



European Securities and  
Markets Authority

# Response Form to the Consultation Paper

**Draft Guidelines on CCP recovery plan indicators (Article 9(5) CCPRRR)**



12 July 2021 | ESMA 91-372-1558

Internal

## 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	Eurex Clearing
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>

Eurex Clearing welcomes 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.

We appreciate the objective to create an integrated framework for the recovery plan indicators and scenarios; however, we would respectfully encourage ESMA to either reconsider its proposed Guidelines on CCP recovery plan indicators or to provide concrete examples of how it sees this indicator framework working in practice.

As a general note, Article 9(3) of Regulation (EU) 2021/23 provides that the indicators should be selected based on the risk profile of the CCP, and we would like to express a concern that the prescriptive nature of ESMA's proposal may run counter to this provision by denying CCPs the necessary flexibility to select indicators based on their own unique risk profiles.

We would therefore respectfully encourage ESMA to instead consider adapting the recovery indicator methodology used under the Bank Recovery and Resolution Directive (2014/59/EU) and the respective EBA Guidelines (EBA-GL-2015-02 in conjunction with the EBA/CP/2021/13) to CCPs. Having been subject to this framework so far due to our business model, our own experience using the BRRD methodology has shown that it is very well suited to ensuring the effective and useable monitoring and assessment of the recovery indicators.

We trust our comments are considered a useful contribution to the specification of the new CCP RRR regime, ensuring an effective implementation, and Eurex Clearing remains available to ESMA for any questions and additional feedback.

<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>

We appreciate the background considerations behind ESMA's proposal, and particularly the recognition that designing a useful indicator framework for CCPs is difficult due to the event-based nature of the risks facing CCPs. However, we have some concerns about how ESMA's proposal would function in practice. These are set out in our responses to Questions 2-4. We believe it would be beneficial to extend this 'event-focussed' dynamic that ESMA has correctly identified into a recovery indicator framework that could capture the impacts of *all* events a CCP could face, even where these are not captured by the recovery scenarios, which would involve some changes to the approach ESMA has proposed in the draft Guidelines.

<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>

It is not entirely clear how this proposal would function in practice and we are therefore concerned that these Guidelines could lead to the creation of recovery indicator frameworks that are perhaps unnecessarily narrow and that do not adequately capture the full range of risks a CCP could face.

ESMA has, of course, correctly identified in the proposed Guidelines that CCPs face three broad categories of risk, namely financial losses arising from a default event, financial losses arising from a non-default event, and operational outages or shortfalls. We would find it more appropriate to allow CCPs to design an indicator framework that covers all possible points at which these sources of risk could impact a CCP. A possible categorisation of these points of impact would be: (1) the financial resources of the CCP, (2) the liquidity position of the CCP, and (3) the operational capacity of the CCP. We would suggest that using these three categories (and perhaps additional categories as ESMA deems appropriate) would be better suited to capture and communicate the full range of 'events' that could impact a CCP. For example, for

scenarios affecting a CCP's capital position indicators such as Total Capital Ratio or Usage of the Own Contribution to the Default Fund could be used.

This distinction is important because, in certain cases, both default scenarios and non-default scenarios can impact the same metric. To continue with our Total Capital Ratio example, this metric could be impacted both by a default scenario requiring the use of, say, EUR 100 million of the CCP's own contribution to the default fund (which would require replenishment), or by an evolving non-default scenario causing EUR 100 million of financial losses in progressive increments. Due to this fact, we would consider it more instructive to monitor and report on the status of the Total Capital Ratio, among other metrics, rather than to have two separate indicators for these events that end up communicating the same impact on the CCP.

With regards to ESMA's proposed category (c) indicators signalling the usage of specific recovery measures, we are not certain how this would be implemented in practice. The proposal does make sense to a certain extent: where a capital indicator such as the Total Capital Ratio is affected, as in our example, the CCP should of course consider recovery measures designed to restore its capital base. We would, however, like to reiterate that the same metric (e.g., Total Capital Ratio) could be affected by both default and non-default events, and therefore two completely different scenarios could reasonably result in similar recovery measures being taken, in this case measures to restore the capital base. Beyond that, even the most well-designed recovery measures are often dependent on external or situation-specific factors at the specific point in time recovery measures are needed. For example, capital-oriented measures can be dependent on market conditions, the point in the financial year, the currency required, and so on. We would therefore suggest that category (c) indicators be made optional, to be used only where a CCP considers such indicators appropriate and illuminative in relation to the specific risks it faces and the recovery options available to it.

<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>

We would again note that we have certain concerns about how this proposal would be implemented in practice and about whether this is the best approach to monitoring the risks facing a CCP.

Our interpretation of the Guidelines is that they foresee CCPs creating essentially 'indicator pipelines', where the occurrence of a specific scenario is detected through

the use of the composite indicators enumerated by ESMA in Table 1 in the Annex, and that these in turn point to the use of specified recovery measures.

As an alternative, we would recall ESMA's comment in its introductory assessment that the risks to which a CCP is exposed are mostly event-driven and elaborate on this point: A well-designed recovery indicator framework can show how *any* event affects a CCP, not just those arising from the specific recovery scenarios. We would therefore find it more useful if CCPs were asked to create a comprehensive framework of indicators, subdivided into the categories we outlined in our response to Question 2. (To reiterate, these would be indicators describing the CCP's capital position, indicators describing the CCP's liquidity position, and indicators describing the CCP's operational capacity, plus any additional categories that ESMA deems appropriate.)

In our understanding, the Guidelines in their present form would require that CCPs establish two different indicators, one for early warning and one for recovery. We believe that this may result in an overly complex framework that could be difficult to understand and that may not provide the best possible basis on which to assess both the risks facing a CCP and the impacts of any risk event that may materialise. Instead, we would ask that ESMA consider having CCPs establish thresholds for each of the indicators, which is the approach taken to the recovery indicators under the BRRD. The BRRD methodology allows institutions to select a range of quantitative metrics (i.e., the recovery indicators) that are intended to reflect the potential impact points of risks arising from the institution's business model. At least two thresholds are set for each indicator, one to indicate early warning and one to indicate recovery. In our experience, this setup allows for easier monitoring of possible deterioration in an indicator over time, while also providing a better understanding of the impacts that materialised risks may be having on the CCP.

We feel that this setup would provide a more holistic basis for assessing any remedial actions to be taken, as opposed to what we see as the more prescriptive approach outlined by ESMA in its proposal.

<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>

We would like to reiterate that, while we agree that each of the items listed in Table 1 of the Annex represents a risk that CCPs may face, we have two overarching concerns:

Firstly, we believe that the overall approach taken may not be the best to adequately capture the full range of risks a CCP could face, as we have outlined in our responses to Questions 2 and 3, above.

Secondly, we are not clear as to how some of these indicators could be monitored in practice, and we would therefore ask that ESMA elaborate further on exactly what a



CCP should be monitoring: for example, Section 1a of Table 1 contains an indicator proposal that reads, “High probability of default of one or more members whose combined effect could consume a significant percentage of the CCP’s default fund”. The probability of default would be signalled by market-based indicators.’ While it is true that significant market distress makes a clearing member’s default more likely in a very general sense (i.e., in comparison to the risk of a default during normal market conditions), it is not necessarily the case that a deterioration in general market conditions would affect any specific clearing member at any specific CCP such that that clearing member would default on their obligation to that CCP, which is the level of granularity we think is required by this indicator. In addition, a CCP is not privy to the information required to assess whether any specific clearing member or group of clearing members may become more likely to default due to specific market movements, given that a CCP is only privy to information about a clearing member’s risk exposure at the CCP itself and to any other information subject to public disclosure – even combined, that amount and type of information does not give an accurate and timely view of the clearing member’s total exposure to the market. We have similar questions about other proposed indicators in Table 1, notably those relating to the possibility that a connected FMI’s or third party’s services become unavailable: Again, we do not see how a CCP could be privy to information that could allow it to accurately assess the risk of an operational incident occurring at a third party. We would therefore be appreciative if ESMA could also specify how it envisages CCPs monitoring such risks in practice.

<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>

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<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>

We agree that CCPs should in principle monitor all the sources of risk listed in Guideline 4; however, as indicated in our other responses, we are uncertain that ESMA's specific proposal as to how these sources of risk should be monitored is necessarily the best approach.

Additionally, we are unclear as to how some of these factors should be monitored in practice, for example the risks presented by clearing members' potential financial instability before this materialises as a default at the CCP. Please see our response to Question 4, where we have discussed this concern in greater detail.

<ESMA\_QUESTION\_INDC\_07>

**Guideline 5 Question:**

Q8 : Do you agree with the proposed Guideline 5?

<ESMA\_QUESTION\_INDC\_08>

Yes; our experience using the recovery indicator framework under the BRRD has 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.

<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>

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<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>

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<ESMA\_QUESTION\_INDC\_10>