



European Securities and
Markets Authority

Response Form to the Consultation Paper

Draft Guidelines on CCP recovery plan scenarios (Article 9(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_SCN_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_SCN_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_SCN_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 CCP recovery plan scenarios”).

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	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_SCN_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 ESMA's consultation regarding the Draft Guidelines on CCP recovery plan scenarios. Please also note in this context that we provided responses as well to the consultations on the Guidelines for recovery plan indicators and on the draft RTS for factors to be taken into account by NCAs and colleges when assessing recovery plans.

While we agree in principle with the Guidelines, we would caution against an overly prescriptive approach and recommend that a CCP have some flexibility in assessing the risks to be reflected in its recovery plan scenarios based on its risk profile and characteristics. As such, we would advise against requiring each CCP to create at least one scenario for each of the seven types identified in the consultation paper for default, non-default and combined scenarios. Rather, CCPs should have some flexibility to create a smaller number of scenarios that are most meaningful to their risk profile and combine this with a comprehensive recovery indicator framework and robust indicator monitoring process.

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_SCN_00>

Questions

Guideline 1 Questions:

Q1 : Do you agree that each CCP should include, in its recovery plan, at least one scenario for each of the seven types of scenarios?

<ESMA_QUESTION_SCN_01>

According to the CCPRRR recovery plan scenarios should cover scenarios that affect the financial soundness or operational viability of the CCP and be relevant to the CCP's specific conditions. The scenarios should cover systemic and idiosyncratic scenarios. Furthermore, it specifies that both default, non-default and a combined event should be covered.

ESMA has defined a total of seven of scenarios in its consultation paper, comprising; 3 default events, 3 non-default events and 1 combined scenario. The scenarios are not per se mutually exclusive, moreover, there seems to be an overlap between the scenarios. ECC would therefore propose not to require every CCP to create at least on scenario for each of the seven types proposed by ESMA but rather to combine scenarios where feasible. For instance, scenario 5 (default event causing liquidity shortfall) can be combined with one of the other default event scenarios. Moreover, default and non-default event scenarios can in general be combined. While each scenario may be superficially very different, in practice the recovery measures taken are straightforward: either the CCP will have to secure funding from one of its pre-determined funding sources, or it will have to activate the relevant unit/service backup plans (or possibly both).

We would propose to require a minimum of 4 scenarios in total covering, at least, the following characteristics/features (which follow from the ESMA proposed scenarios):

- *Idiosyncratic event.*
- *Systemic event.*
- *Default event, returning to matched book through voluntary, market-based tools.*
- *Default event, returning to matched book through mandatory rules-based arrangements.*
- *Default event causing liquidity shortfall.*
- *Default event beyond Cover-2.*
- *Non-default event preventing the CCP from performing its critical functions.*
- *Non-default event causing financial losses.*

<ESMA_QUESTION_SCN_01>

Q2 : Do you agree with the proposed list of the types of scenarios? Would you propose any additional types of scenarios?

<ESMA_QUESTION_SCN_02>

The proposed list of the types of scenarios is in general complete and it would allow CCPs to tailor them to their specificities/business model. However, proposed scenario 2 (*default event causing financial losses with a default management process that requires mandatory, rules-based arrangements in order to re-establish a matched book*) would require the full default fund of a CCP and its additional amount of pre-funded dedicated own resources (Second Skin-in-the-Game, SSITG) to be fully depleted. In our opinion, such a scenario may be well beyond the *extreme but plausible* principle. We would therefore propose removing the requirements to use mandatory rule-based arrangements (i.e. those arrangements referred to in point 15 of Section A of the Annex of the CCPRRR).

<ESMA_QUESTION_SCN_02>

Q3 : Do you agree that CCPs should further assess, based on the factors provided, whether it is necessary to create additional scenarios for each type of scenario?

<ESMA_QUESTION_SCN_03>

As outlined under the response to question 2, ECC believes that the proposed types of scenarios are complete and would allow CCPs to tailor them to their specificities. ECC believes that the proposal to have, at a minimum, 4 scenarios covering the characteristics outlined in question 1 should be sufficient for most CCPs. However, if the CCP is of the opinion that additional scenarios are necessary, as its specificities cannot be incorporated into any of the other scenarios, the CCP should be able to do so on a voluntary basis.

<ESMA_QUESTION_SCN_03>

Guideline 2 Question:

Q4 : Do you agree with the proposed Guideline 2 and the list of relevant types and sources of risk that CCPs should cover when building their range of recovery plans scenarios?

<ESMA_QUESTION_SCN_04>

In general, we agree that the types and sources of risks that are most relevant to the CCP should find their way into the recovery plan scenarios. ECC is of the opinion that when assessing the relevance of a certain type or source of risk, the CCP's assessment should be performed taking into consideration its particular risk profile and specificities. While understanding the importance of establishing a certain level of convergence in the recovery plan scenarios, we nonetheless argue that CCPs should

retain flexibility in assessing which types and sources of risk should be addressed in the various scenarios, always taking into account the CCP specific structure. Moreover, this assessment would always be subject to consultation and review with NCAs.

Against this background, the proposed list of types and sources of risks seems too prescriptive and we believe that a degree of proportionality, via additional flexibility, would be required in light of the CCPRRR principles. This would help avoid a “check-the-box” approach by CCPs and authorities, which would not help the effectiveness of recovery planning.

<ESMA_QUESTION_SCN_04>

Guideline 3 Questions:

Q5 : Do you agree with the proposed Guideline 3 and the principles for determining the magnitude of the recovery plan scenarios (with reference to the overall risk management framework of the CCP as required by EMIR and the relevant RTSs)?

<ESMA_QUESTION_SCN_05>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SCN_05>

Q6 : As regards operational risk, do you agree the recovery plan scenarios should include, if deemed relevant, scenarios in which all resiliency measures that form part of the policies and procedures required by Article 34 of EMIR are surpassed, leading to a failure in one or more critical functions of the CCP that exceed the legal requirement set out in article 17(6) of RTS 153/2013?

<ESMA_QUESTION_SCN_06>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SCN_06>

Guideline 4 Question:

Q7 : Do you agree with the proposed Guideline 4 and the information to be included when describing the recovery plan scenarios?

<ESMA_QUESTION_SCN_07>

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<ESMA_QUESTION_SCN_07>

Guideline 5 Question:

Q8 : Do you agree with the proposed Guideline 5?

<ESMA_QUESTION_SCN_08>

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<ESMA_QUESTION_SCN_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_SCN_09>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SCN_09>

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

<ESMA_QUESTION_SCN_10>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SCN_10>