
**EACH response to the ESMA consultation
on Draft RTS on the content of CCP
resolution plans (Article 12(9) of the
CCPRRR)**

January 2022

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 on Draft RTS on the content of CCP resolution plans (Article 12(9) of the CCPRRR) (hereinafter called "The consultation").

Section 3.4 – Nature and complexity of the CCP

Question 1: Do you agree with how ESMA has enabled sufficient flexibility and ensured proportionality in the draft RTS? If not, please explain?

Yes, EACH generally agrees that the draft RTS enables sufficient flexibility and proportionality. However, EACH would like to kindly suggest a number of clarifications in relation to the provisions of the draft RTS to further specify the resolution plan. In particular, Art. 11 in relation to resolution strategies and scenarios may not be sufficiently flexible (see response to Question 3).

In addition, we appreciate the efforts of creating proportionality and allowing resolution authorities some room of manoeuvre, taking into account the risk and organisational profiles of their supervised CCPs. However, considering that paragraph 12 of the consultation specifies that the draft RTS should not provide a fixed list of requirements for the resolution authority to include, we believe it needs to be assured that there is a level-playing field between the approaches that will be adopted by the resolution authorities in the various jurisdictions. The aim should be, in this context, to reserve similar treatments to similar CCPs, even though they are located in different jurisdictions.

Question 2: Is there any aspect from the BRRD RTS that is not included in the draft RTS, but should be? If yes, please specify and explain why?

EACH is of the opinion that there are no aspects of the BRRD RTS that have not been included in the draft RTS, and agrees with the reasoning by ESMA.

Section 4.19 – Measures to facilitate portability of positions and related assets

Question 3: Do you agree with how the draft RTS envisages to further specify the resolution plan? If not, please explain?

EACH is of the opinion that certain clarifications concerning some points of the RTS would be necessary:

1. Article 3 “Summary of material changes”

- EACH agrees with the fact that only *material* changes are considered in Art. 3 of the draft RTS. In addition, we would suggest deleting the reference to the ancillary clearing related services, as these are side services and any changes to them should not, in our opinion, classify as a *material* change.

2. Article 5 “Timeframe for implementation”

- EACH would like to stress the need for flexibility when it comes to estimating the timeframe for implementation of the resolution plan. In particular, in point (b), instead of “allocated times” we would suggest using the wording “allocated timeframes” or “allocated time spectrum”.

3. Article 9 “Information requirements”

- EACH agrees with the requirement of reviewing all information at least yearly and also upon request by the resolution authority. This would help the CCP ensuring the resolution authority is using updated information.

4. Article 10 “How resolution actions could be financed”

- EACH would like to kindly request a clarification that the financial resources envisaged to be needed under the resolution plan would be sourced in line with the provisions included in Level 1. In addition, we would suggest deleting the sentence “whether such financial resources or tools would be reserved for resolution or if they would also be available in recovery” in order not to conflate the two different phases.
- Point (b) states that the resolution authority shall prepare a description of potential sources of resolution funding, including the terms of financing. However, these may be very detailed and very difficult to know in advance. We would therefore suggest amending point (b) by adding “A description of potential sources of resolution funding, including the terms of financing, *to the extent they are available ex-ante* [...]”.
- EACH notes that point (c) requests the resolution authorities to analyse the conditions for CCP access to central bank facilities. In this context, on 6 December 2021 EACH published a research paper¹ analysing the results of surveys conducted internally concerning the CCP access to deposits and liquidity. Evidence shows that there is still no common approach at European

¹ EACH Paper – CCP access to Central Banks’ facilities (December 2021): <https://www.eachccp.eu/wp-content/uploads/2021/12/EACH-Note-on-CCP-access-to-Central-Banks-deposits-and-liquidity-December-2021.pdf>

level, and that many CCPs cannot have any access to central banks or only with significant additional hurdles, such as obtaining a banking license. In addition, only very few CCPs have access in multiple currencies and the ability to ensure this access is also varying as far as the question is concerned if such access to multiple currencies is being ensured via one or multiple central banks. Access to central bank liquidity varies even more at the top level, with CCPs' level of access varying depending on whether it is for intra-day or overnight purposes. However, this access is in own currency only with no CCP having access in multiple currencies. Lastly, there occurs to be an even split between CCPs with access to overnight liquidity with and without a banking license, and out of the latter, 50% of them have this service provided by non-Eurosystem Central Banks.

5. Article 11 "Resolution strategies and scenarios"

- EACH would like to kindly suggest resolution authorities to involve CCPs when preparing the detailed description of the resolution strategies and scenarios. In addition, EACH wonders whether having a minimum number of resolution plan scenarios (nine, as established by the draft RTS) is the right approach to pursue, and would rather suggest allowing some more flexibility considering that the nine resolution scenarios may not be equally pertinent to the specific case of each CCP. Therefore, we believe the RTS should refer to the types of scenarios described in Annex 1 rather as examples which relevant authorities may take into account when drafting resolution plans under involvement of the CCP, in order to identify meaningful resolution scenarios that are appropriate to the specifics of the respective CCP.

6. Article 12 "Critical interdependencies"

- Regarding point (a), EACH would respectfully request ESMA to specify how to define the "material effects" of the resolution authority assessing the critical interdependencies differently from how they have been assessed in the resolution plan.

7. Article 16 "Impact assessment on employees"

- EACH would suggest deleting point (b) as it appears to be redundant with point (a).

Question 4: In particular, do you agree with the content of the summary of the resolution plan (Article 12(7)(a))? Is there any aspect missing? If yes, please specify and explain why?

EACH agrees with the content of Article 12(7)(a). However, we would kindly request that the description of non-default events takes into due consideration the various responsibilities, distinguishing among **different types of non-default events**:

1. Those non-default events that are the **sole responsibility of the CCP**;
2. Non-default event whose **responsibility is to be shared among different stakeholders** and that occurred despite the CCP complying with all the rules (e.g. investment losses or losses caused by the failure of a custodian).

As indicated in recital 20 of the CCP R&R legislation, loss allocation for non-default losses should be proportional to the level of responsibility and/or benefits extracted from a service of each stakeholder.

Although Article 2(b) of the draft RTS refers to “a short summary of the material key elements”, a more detailed description of the resolvability assessment should, in our opinion, also be part of the summary. It is important for the CCP to have access on the resolution authority’s view on this and this can help the CCP to set the right priorities to improve its resolvability.

Section 5.2 – Annex 2 cost-benefit analysis

Question 5: 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)?

In view of our concerns with some rather prescriptive elements under Option 1, which includes the requirement to reflect nine mandatory resolution scenarios in every resolution plan (see response to Question 3), we would prefer Option 2. This option would provide resolution authorities with more flexibility to tailor resolution planning to the specificities of respective CCPs.

Question 6: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

Please see our response to Question 5.