



European Securities and  
Markets Authority

# Response Form to the Consultation Paper

**Draft Guidelines on CCP recovery plan indicators (Article 9(5) 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\_INDC\_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\_INDC\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_INDC\_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 CCP recovery plan indicators").

## **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\_INDC\_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 ESMA Consultation Paper on Draft Guidelines on CCP recovery plan indicators. Please also note that, relatedly, we provided responses to the consultations on the Guidelines for recovery plan scenarios and to the draft RTS for factors to be taken into account by NCAs and colleges when assessing recovery plans.

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\_INDC\_00>

## Questions

### Guideline 1 Question:

Q1 : Do you agree with the overarching principle and objectives of the guidelines for the framework of CCP recovery plan indicators as set out in the proposed Guideline 1?

<ESMA\_QUESTION\_INDC\_01>

As stated by article 9 (3) CPRRR, recovery plan indicators should be identified by the CCP based on its peculiar risk profile and having regard to a principle of proportionality.

Indicators should, in the wider context of recovery, serve the specific purpose of identifying the points at which appropriate actions referred to in the recovery plan may be taken. The adoption of a comprehensive framework of indicators is meant to streamline and assure the timely implementation of predetermined recovery procedures, by identifying ex ante clear qualitative or quantitative risk-based markers. It is however important to point out that the thresholds for the recovery indicators should be considered by CCPs solely as a reference, without assuming any automatic response in terms of recovery actions.

In this context, as referenced in wording no. 19 of CCPRRR, a risk based framework of recovery plan indicators should clearly be linked to situations encompassing either a significant deterioration in the CCP's financial situation or a significant risk of breach of its capital and prudential requirements, that if occurring would require the start of the appropriate recovery actions foreseen in the plan.

By specifying a minimum list of indicators, as per article 9 (5) of CCPRRR we suggest ESMA to consider the potential drawbacks of an excessively prescriptive approach. In particular, so as to ensure consistency while at the same time guaranteeing proportionality to the system, the guidelines should only define a minimum set of indicators, leaving each CCP an appropriate degree of flexibility so as to identify, in accordance with relevant authorities, the most appropriate framework of indicators, depending on the risk peculiarities of the given CCP. Furthermore, the introduction of an excessively high number of indicators would add complexity to the system, making recovery less effective.

Therefore, we strongly believe that indicators should always show a clear cut link with recovery phase, and, in designing a minimum framework, potential overlaps with BAU activities and situations should be avoided.

<ESMA\_QUESTION\_INDC\_01>

## **Guideline 2 Question:**

Q2 : Do you agree with the proposed Guideline 2 and the categorisation of CCP recovery plan indicators into the three categories? Would you propose a different categorisation?

<ESMA\_QUESTION\_INDC\_02>

ECC agrees that indicators are intended to identify the points at which appropriate decision-making and actions referred to in the plan may be taken.

In light of the above, ECC is in favour of a distinction between indicators that signal the move from a Business as Usual scenario to a recovery phase (referenced as category b indicators) and indicators that signal the usage of specific recovery measures (referenced as category c indicators). On the other hand, we question the opportunity to introduce a further early warning category of indicators (referenced as category a indicators), which all CCPs would be mandated to include in their recovery plans.

The conditions which would be relevant for early warning indicators would complement the system by capturing circumstances where there would be a material probability of the need to adopt measures foreseen in the recovery plan. This perspective, which seems rather hypothetical, appears excessively formalistic, and adds unnecessary complexity to the system. Moreover, a clear connection with the start of the recovery phase or the adoption of recovery measures seems missing for this category of indicators, which seem to intend to anticipate effective recovery scenarios, thus confusing the lines between BAU arrangements and recovery arrangements. Furthermore, in certain instances there would also be overlaps with category b indicators, with the risk that recovery actions may be taken too late. In any case it would not be straightforward for CCPs to determine ex ante the difference between a material and non material probability. We see also a need for specification when to go to the recovery phase, this should not be the assessment of individual CCPs, otherwise the process might be called too late/too early.

Also, whereas the development by ESMA of a minimum list of category b and c indicators shows a clear link with the CCPRRR mandate envisaged in article 9 (4 and 5), the specification of a minimum list of early warning/category a indicators does not seem to be explicitly referenced in the context of the level 1 provisions.

In light of the above listed considerations, we would suggest ESMA to reconsider the inclusion of the early warning category a indicators in the minimum list of indicators which shall be mandatory adopted by CCPs. This would make the system more straightforward and proportionate and at the same time it would not prevent CCPs to adopt early warning indicators in the context of the CCP's governance arrangements, if deemed appropriate in light of the peculiar risk profile of the CCP and in accordance with competent authorities.

Alternatively, we would suggest nonetheless ESMA to complement the proposed categorisation by including in respect to early warning indicators additional flexibility for CCPs in defining the specific indicators pertaining to this category, as this would make the system more tailored on the specificities of CCPs.

<ESMA\_QUESTION\_INDC\_02>

**Guideline 3 Questions:**

Q3 : Do you agree with the proposal to link each recovery plan scenario of a CCP with at least one 'indicator that provides early warning for recovery actions' and one 'indicator that signals the move from Business as Usual risk management to the recovery phase'? Would you propose a higher number of indicators for each scenario?

<ESMA\_QUESTION\_INDC\_03>

As stated above, ECC agrees that indicators should serve the purpose of identifying the points at which appropriate decision-making and actions referred to in the plan may be taken. However, we would not agree with linking each recovery plan scenario with any specific indicator. While the scenarios are hypothetical in nature for providing a realistic and detailed picture of the risk facing a CCP, the indicators should be established on the basis of quantitative metrics in relation to the CCP's financial and operational position linked to the activation of the recovery plan. Therefore, rather the indicators could be used to assess various risk scenarios to determine which risks likely trigger a possible scenario. Further, as mentioned above,

We would encourage ESMA to consider not including early warning category a) indicators in the list of minimum indicators that would need to be adopted by the CCP (which would not be precluded to adopt if deemed appropriate). ECC does not support a higher number of indicators for each scenario, as the most appropriate number of indicators should be assessed on a case by case basis by the CCP, depending on its risk profile and in accordance with authorities.

<ESMA\_QUESTION\_INDC\_03>

Q4 : Do you agree with the list of proposed indicators for each scenario as set out in Table 1? Would you add/delete any?

<ESMA\_QUESTION\_INDC\_04>

Overall, as stated in sub answer 3, ECC is of the opinion that the inclusion of early warning category a indicators in the minimum list of indicators which shall be mandatory adopted by CCPs should be reconsidered, as we suggest that CCPs should retain the freedom to decide if the inclusion of early warning indicators would be appropriate in light of the peculiar risk profile of the CCP and in accordance with competent authorities. Alternatively, we would suggest nonetheless ESMA to complement the proposed categorisation by including in respect to early warning indicators additional flexibility for CCPs in defining the specific indicators pertaining to the this category, as this would make the system more tailored on the specificities of CCPs.

ECC likes to point out that some of the proposed category a indicators overlap with category b indicators, thus creating inconsistencies in the system. Also, we would like to suggest again that the various category b) indicators referencing ‘a realised or forecasted loss or shortfall’ should only focus on the concept of realised loss or shortfall in order to more precisely identify the start of the recovery phase (provided that in any case indicators should be considered by CCPs solely as a reference, without assuming any automatic response in terms of recovery actions).

<ESMA\_QUESTION\_INDC\_04>

Q5 : Do you agree with the degree of granularity of the proposed indicators (as set out in Table 1) or should these be more prescriptive? Example: to assess the reduced liquidity of a market and the increased likelihood of being unable to reach a balanced book, the indicators could be the withdrawal of one or several market participants, the trading volumes, and the typical transaction costs.

<ESMA\_QUESTION\_INDC\_05>

ECC agrees on the granularity of the indicators, in light of the amendments proposed in the previous answer. We would suggest in any case ESMA to consider that the level of granularity should be set in accordance with the principle of proportionality, leaving each CCP the possibility to undertake the actions deemed more appropriate on a case by case basis. In particular, too prescriptive indicators that may not properly fit all the circumstances, should be avoided and we suggest ESMA to consider the potential drawbacks of such an excessively prescriptive approach. As stated, so as to ensure consistency while at the same time guaranteeing proportionality to the system, the guidelines should only define a minimum set of indicators, leaving each CCP an appropriate degree of flexibility so as to define, in accordance with relevant authorities, the most appropriate framework of indicators, depending on the risk peculiarities of the given CCP.

<ESMA\_QUESTION\_INDC\_05>

Q6 : Do you agree with the proposed approach for the ‘indicators that signal the usage of specific recovery measures’?

<ESMA\_QUESTION\_INDC\_06>

We do not feel that this approach would necessarily be the most effective; please see our response to Questions 2 and 3.

<ESMA\_QUESTION\_INDC\_06>

**Guideline 4 Question:**



Q7 : Do you agree with the proposed Guideline 4 on the integration of CCP recovery plan indicators with the CCP's monitoring system, and with the list of risks, entities and issues that should be monitored?

<ESMA\_QUESTION\_INDC\_07>

The proposal that CCPs should monitor a list of all relevant types and sources of risk proposed by ESMA seems questionable, as it does not adequately reflect a risk based perspective, which should guide CCPs in the definition of the appropriate framework of recovery indicators and it lacks proportionality, so that it would be particularly burdensome for smaller CCPs. We urge ESMA to consider adding flexibility to this guideline, including a reference to the need determine the list in light of the CCP risk profile, the critical functions of a CCP according to Art. 1 (27) and Art. 9 (1) CCPRRR and the principle of proportionality.

According to CCPRRR Article 9(4) CCPs shall monitor on a regular basis the recovery plan indicators. The proposal of ESMA in paragraphs 39 and 40 is, in our opinion, beyond the scope of CCPRRR Article 9(4 and 5), and the monitoring of all material risks is already part of general prudent risk management under EMIR. Well defined recovery plan indicators should already cover the relevant and material sources of risks. Regular monitoring (and reporting) of anything beyond the recovery plan indicators, in addition to the general risk management and associated monitoring and indicators would not be proportional and, as stated, outside the scope of the CCPRRR.

The proposed additional monitoring requirements seems to be more fitting to business-as-usual risk management and are likely to be already monitored as part of that. We therefore urge ESMA to reconsider the proposed requirement in this CP to monitor anything beyond the recovery plan indicators itself. Furthermore, we would suggest ESMA to consider that, especially in terms of monitoring of the financial soundness and/or operational viability of third parties and interconnected FMIs, the state of information available to the CCP, is in many instances limited (e.g. CCPs do not have access to members recovery plans or to third party incident reports).

Where ESMA decides to stay with these monitoring requirements, it shall at least be clarified that, where such indicators, monitoring and evaluations processes are already in place in the CCPs general risk management under EMIR, no additional monitoring or reporting is required.

<ESMA\_QUESTION\_INDC\_07>

#### **Guideline 5 Question:**

Q8 : Do you agree with the proposed Guideline 5?

<ESMA\_QUESTION\_INDC\_08>

Yes; other frameworks like BRRD have shown that an annual review of the recovery indicators ensures they continue to be well-designed and appropriate to the nature of

the risks facing a CCP, which naturally evolve over time. However, as indicators are integral part of the recovery plan (see Annex A CCPRRR), an update of the plan itself includes review and update of the indicators already and this guideline is not necessarily required.

<ESMA\_QUESTION\_INDC\_08>

**Cost and Benefit Analysis Questions:**

Q9 : Do you agree with the Option 3, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 3)?

<ESMA\_QUESTION\_INDC\_09>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_INDC\_09>

Q10 : If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

<ESMA\_QUESTION\_INDC\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_INDC\_10>