



EUROPEAN  
COMMISSION

Brussels, 25.11.2022  
C(2022) 8435 final

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 25.11.2022**

**specifying the factors to be taken into consideration by the competent authority and the supervisory college when assessing the recovery plan of central counterparties**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Article 10(12) of Regulation (EU) 2021/23 ('the Regulation') empowers the Commission to adopt, following the submission of draft regulatory technical standards by the European Securities and Markets Authority (ESMA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010, a delegated act specifying the factors referred to in points (a), (b) and (c) of Article 10(3) of the Regulation.

In accordance with Article 10(1) of Regulation (EU) No 1095/2010 establishing the ESMA, the Commission must decide within 3 months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, the ESMA carried out a public consultation on the draft technical standard submitted to the Commission in accordance with Article 10(12) of the Regulation. A consultation paper was published on the ESMA internet site on 12 July 2021, and the consultation closed on 20 September 2021. Moreover, the ESMA invited the ESMA's Securities and Markets Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1095/2010 to provide advice on the draft technical standard. Together with the draft technical standard, the ESMA submitted an explanation of how the outcome of these consultations was taken into account in the development of the final draft technical standard submitted to the Commission.

Together with the draft technical standard, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, the ESMA submitted its impact assessment, including its analysis of the costs and benefits, for the draft technical standard submitted to the Commission. An analysis is available on the [ESMA website](#)<sup>1</sup>.

### **3. LEGAL COMPONENTS OF THE DELEGATED ACT**

This delegated act covers the factors referred to in points (a), (b) and (c) of Article 10(3) of the Regulation.

Article 1 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of the capital structure and financial risk of the central counterparty ('CCP').

Article 2 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of the CCP's default waterfall.

Article 3 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of the level of complexity of the organisational structure.

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<sup>1</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-reports-ccp-recovery-regime>

Article 4 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of the substitutability of the CCP's activities.

Article 5 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of the risk profile of the CCP.

Article 6 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of the scenarios and indicators designed in the recovery plan.

Article 7 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of the operational risk of the CCP's business model.

Article 8 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of the CCP's communication and disclosure plan considering the overall impact that implementation of the recovery plan would have on the entities or markets as listed under Article 10(3)(b) of the Regulation.

Article 9 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of its impact on the CCP's clearing members, and where the information is available, their clients and indirect clients, including where they have been designated as other systemically important institutions as referred to in Article 131(3) of Directive 2013/36/EU.

Article 10 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of its impact on any linked financial market infrastructures.

Article 11 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of its impact on financial markets, including trading venues, served by the CCP.

Article 12 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in respect of the impact on the financial system of any Member State and the Union as a whole.

Article 13 of the draft regulatory technical standard sets out the aspects to be considered by the competent authority and the supervisory college during the assessment of the recovery plan's adequacy in creating appropriate incentives for the CCP's owners, clearing members, and where possible their clients, as relevant, to control the amount of risk that they bring to or incur in the system, monitor the CCP's risk-taking and risk management activities and contribute to the CCP's default management process.

Article 14 of the draft regulatory technical standard sets out the entry into force and application related provisions.

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 25.11.2022**

**specifying the factors to be taken into consideration by the competent authority and the supervisory college when assessing the recovery plan of central counterparties**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132<sup>2</sup>, and in particular Article 10(12) thereof,

Whereas:

- (1) When taking into consideration a CCP's capital structure and risk profile to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider whether the recovery plan is appropriate to ensure the adequacy of the CCP's financial resources, including where necessary to ensure a timely recapitalisation of the CCP, the replenishment of its pre-funded resources, and to address any funding and liquidity gap.
- (2) When taking into consideration a CCP's default waterfall to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider whether the structure of that CCP's default waterfall and loss-allocation rules are adequate to sustain all envisaged default losses scenarios, and whether those loss-allocation are legally enforceable.
- (3) When taking into consideration the complexity of a CCP's organisational structure to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider whether that CCP's ownership structure and governance arrangements are sufficiently clear and practicable to confirm the recovery plan's feasibility and ensure a smooth implementation of the recovery measures.
- (4) When taking into consideration the substitutability of a CCP's activities to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider how that CCP's recovery plan envisages that part or all of the CCP's clearing services could be provided by other authorized Union CCPs or recognized third-country CCPs to mitigate the risk of disruption of services that are essential to the real economy and to financial stability.
- (5) When taking into consideration a CCP's risk profile to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider the business

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<sup>2</sup> OJ L 22, 22.1.2021, p. 1.

features and the governance and legal risks of that CCP to assess whether that CCP is in a position to undertake the measures set out in the recovery plan in a swift and efficient manner, regardless of the CCP's specificities.

- (6) When taking into consideration a CCP's preparedness to face stress that would endanger the CCP's viability with the aim of assessing the recovery plan of that CCP, competent authorities and supervisory colleges should consider the adequacy of scenarios and indicators included in the recovery plan in light of that CCP's specificities to ensure the credibility of the CCP's level of preparedness to face such stress.
- (7) When taking into consideration a CCP's business model to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider the suitability of the identification of critical functions in that recovery plan and how the recovery plan envisages to undertake a sale of assets or business lines to anticipate the effects of the activation of the recovery plan on clearing members, their clients and indirect clients, and outsourcing arrangements.
- (8) When taking into consideration the impact of a CCP's recovery plan on certain entities in relation to communication, competent authorities and supervisory colleges should consider the adequacy of the CCP's communication and disclosure procedures to share information as transparently as possible and manage potentially negative market reactions to the CCP's difficulties.
- (9) When taking into consideration the impact of a CCP's recovery plan on clearing members, competent authorities and supervisory colleges should consider how that CCP evaluates the complexity of its clearing membership to anticipate the impact of the recovery plan on clearing members' clients and indirect clients, and consider their contractual obligations in any recovery scenario.
- (10) When taking into consideration the impact of a CCP's recovery plan on linked market infrastructures, competent authorities and supervisory colleges should consider whether the implementation of that CCP's recovery measures may affect the operations of a linked infrastructure to properly evaluate the impact of the resolution plan in terms of interoperability effects.
- (11) When taking into consideration the impact of a CCP's recovery plan on financial markets served by the CCP, including trading venues, competent authorities and the supervisory colleges should consider any link with that CCP's trading venues to anticipate any material impact of the recovery measures on the ability of a trading venue to process trades or establish prices.
- (12) When taking into consideration the impact of a CCP's recovery plan on the financial system of any Member State and the Union as a whole, competent authorities and the supervisory colleges should evaluate the impact of recovery measures on entities with material links to that CCP, clearing members and FMIs to consider any contagion risk that may stem from the activation of the recovery plan. They should also consider the appropriateness of the incentives introduced by the recovery plan to ensure that the recovery measures and loss allocation tools are likely to optimise the likelihood of a successful recovery, with a fair and proportionate allocation of costs among that CCP's shareholders, clearing members and their clients.
- (13) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Market Authority ('ESMA').

- (14) ESMA developed the draft technical standards on which this Regulation is based in cooperation with the European System of Central Banks and the European Systemic Risk Board. ESMA conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>3</sup>.

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### **Assessment of a CCP's capital structure and financial risk**

When assessing the adequacy of a CCP's recovery plan in respect of that CCP's capital structure and financial risk, competent authorities and supervisory colleges shall consider all of the following factors:

- (a) whether there are any inconsistencies between the CCP's capital structure and the recovery measures designed to ensure timely recapitalisation of the CCP should its capital level fall below the notification threshold or capital requirements;
- (b) whether the recovery plan duly accounts for the additional amount of pre-funded dedicated own resources referred to in Article 9(14) of Regulation (EU) 2021/23;
- (c) whether, considering the types of products cleared, the measures in the recovery plan are well designed, feasible, credible and suitable for the CCP to:
  - (i) restore the CCP's matched book and capital;
  - (ii) replenish pre-funded resources;
  - (iii) maintain access to sufficient sources of liquidity;
  - (iv) maintain or restore the financial viability and soundness of the CCP by undertaking certain recovery tools or measures, including loss allocation tools such as recovery cash calls, reduction in value of gains payable by the CCP to non-defaulting clearing members, position allocation and other liquidity actions;
- (d) whether the measures in the recovery plan are duly tested to allow for allocation and price discovery;
- (e) whether the measures in the recovery plan and the tools referred to in point (c)(iv) are sufficiently reliable and promptly available in case of both idiosyncratic and system-wide recovery events;
- (f) whether the recovery plan sets out arrangements to address both funding gaps and temporary liquidity gaps, and specifies the liquidity arrangements available to the CCP;
- (g) whether the measures in the recovery plan take into account the margin model and margin processes as well as the collateral framework, including a list of accepted

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<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

collateral and collateral haircuts within the CCP, and in particular all of the following:

- (i) the maximum amount of margins collected by the CCP;
  - (ii) where applicable, for each default fund of the CCP, the maximum default fund contributions required;
  - (iii) an estimate of the largest amount in total that could fall due in payment obligations on a single day in the event of a default of one or two of the largest single clearing members and their affiliates in extreme but plausible market conditions;
  - (iv) the possibility to transfer resources or liquidity across business lines;
- (h) whether the recovery plan envisages to use standing central bank facilities and clearly identifies the assets that would be expected to qualify as collateral under the terms of the central bank facility.

## *Article 2*

### **Assessment of a CCP's default waterfall**

Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of that CCP's default waterfall by considering all of the following factors:

- (a) whether the default waterfall and different paths of loss propagation are clearly specified and whether the consequences of any losses are modelled in accordance with the rules allocating those losses, including arrangements between the CCP and its clearing members and the overall risk management framework of the CCP, such as the CCP rulebook;
- (b) whether relevant legal risks have been assessed and addressed in ensuring the enforceability of the waterfall, including with regard to clearing members that are domiciled in third-country jurisdictions.

## *Article 3*

### **Assessment of the organisational structure of a CCP**

Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of the level of complexity of the organisational structure by considering all of the following factors:

- (a) whether the ownership structure of the CCP might affect the recovery plan;
- (b) how the ownership structure of the CCP is reflected in incentive structures or decision processes of the CCP;
- (c) how requirements on owners under the recovery plan might affect the recovery plan, including where contractual parental or group support agreements form part of the recovery plan, and assessing in particular:
  - (i) the reliability and enforceability of such support;
  - (ii) whether the recovery plan appropriately considers and addresses cases where such support agreements cannot be honoured;
- (d) whether the links of the CCP to any same-group entity are sufficiently assessed to ensure that any risk of contagion that may arise in the event of any group company

being subject to financial constraints or being in default is accounted for, and assessing how those links might impact the applicability of the measures in the recovery plan;

- (e) whether the policies and procedures governing the approval of the recovery plan and the identification of the persons in the organisation responsible for drawing up and implementing the recovery plan are suitable, clear and practicable;
- (f) whether the recovery plan is consistent with the corporate governance structure of the CCP and the CCP's decision processes and internal governance;
- (g) whether the complexity of the CCP's internal organisation might be a hindrance to timely actions or whether processes are likely to run efficiently with clear decision-making chains and clearly defined responsibilities;
- (h) whether the recovery plan is clear and practicable in procedures and action plans, including procedures for decision processes, detailed contact sheets from any person relevant to the recovery plan process, remote access abilities and accessibility to decision makers, and whether the recovery plan has procedures to access key persons both on and off-site;
- (i) whether the recovery plan is effectively included, where required, in the operating rules of the CCP;
- (j) whether the CCP has in place appropriate rules and procedures to test its recovery plan with its clearing members on a regular basis, and where possible, to identify their clients and indirect clients.

#### *Article 4*

##### **Assessment of the substitutability of a CCP's activities**

Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of the substitutability of that CCP's activities by considering all of the following factors:

- (a) whether the recovery plan has taken into account whether other CCPs authorised or recognised under Article 14 or Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council<sup>4</sup> provide some or all of the clearing services provided by the CCP;
- (b) the extent to which the recovery plan provides details, using the information available to the CCP, on how clearing services provided by another CCP have been identified and whether such identified services by other CCPs are established services or newly established clearing services;
- (c) where the recovery plan envisages the portability of transactions or the transfer of non-critical activities, partially or in full, to another service provider, and:
  - (i) whether that possibility is presented with an assessment of its viability, using the information available to the CCP;

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<sup>4</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).



- (ii) how the recovery plan caters for the eventuality that the implementation of such portability of transactions or the transfer of non-critical activities would not be possible.

## *Article 5*

### **Assessment of the risk profile of a CCP**

1. Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of the risk profile of that CCP by considering all of the following factors:

- (a) whether the CCP's recovery plan overall encompasses and provides appropriate measures to address different types of risk, and plausible combinations thereof, which might require the use of the recovery tools referred to in Article 1, point (c)(iv);
- (b) whether the risk of disruptions originating both at the CCP and in other entities and service providers to which the CCP is exposed, including clearing, investment, custody and payments, is assessed and mitigated in the recovery plan;
- (c) whether the recovery plan takes into account the nature, size and complexity of the CCP's business and how those elements are reflected in the measures proposed by the CCP;
- (d) whether the CCP can independently apply the recovery plan without interference from other entities in the same corporate group and, where possible, whether any spill-over effects on other group entities and financial interdependencies are clearly identified;
- (e) whether the recovery plan takes into account environmental risks and the risk of cyber-attacks that could lead to a significant deterioration of the financial situation of the CCP and any other risks identified in stress-test exercises performed in accordance with Article 49(1) of Regulation (EU) No 648/2012 and Article 21(2) of Regulation (EU) No 1095/2010, where relevant for the recovery plan;
- (f) whether the legal risks have been assessed in the recovery plan, and in particular whether all measures in the recovery plan are legal, valid, binding and enforceable;
- (g) whether the arrangements, agreements and contracts, including the operating rules of the CCP and agreements with service providers, are clear, legal, valid, binding and enforceable and actionable to ensure that the risks of legal challenges and lawsuits are managed and minimised;
- (h) whether legal opinions have been collected, where needed, to evidence the legal validity and enforceability of the recovery measures and agreements, in particular where the counterparty to the agreement is located in a third country;
- (i) whether, where the board of the CCP has decided not to follow the advice of the risk committee when approving the CCP's recovery plan, the reason provided by the CCP both to the members of the risk committee and to its competent authority in accordance with Article 9(18) of Regulation (EU) 2021/23, is adequate.

2. For the purposes of paragraph 1, point (a), the types of risk to be considered shall include, depending on the CCP, operational, credit, liquidity, general business, custody, settlement, investment, market, systemic, environmental, and climate risks.

3. For the purposes of paragraph 1, point (c), the aspects referred to in that point may be assessed in the recovery plan by considering all of the following aspects of the CCP's business:

- (a) the type of financial instruments cleared or to be cleared by the CCP;
- (b) the financial instruments cleared or to be cleared by the CCP that are subject to the clearing obligation referred to in Article 4 of Regulation (EU) No 648/2012;
- (c) the average values cleared by the CCP over one year, per type of product and by currency both in absolute terms, as well as relative terms to the CCP's capital, at the level of each clearing member and, where possible, of each client;
- (d) whether the transactions cleared by the CCP are executed on an EU trading venue, on a third-country trading venue considered equivalent in accordance with Article 2a of Regulation (EU) No 648/2012, or an OTC;
- (e) the Member States where the CCP provides, or intends to provide, services and other cross-border activities of the CCP.

#### *Article 6*

##### **Assessment of the risk profile of the CCP in relation to the CCP preparedness**

Competent authorities and supervisory colleges shall assess a CCP's recovery plan's adequacy in respect of the timeline, scenarios and indicators contained in the recovery plan. When performing that assessment, competent authorities and supervisory colleges shall consider all of the following factors:

- (a) whether the planned application and designed strategy of the recovery plan:
  - (i) reflect the CCP's risk profile arising from its business model and product mix, including considerations as to its market liquidity, market concentration, the role of direct clearing members and their clients, settlement methodologies, currencies and clearing hours, as well as trading venues served;
  - (ii) take into account the CCP's specific structure and organisational set-up, including considerations as to its default waterfall segregation and risk-pooling possibilities across services;
  - (iii) take into account the CCP's dependencies on relevant entities, including related group entities and third parties;
- (b) whether the framework of quantitative and qualitative indicators included in the recovery plan identifies the circumstances in which measures in the recovery plan are to be taken.

#### *Article 7*

##### **Assessment of the risk profile of the CCP in relation to the business model**

Competent authorities and supervisory colleges shall assess a CCP's recovery plan's adequacy in respect of the operational risk of the business model of that CCP by considering all of the following factors:

- (a) whether the critical functions of the CCP are properly identified;

- (b) whether the preparatory arrangements to facilitate the sale of assets or business lines, as envisaged in the recovery plan, are suitable for the CCP, taking into account all of the following:
  - (i) whether the processes for determining the value and marketability of the core business lines, operations and assets of the CCP are suitable for a rapid and trustworthy assessment;
  - (ii) whether the timeframe envisaged to prepare the sale is appropriate considering the type of instruments cleared and the scope of the sale;
  - (iii) whether the assessment of the potential impact of such a sale on the operations of the CCP is reflecting the specific operations of the CCP, i.e. the type of products cleared or margining methods applicable to products and account structures;
  - (iv) whether the impact of the preparatory arrangements of the business lines on clearing members and their clients and indirect clients, where possible to identify, are sufficiently assessed and whether any negative effects are mitigated;
- (c) where the CCP clears several products, whether the CCP has considered the potential of splitting a sale between products, and whether any impediments have been identified as an effect of such a split or if any other effect on the recovery plan has been identified by such a split sale;
- (d) whether the number and importance of different links with entities, including liquidity providers, settlement banks, platforms, custodians, investment agents, banks or service providers have been assessed in the recovery plan and how such links impact the recovery measures and the effectiveness of the recovery plan;
- (e) whether the significance or materiality of each link has been assessed, including in terms of volumes cleared and the financial exposures under those arrangements;
- (f) whether any outsourcing arrangements that cover part of the CCP's core business have been sufficiently assessed and whether any identified risks have been mitigated;
- (g) how the legal enforceability of the recovery plan against service providers of outsourcing arrangements as referred to in point (f) has been assessed and whether any inability of the provider of such outsourced arrangements to comply with its obligations under the outsourcing arrangements has been satisfactorily assessed and how those risks have been mitigated in the recovery plan.

## *Article 8*

### **Assessment of the overall impact on certain entities in relation to a CCP's communication and disclosure plan**

Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of that CCP's communication and disclosure plan by considering the overall impact that the implementation of the recovery plan would have on the entities or markets referred to in Article 10(3), point (b), of Regulation (EU) 2021/23, and in particular by considering all of the following factors:

- (a) whether the CCP's communication and disclosure plan complies with Section A, point (3), of the Annex to Regulation (EU) 2021/23, and in particular whether the CCP's communication and disclosure plan:

- (i) envisages how information is to be shared as transparently as possible with the CCP's stakeholders, including clearing members and the financial market in general;
  - (ii) provides clear guidance on how to manage expectations and envisages minimising potentially negative market reactions when disclosing information;
- (b) whether the CCP's communication and disclosure plan contains clear procedures for how and when to share information with different entities, giving clear descriptions of how such procedures have taken into consideration legal requirements and other binding requirements.

#### *Article 9*

#### **Assessment of the overall impact of a CCP's recovery plan on clearing members, their clients, and indirect clients**

Competent authorities and supervisory colleges shall assess the recovery plan's adequacy in respect of its overall impact on the CCP's clearing members and, where that information is available to the CCP, on their clients and indirect clients, including where those clients and indirect clients have been designated as other systemically important institutions (O-SIIs), by considering all of the following factors:

- (a) whether the recovery plan correctly reflects the complexity of the CCP's clearing membership, including all of the following:
  - (i) the level of client clearing in the CCP;
  - (ii) the number of clearing members established:
    - (1) within the CCP's jurisdiction;
    - (2) in another Member State;
    - (3) in a third country;
  - (iii) the concentration of the membership;
- (b) whether the recovery plan has taken into account the overall impact on clearing members and, where that information is available to the CCP, on their clients and indirect clients, of a possible disruption of the clearing services provided by the CCP, including potential impacts on access to clearing and other effects derived from the operating rules of the CCP;
- (c) whether the recovery plan has taken into account the potential effect of the agreed measures to be taken under the recovery plan on clearing members and, where relevant, on their clients and indirect clients;
- (d) whether, under the operating rules of the CCP, any financial or contractual obligation is agreed to by the clearing members and, where relevant, by their clients and indirect clients, including about how the amount of the obligation is calculated, whether any maximum or cap is applied, whether the amount is a pre-agreed sum or will be derived as a function of the member's or client's exposures and how such resources would be requested.

## *Article 10*

### **Assessment of the overall impact of a CCP's recovery plan on linked FMIs**

Competent authorities and supervisory colleges shall assess a CCP's recovery plan's adequacy in respect of its overall impact on any linked financial market infrastructures (FMIs), by considering all of the following factors:

- (a) whether the recovery plan assesses the potential impact of applying the recovery measures on any interoperable CCP and on any other FMI linked to the CCP, by assessing the significance of the CCP's involvement in those entities;
- (b) whether the recovery plan addresses any interoperability or cross-margining agreements with other CCPs and the scope of such arrangements, including volumes cleared and financial resources exchanged as part of those arrangements;
- (c) whether the impact of the implementation of any of the measures under the recovery plan might affect access to other FMIs, and where impediments or limitations are identified, how they are mitigated;
- (d) whether linked FMIs and stakeholders which would bear losses, incur costs or contribute to covering liquidity shortfalls in the event that the recovery plan was implemented, have been involved in the process of drawing up that plan in an effective and satisfactory manner in accordance with Article 9(16) of Regulation (EU) 2021/23.

## *Article 11*

### **Assessment of the overall impact of a CCP's recovery plan on financial markets, including trading venues, served by the CCP**

Competent authorities and supervisory colleges shall assess a CCP's recovery plan's adequacy in respect of its overall impact on financial markets, including trading venues, served by the CCP, by considering all of the following factors:

- (a) whether the potential impact of applying the recovery measures on trading venues as well as any other sources of trading connected to the CCP has been assessed in the recovery plan, including an assessment of the significance of the CCP's involvement in those entities and whether the impact represents a threat to the stability of the entities concerned;
- (b) whether the CCP provides, in addition to clearing services, any other or ancillary material or significant services linked to clearing, and whether any measure under the recovery plan might have an impact on the financial market served by the CCP, where the CCP provides such other or ancillary material or significant services.

## *Article 12*

### **Assessment of the overall impact of a CCP's recovery plan on the financial system of any Member State and of the Union as a whole**

Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of the overall impact on the financial system of any Member State and of the Union as a whole by considering all of the following factors:

- (a) whether the potential impact has been assessed of the recovery plan on:

- (i) the financial stability of any Member State and of the Union as a whole arising as a result of possible contagion effects, including in terms of credit, liquidity or operational risks for clearing participants and interdependent FMIs;
  - (ii) on the financial system of any Member State and of the Union as a whole resulting from one or more entities linked to the CCP or the CCP itself being impacted by the recovery plan;
- (b) whether, to assess the wider systemic risk impact of the recovery plan, the results from analyses performed occasionally by ESMA are considered and reflected upon, where relevant for the recovery plan, in the recovery plan and whether any relevant discoveries or concerns are mitigated, as far as possible, in that plan;
- (c) whether material links with entities, including liquidity providers, settlement banks, platforms, custodians, investment agents, banks or service providers have been considered by assessing how the recovery plan might impact the operations of the linked entities, and whether the measures contained in the recovery plan are suitable and workable for the entities with material links identified or could have a material negative impact on the financial system of any Member State and of the Union as a whole;
- (d) whether liquidity providers, where supervised by the CCP's competent authority or to the extent information on their liquidity exposures is available, give rise to concentrated liquidity exposures due to the multiple roles those liquidity providers may play for several CCPs, including as clearing member, payment bank, investment bank, custodian, or provider of liquidity back-stop arrangement.

### *Article 13*

#### **Incentives**

Competent authorities and supervisory colleges shall assess a CCP's recovery plan's adequacy in respect of creating appropriate incentives for that CCP's owners, clearing members, and where possible their clients, as relevant, to control the amount of risk that those CCP's owners, clearing members and their clients bring to or incur in the system, to monitor the CCP's risk-taking and risk management activities and to contribute to the CCP's default management process by considering all of the following factors:

- (a) whether the incentives increase the likelihood of a successful recovery and whether the recovery plan specifies the incentives for different stakeholders, providing examples, where relevant, of how voluntary or optional contributions, in addition to the agreed contributions under the operating rules of the CCP, could be encouraged in times of crisis;
- (b) whether calls for resources, contributions or the allocations of costs associated with the recovery plan create the appropriate incentives for the CCP, its clearing members, their clients, and indirect clients insofar as those direct and indirect clients are known, shareholders and other entities within the same group, to act in a way that minimises risks and potential costs;
- (c) whether the structure of the default management process incentivises participation in the default management of the clearing members and their clients by the use of recovery tools and by the resources to be provided to the CCP in a recovery, including penalties in the event of a failure to provide, where agreed, committed

resources, including the provision of seconded personnel to assist in the recovery management or to engage in competitive bidding in an auction;

- (d) whether the arrangements and measures for auctions of defaulted members' positions sufficiently incentivise non-defaulting clearing members to bid competitively and are well organised and whether those arrangements and measures create the incentives envisaged in the recovery plan;
- (e) whether the link between clearing members' activity and their potential losses resulting from the recovery plan creates an appropriate incentive for making a successful recovery more likely, including whether the losses or a cap on potential losses are proportionate to a metric on the activity of the member, based on variation margin, initial margin, default fund contributions or other risk-based and activity-based metrics;
- (f) whether the CCPs mechanisms to involve linked FMIs and stakeholders, which would bear losses, incur costs or contribute to covering liquidity shortfalls in the event that the recovery plan was implemented, in the process of drawing up of the recovery plan and participating in relevant risk-management discussions, are well-organized and create suitable incentives to ensure the balance between the interests of linked FMIs and stakeholders;
- (g) whether the involvement of clearing members, and possibly their clients, or other entities linked to the CCP in the provision of services, to address the mitigation of losses in the event of recovery, embeds the right incentives to provide the CCP with suitable services, including acting as a repo counterparty and providing liquidity.

#### *Article 14*

##### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25.11.2022

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*