
EACH response to the ESMA consultation on Draft Guidelines on CCP recovery plan scenarios (Article 9(12) CCPRRR)

September 2021

Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 19 members from 15 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide feedback to the ESMA Consultation Paper “EACH response to ESMA consultation on Draft Guidelines on CCP recovery plan scenarios (Article 9(12) CCPRRR)” (hereinafter called “The consultation”).

Guideline 1: Establishing the appropriate number of scenarios to be included in CCP recovery plans

Question 1: Do you agree that each CCP should include, in its recovery plan, at least one scenario for each of the seven types of scenarios?

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 types of scenarios in its consultation paper, comprising: 3 default events, 3 non-default events and 1 combined scenario. We respectfully believe that these **scenarios will likely overlap with each other** as from our point of view they are not fully mutually exclusive. We would therefore propose, in line with ESMA’s call for CCPs to design or build each scenario in a way that best fits their specific characteristics and level of complexity, not to require every CCP to create at least one scenario for each of the seven types proposed by ESMA but rather to **allow CCPs to use the scenario types in Table 1 to create the number of scenarios that are most meaningful to CCPs** based on **their risk profile and specificities**, be this number smaller or larger than the seven proposed in the consultation paper. For instance:

- Scenario types 3 (Non-default event preventing the CCP from performing its critical functions) and 4 (Non-default event causing financial losses) could **potentially happen simultaneously**;
- Scenario types 5 (default event causing liquidity shortfall) can be **combined with one of the other default event scenarios**;
- Default and non-default event scenarios types can in general be **combined**.

Question 2: Do you agree with the proposed list of the types of scenarios? Would you propose any additional types of scenarios?

We think that 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, as outlined in our previous answer, EACH would caution against requiring every CCP to create at least one scenario for each of the seven types and rather allow CCPs some flexibility in tailoring the scenarios to their specific risk profiles. For instance, 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 rules-based arrangements (i.e. those arrangements referred to in point 15 of Section A of the Annex of the CCPRRR).

Question 3: 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?

As outlined under the response to question 2, we believe that the proposed types of scenarios are complete and would allow CCPs to tailor them to their specificities. However, we believe that the proposal to have, at a minimum, **4 scenarios covering the characteristics outlined in question 1 should be sufficient for most CCPs**. Nevertheless, 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 have the flexibility do so on a voluntary basis.

Guideline 2: Types and sources of risk to be covered by CCP recovery plan scenarios

Question 4: 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?

In general, we agree that the types and sources of risks that are most relevant to the CCP should be included in the recovery plan scenarios. We are 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, in light of 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** to us, 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.

As also referenced under our response concerning recovery plan indicators, we would respectfully suggest ESMA to consider the potential drawbacks of an excessively prescriptive approach, which would not be risk sensitive. Therefore, to ensure consistency while at the same time guaranteeing proportionality to the system, an **appropriate degree of flexibility** should be foreseen.

Guideline 3: Principles for determining the magnitude of CCP recovery plan scenarios

Question 5: 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)?

Yes, as recovery follows the business-as-usual risk management, it is logical that the recovery plan scenarios go beyond the overall risk management framework as required by EMIR.

Question 6: 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?

Yes, we agree that recovery plan scenarios should not cover the exact same scenarios of operational resiliency already covered by policies and procedures required by EMIR Article 34. We however think that surpassing all measures set out in such policies and procedures seems implausible. Furthermore, it seems very likely that, **in such a scenario, recovery is not very plausible either**. We therefore propose to allow for the usage of measures and tools described in existing policies and procedures.

Guideline 4: Information to be included in the description of CCP recovery plan scenarios

Question 7: Do you agree with the proposed Guideline 4 and the information to be included when describing the recovery plan scenarios?

Yes, we agree with the proposed Guideline 4 and the information to be included when describing the recovery plan scenarios.

Guideline 5: Maintenance of CCP recovery plan scenarios

Question 8: Do you agree with the proposed Guideline 5?

Yes, we agree with the proposed Guideline 5.

Costs and benefits analysis

Question 9: 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)?

As outlined in the response to question one, we respectfully propose that ESMA provides required factors/features that the recovery plan scenarios should have instead of prescribing which exact scenarios the recovery plan should have. Furthermore, we propose to allow CCPs some flexibility in assessing which types and sources of risk should be addressed in the scenarios and to create a smaller number of separate scenarios to cover those factors/features. This approach **would still fit under policy option 3** as this would also allow for a relatively high level of convergence among recovery plan scenarios. Moreover, this would not materially alter the cost and benefit assessment.