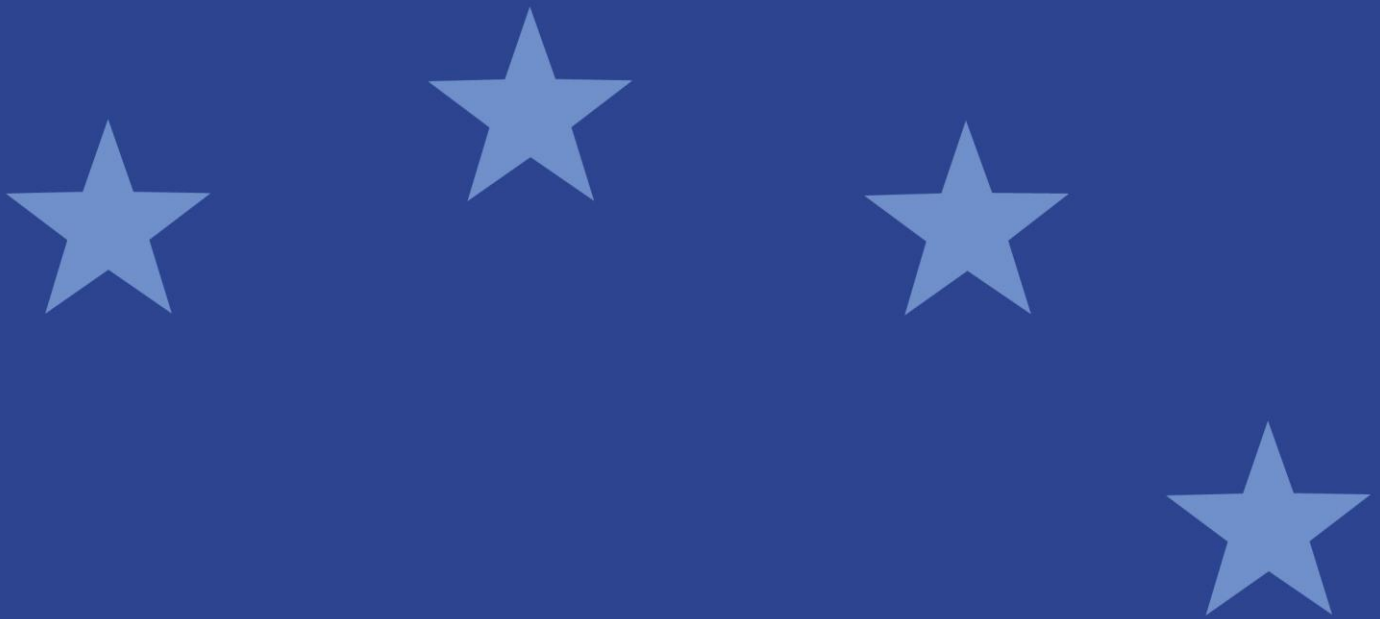




European Securities and  
Markets Authority

# 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](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

### Instructions

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_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](http://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](http://www.esma.europa.eu) under the heading [Legal Notice](#).

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

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

## General information about respondent

Name of the company / organisation	European Commodity Clearing AG
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>

European Commodity Clearing AG is an EMIR-authorized central counterparty (CCP) and a subsidiary of the Deutsche Börse Group. European Commodity Clearing AG provides clearing services for commodity derivatives markets.

European Commodity Clearing AG 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.

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

ECC would have one more general remark on the timeline. ESMA is consulting on those draft RTS until 20 September 2021. Taking into account a proper analysis and the respective internal formal processes we anticipate final RTS to be published more at the end of Q4/2021. CCP Recovery & Resolution will come into effect in February 2022 which will leave up a limited amount of time for adapting to potential changes. We therefore expect ESMA and the NCAs to find a reasonable and practicable approach how CCPs should deal with potential last minute RTS.

<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. 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.

**ECC believes that the following criteria should be reconsidered/adjusted with specific parameter:**

**Criteria 4.2.5 - The level of complexity of the organisational structure (Article 6 of the RTS)**

**“The links of the CCP to any same-group entities “** → Most CCPs are belonging to bigger exchange groups and therefor have links to different same-group entities. ECC questions the assessment of such a parameter and in addition – due to their unique profile – most CCP organisations are anyway rather complex.

**“The complexity of the CCP’s internal organisation may affect the application of the recovery plan; “** → ECC questions this parameter as a respective complex internal organization is a prerequisite in order to develop and execute recovery plans. ECC asks for specification on the measurement and a definition of a complex organization.

With respect to the **Procedures for decisions processes** ECC questions whether it is good to have high flexibility for fast decision making or is it better to have more documentation/processes in place?

<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>

- **Criteria 4.3.1 - General links of the CCP (Article 10 of the RTS)**
  - ECC appreciates the reference to the assessment taking into account the significance and materiality (RTS Article 10.b) of the links that the CCP has with other entities. However, we would appreciate receiving a clarification on what it is meant by “*financial resources exchanged*”, given that the nature and maturity of such exchanges affect the risk.
- **Criteria 4.3.2 - Overall impact of the recovery plan on the CCP’s clearing members, and to the extent the information is available, their clients and indirect clients (Article 11 of the RTS)**
  - Criteria 4.3.2.b – ECC wonders whether the cost of clearing are relevant for this assessment and suggest removing them. For what concerns in particular RTS Article 11(b), we would recommend deleting it as the CCP cannot be held responsible for managing the financial situation of the clearing members or even indirect clients. In addition, we would like to make it clearer that Article 11(c) of the RTS should refer to the relevant knowledge of the recovery plan by clearing members, i.e. clearing members should be made aware of the obligations they have and how they are affected by certain recovery options (e.g. cash call or variation margin gain haircutting). It is up to the CCP to determine how to make its clearing members aware of this (e.g. via the rulebook). This Article should therefore not lead to the full disclosure of the recovery plan to CMs (and clients).
- **Criteria 4.3.5 - Overall impact on the financial system of any Member State and the Union as a whole (Article 14 of the RTS)**
  - Criteria 4.3.5.b – The results of ESMA’s cross-CCP stress-testing exercises may not always be suitable to be considered in the CCP’s recovery plan but they may rather be considered for the default management process prior to the recovery phase. We suggest this is reflected in the text of the RTS.
  - Criteria 4.3.5.c – A similar criteria is included in 4.2.3.b and 4.3.1.a. We therefore wonder whether it is appropriate to repeat it here.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FCTRS\_05>

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

<ESMA\_QUESTION\_FCTRS\_06>

ECC is of the opinion that the proposal is too detailed and would make the recovery overly extensive. In addition, ECC thinks that the assessment in Art. 15(a) of how to incentivize additional voluntary contributions could be deleted or should only be assessed where a CCP has chosen to incentivize voluntary contributions.

<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>