

Guidelines

On the assessment of resolvability (Article 15(5) of CCPRRR)



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1 Scope

Who?

1. These Guidelines apply to resolution authorities.

What?

2. These Guidelines apply in relation to Article 15 of Regulation (EU) 2021/23 on CCP resolution and recovery (CCPRRR). These Guidelines establish a common set of aspects for resolution authorities to consider when applying the 26 matters provided in Section C to the Annex of CCPRRR during the conduct of resolvability assessments.

When?

3. These Guidelines apply from two months after the date of publication on ESMA's website in the official languages of the European Union.

2 Legislative references, abbreviations and definitions

2.1 Legislative references

CCPRRR	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 ¹ .
EMIR	Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories ² .
ESMA Regulation	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 ³ .

¹ OJ L 22, 22.1.2021, p. 1–102

² OJ L 201, 27.7.2012, p.1

³ OJ L 331, 15.12.2010, p. 84

2.2 Abbreviations

<i>CCP</i>	Central Counterparty
<i>CP</i>	Consultation Paper
<i>EC</i>	European Commission
<i>EEA</i>	European Economic Area
<i>ESFS</i>	European System of Financial Supervision
<i>ESMA</i>	European Securities and Markets Authority
<i>ESRB</i>	European Systemic Risk Board
<i>EU</i>	European Union

2.3 Definitions

4. Unless otherwise specified, the terms used in these Guidelines have the same meaning as in CCPRRR, EMIR and the Delegated Regulations 152/2013 and 153/2013.

3 Purpose

5. These Guidelines are based on Article 15(5) of CCPRRR. The objective of these Guidelines is to promote convergence of resolution practices regarding the application of Section C in accordance with Article 16(1) of the Regulation (EU) No 1095/2010.
6. In order to achieve this objective ESMA should in addition to providing guidance to promote convergence on the 26 matters as set out in Section C, also generally promote convergence on resolution practices in relation to those 26 matters. However, even if a CCP complies with and is in line with the aspects presented by the Guidelines, it does not necessarily mean that the CCP is resolvable, as it is the resolution authorities which have the sole responsibility of making the resolvability assessment on the basis of their expert judgment.
7. As the Guidelines establish generic aspects for the resolution authority to consider, some of the aspects presented in the Guidelines may be more relevant for a certain type of resolution tool than others, and the extent of their application to other resolution tools is left to the discretion of the resolution authorities. The Guidelines does not provide an exhaustive list and the resolution authority may consider other or additional aspects when assessing the resolvability of the CCP under Article 15 of CCPRRR.
8. However, in order to ensure a harmonised application of the Guidelines to the extent possible, the resolution authorities should explain, in the resolvability assessment, why a Guideline would not be relevant for the CCP or if additional aspects are used in the resolvability assessment.

4 Compliance and reporting obligations

4.1 Status of the guidelines

9. In accordance with Article 16(3) of ESMA Regulation, competent authorities (being the resolution authorities designated pursuant to Article 3 of CCPRRR) must make every effort to comply with these Guidelines.
10. Competent authorities to which these Guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate.

4.2 Reporting requirements

11. Within two months of the date of publication of the Guidelines on ESMA's website in all EU official languages, competent authorities to which these Guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the Guidelines.
12. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the Guidelines on ESMA's website in all EU official languages of their reasons for not complying with the Guidelines.

5 Guidelines on CCP assessment of resolvability

5.1 Introduction to the Guidelines

ESMA notes that Section C of Annex to CCPRRR contains references to both, ‘critical functions and ‘critical operations’ whereas in the different matters listed in section C of its Annex it is the latter that is mostly used. Considering the definition of critical functions provided under CCPRRR it is understood that critical operation(s) of a CCP form part of critical functions as defined under CCPRRR.

ESMA further notes the use of the terminology “service level agreement” under matters 5, 7, 8 and the use of “service agreement” under matter 6. As the term “service agreements” generally also caters for the service level agreements and the important aspect for the assessment under the Guidelines is to ensure all relevant service agreements (be them under the ‘chapeau’ of service level agreement or not), are captured. ESMA therefore under the Guidelines 4 and 5, use “service agreement” to cater for both type of agreements, to ensure a content driven assessment focusing on the aim of Guidelines 4 and 5.

5.2 Guideline 1 – Principles for the resolvability assessments

The resolution authority should use the method described hereunder as guidance to assess the resolvability of the CCP.

Materiality assessment

ESMA notes that, for an identified concern, shortcomings, uncertainty, restriction or limitation to affect the overall assessment of the CCPs resolvability, it would need to constitute a material concern i.e. (i) it would need to be of a significant magnitude, (ii) it would need to be likely to occur (probable) and (iii) the complexity of the issue would need to be likely to negatively affect resolvability.

ESMA therefore would suggest that the resolution authority establishes an assessment system, using 3 parameters in to assess the identified shortcoming, uncertainty, restriction or limitation, and to conclude on whether the issue is of such an overall materiality that it may affect the resolvability of the CCP.

Guideline 1

In the determination of the CCPs resolvability, the resolution authority should assess whether any concerns, shortcomings, uncertainties, restrictions or limitations have been identified in the assessments of the relevant matter and whether any of those identified concerns, shortcomings, uncertainties, restrictions or limitations may affect the resolvability of the CCP in a detrimental or negative manner, using the elements listed under this Guideline 1 for this assessment.

The resolution authority should, by assessing the significance, probability and complexity of the identified issue, determine whether the identified issue could be considered to have a material negative impact on the resolvability of the CCP.

The resolution authority should use the method outlined in this Guideline 1 to assess, given the specific characteristics of the CCP and the resolution strategies identified in the plan, the impact of an identified issue on the specific resolvability matter based on the materiality assessment, considering in principle three main parameters listed below.

The resolution authority may use the template provided and score the guidelines independently by assigning ratings between low, medium, and high for the significance, probability, and complexity of every issue with respect to the Guidelines. However, the resolution authority may also assign in its assessment an overall rating to the overall resolvability of the CCP and use the template to further specify certain aspects that are materially relevant for assessment. The resolution authority may also not use the template at all but establish its own template for its assessments.

Parameter 1 – Significance

The significance of an issue is concluded based on a joint assessment based on the relevance of the issue and the scope of the issue identified.

Relevance

The more relevant an identified issue is for the outcome of the resolvability assessment, the higher the significance allocated to the issue. An issue that is easily resolved, even if complex in nature, or that is in the process of being corrected or mitigated in a satisfactory manner, would be considered as less relevant by the resolution authority.

Scope of issues identified

The significance is related to the scope of the issue identified, and the more severe the impact of an issue on the CCP, the more likely it is that the identified issue is considered significant for the resolvability assessment. Where the issue identified is

in relation to a very important aspect of the resolvability assessment, even a minor issue may result in a significant risk, as such identified issue may reduce the chances of a resolution being feasible and credible.

Parameter 2 – Probability

The higher the probability of an issue materialising and the less clarity over the issue identified (for instance if the scope of the issue cannot be verified), the higher the risk that the identified issue is significant to the resolvability assessment, as an identified issue with a high probability and lack of clarity as to its consequences increases the risk that the use of a resolution tool would not in the end be successful and therefore reduces the chances of a resolution being feasible and credible.

Parameter 3 – Complexity

The more complexity there is in an issue identified or in the CCP's group structure, governance or internal procedures relating to core business lines and critical functions with an entity, the higher the risk that the identified issue is material to the resolvability assessment and reduces the chances of a resolution being feasible and credible.

Template to assist the resolution authority in their assessment.

	Issue/s detected	Significance (low, medium, high)	Probability ((low, medium, high)	Complexity ((low, medium, high)
GL 2				
GL 3				
GL 4				
GL 5				
GL 6				
GL 7				
GL 8				
GL 9				

GL 10				
GL 11				
GL 12				

5.3 Guideline 2 – Matters 1-3: Mapping and alignment of core business lines and critical operations

ESMA notes that whilst ‘critical operations’ is used under matters 1-3 it is understood that critical operation(s) of a CCP form part of the critical functions as defined under CCPRRR.

ESMA understands that the reference to “legal persons” in matter 1, should include all legal persons, either within the CCP group or outside the CCP’s group structure, that are important to the CCP, because they provide services or would be otherwise involved with the CCP’s core business lines and critical operations or because the CCP is dependent on such legal persons for the functioning of its core business lines and critical operations. Hence the assessment under matter 1 should result in an understanding of the mapping undertaken by the CCP and provide information on the identified legal persons which have been mapped to the CCP’s core business lines and critical operations as well as on whether there are core business lines and critical operations that cannot be mapped to a legal person and the reason for this.

ESMA understands matter 2 to be focused on the CCP’s legal and corporate structures, i.e. legal entities forming part of the CCP’s group and the CCP’s internal organisation and group structure, and understands that the aim is to assess the extent to which the CCP’s legal and corporate structures are aligned with core business lines and critical operations identified under the resolution plan and used in the mapping under matter 1.

Matter 3 is closely linked to matter 2, in that this assessment considers similar aspects as under matter 2 but with the difference that here the assessment focuses on the actual risk that the CCP’s structure could, and the extent to which it could, prevent the use of resolution tools.

Guideline 2 provides for a common set of aspects the resolution authority should use to assess matters 1 – 3 set out in Section C of Annex to CCPRRR.

Guideline 2

The resolution authority should consider the extent to which (i) the CCP is able to map core business lines and critical operations to legal persons, (ii) corporate structures are aligned with core business lines and critical operations and (iii) the legal structure of the CCP inhibits

the application of the resolution tools due to complexity of the group (matters 1-3 of Section C of CCPRRR Annex) by assessing the following aspects:

(1) Whether and to what extent the CCP has identified its core business lines and critical operations.

(2) Whether and to what extent the CCP has mapped its core business lines and critical operations to legal persons and whether the mapping of the CCP is comprehensive and up-to-date.

(3) Whether legal persons, such as critical or essential service providers, have been identified in the mapping and whether the mapping describes the scope and provide details of the core business lines and critical operations mapped to each such identified legal person.

(4) Whether the mapping of the core business lines and critical operations against the CCP's legal and corporate structures has identified:

- a) alignments between, on one side, the different clearing services provided by the CCP and, on the other side, the organisation of the CCP, or whether there are limited alignments or no alignments identified;
- b) that there are several legal persons within the CCP group structure and the extent to which the number of legal persons raises the complexity of the group or whether there are other indications that the CCPs structure is overly complex; and
- c) whether the ownership structure of the CCP could impede the resolvability of the CCP:, for example, whether it is found that the ownership's structure results in complex decision models, reliance on owners or other legal persons within the group for the use of resolution tools, entails complex ownership structures or involves owners with complex or public ownerships.

(5) Whether the mapping has identified clearing services that could more easily be separated from other clearing services of the CCP, or not.

5.4 Guideline 3 – Matter 4: Arrangements to provide for essential staff, infrastructures and capital

The aim of this Guideline 3 is to provide guidance on how the resolution authority should assess the feasibility, and the credibility of the arrangements the CCP has established to provide for essential staff, infrastructure, funding, liquidity and capital are to support and maintain the core business lines and the critical operations.

The main focus of this Guideline 3 would be to identify risks in the established arrangements, such as the risk of them not being upheld as envisaged in a resolution or the risk of them being vulnerable to certain measures or events.

Guideline 3 provides for a common set of aspects the resolution authority should use to assess matter 4 as set out in Section C of Annex to CCPRRR.

Guideline 3

The resolution authority should consider the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations (matter 4 of Section C of CCPRRR Annex), by assessing the following aspects:

(1) Whether the CCP has arrangements in place to provide for essential staff to support and maintain the core business lines and the critical operations and whether such arrangements are adequate and sufficiently robust bearing in mind the extent to which such arrangements could be subject to limitations derived from national law for example, by assessing:

- a) what is provided in the CCP's staff rules and conditions of employment in case of CCP resolution; and
- b) to which extent the employment relationships of essential CCP employees would be upheld in a resolution and whether the CCP has obtained internal or external legal advice supporting this.

(2) Whether the arrangements in place to provide for continued access to vital infrastructures such as premises, telecommunication services, IT, software licenses and other material intellectual property right licenses, hardware, such as servers and other IT equipment, and power are adequate and robust to support and maintain the core business lines and the critical operations of the CCP in order to allow for the CCP to continue the operations of the core business lines and critical operations.

To assess the robustness of the relationship with the different infrastructures, the assessment would need to cover how the arrangements with such infrastructures could be affected by a resolution. The resolution authority should, for example, assess the following:

- a) the possibility to terminate, suspend or modify the access rights to those infrastructures due to the resolution of the CCP;
- b) the continued access to relevant infrastructures where the CCP may transfer in part or in full its clearing services under the resolution tools; and
- c) the continuity of access to critical infrastructures during resolution for a reasonable period of time by the current service provider and under the same terms and conditions.

(3) Whether the arrangements in place to provide for funding in supporting and maintaining a core business line or critical operation are adequate and the extent to which such arrangements would remain valid in a resolution and the extent to which they are transferable in case the sale of business tool or the bridge CCP tool is used. The resolution authority should, for example, assess the following:

- a) the extent to which the CCP has made pre-arrangements for pre-paying the relevant services for a reasonable period; and
- b) whether the funds for such pre-payment are sufficiently protected and ensured via sufficiently liquid assets.

(4) Whether the arrangements in place to provide liquidity to the CCP are well structured in order to remain valid in a resolution and whether appropriate arrangements have been made (e.g. dedicated cash accounts) by the CCP for a swift and seamless identification of liquidity sources allocated to a particular core business line or critical operation of the CCP.

(5) Whether the arrangements in place to provide for capital to support the core business lines and the critical operations provide dedicated funds in the CCP's capital structure and whether such capital would likely remain valid in a resolution and whether such arrangements are structured on a per core business line and critical operation basis. The resolution authority should, for example, assess the following:

- a) the amount of the protected dedicated (including uncommitted) funds of the CCP for the support and maintenance of each core business line and critical operation;
- b) the extent to which the clearing members' own liquidity arrangements are adequate and enforceable in order to ensure that they would be able to honour their obligations towards the CCP; and
- c) the extent to which the relevant financial resources are held in a segregated way from other group assets.

5.5 Guideline 4 – Matters 5 and 6: Service agreements robustness and enforceability

The aim of this Guideline 4 is to provide guidance on how the resolution authority should assess the feasibility and credibility of the arrangements adopted by the CCP to ensure the robustness and enforceability of the CCP's service agreements in the event of resolution (be them under the “chapeau” of service level agreements or not).

Therefore, the main focus of this Guideline 4 would be to ascertain the existence of and where identified, the robustness of the service agreements and in addition, whether the CCP's service agreements provide for appropriate arrangements to ensure that the provision of services under the service agreements would not be likely to be interrupted, terminated or negatively affected by the resolution of the CCP, and would remain fully enforceable in a resolution scenario.

Guideline 4 provides for a common set of aspects the resolution authority should use to assess matters 5 - 6 set out in Section C of Annex of CCPRRR.

Guideline 4

The resolution authority should consider the extent to which service agreements exist, are robust and remain fully enforceable in the event of resolution of the CCP (matters 5 and 6 of Section C of CCPRRR Annex), by assessing the following aspects:

- (1) Whether the CCP has a record of the different service providers and the service agreements relevant for the CCP to ensure its core business lines and the critical operations.
- (2) Whether and to what extent, the service agreements relevant for the CCP to ensure its core business lines and the critical operations specifically provide for the situation where the CCP enters into resolution, and to what extent the critical operations and core business lines contain specific arrangements to ensure the service agreements are robust and remain fully enforceable in the CCPs resolution, and whether those specific arrangements would be suitable and efficient to achieve the aim of remaining fully enforceable in the event of resolution of the CCP. The resolution authorities should, for example, assess the following:
 - a) The extent to which the service agreements that remain fully enforceable in the event of CCP's resolution cover appropriately and sufficiently the main parts of the services needed by the CCP (or part of the CCP) to continue to provide the core business lines and the critical operations,

- b) The extent to which the service agreements relevant for the CCP contain limitations or restrictions on the applicability and enforceability of certain service agreement or part of service agreements, in the resolution of a CCP,
- c) The extent to which the terms and conditions (including pricing for the service and other crucial aspects of the agreement) remain unchanged and unaffected by the CCP entering into resolution.

5.6 Guideline 5 - Matters 7 and 8: Adequate governance structure, service agreements

The resolution authorities should ascertain whether the organisational units/persons within the CCP governance structure are adequately involved regarding the management of the service agreements to ensure compliance with internal policies applicable to the service agreements, hence whether appropriate checks and balances exist in order to ensure that the service agreements are entered into and managed in compliance with the CCP's internal policies. As noted above, the term "service agreement" will be used in the Guidelines to cover all types of service agreements (be them under the "chapeau" of service level agreement or not). The resolution authorities should ascertain whether the CCP has a process for transitioning the services provided under its service agreements to third parties (for example in relation to the sale of a business tool or of bridge CCP tool) in the event of separation of core business lines or critical functions. In case of CCP resolution, the existence of such a transition process will be crucial to the implementation of the sale of business or bridge CCP resolution tool.

Guideline 5 provides for a common set of elements and aspects the resolution authority should use to assess matters 7 - 8 set out in Section C of Annex to CCPRRR.

Guideline 5

The resolution authority should consider the extent to which the governance structure of the CCP is appropriate to manage and ensure compliance with the CCP's internal policies with respect to its service agreements and whether the CCP has a process for transitioning the services provided under service agreements to third parties in the event of the separation of core business lines or critical functions (matters 7 and 8 of Section C of CCPRRR Annex), by assessing the following aspects:

(1) Whether the internal guidance on the required content of service agreements in relation to the CCP's core business lines or critical functions provide adequately clear parameters,

quantitative and qualitative, against which the relevant service agreements can be monitored.

(2) Whether the arrangements and governance structures in place are adequate to ensure compliance with internal policies for each service agreement, considering for example whether:

- a) there is a centralised management function or a dedicated manager of the service agreements within the organisational unit, managing the service agreements in relation to the relevant core business line or critical functions;
- b) the organisational unit and the reporting lines of the designated manager for each service agreement are clearly defined in the governance or management structure of the CCP; and
- c) legal and/or the compliance functions are involved or consulted to ensure compliance with the internal policies for service agreements.

(3) Whether the service agreements are transferable (or renewed or restated, as the case may be under the relevant law governing the contract), including in the situation where the sale of business or the bridge CCP resolution tool are envisaged to be used by the resolution authority. To assess the transferability, the resolution authority should assess the extent to which:

- a) the service agreements regulate the possibility to transfer a relevant service to a new CCP by the resolution authority in a resolution;
- b) the service agreements provide for support in the transfer or termination of contracts occurring during resolution;
- c) the CCP's migration process arrangements are foreseen in the terms of the service agreements, in case of the CCP's resolution; and
- d) there are impediments of a legal nature to the transition of the services for example in relation to the CCP's client side, such as in relation with personal data protection or repapering requirements.

5.7 Guideline 6 - Matter 9: Contingency plans and continuity of access to payment and settlement systems

It is essential for the CCP to have procedures and arrangements in place to ensure the continuity of the CCP's critical functions. Furthermore, CCPs, payment system operators and

settlement system operators should set out in their contractual relations or operating rules processes to regulate the terms under which a CCP undergoing resolution may continue to access such payment and settlement systems.

The resolution authority should assess the feasibility and credibility of the contingency plans ensuring continued access to payment and settlement systems.

Guideline 6 provides for a common set of elements and aspects the resolution authority should use to assess matter 9 set out in Section C of Annex to CCPRR.

Guideline 6

The resolution authority should consider the extent to which there are contingency plans and measures in place to ensure continuity of access to payment and settlement systems (matter 9 of Section C of CCPRR Annex), by assessing the following aspects:

Whether the contingency plan adequately ensures the continued access to payment and settlement systems and whether the contingency plan foresees the steps to take, in case of the CCP's resolution, to ensure continued access to payment and settlement systems, considering for example:

- a) Whether the actions foreseen under the contingency plans are adequate to continue meeting the substantive obligations applying to the CCP and to maximise the likelihood of continued access to payment and settlement systems and continued service provision to the CCP;
- b) Whether the contingency plan is detailed enough to cater for different scenarios in accessing payment and settlement systems in a resolution, and whether the contingency plan includes details on how changes could impact the access to the systems, such as changing settlement bank and identifying substitutes (from a commercial bank money cash settlement to central bank money settlement) and the timing of such changes (overnight or intra-day);
- c) Whether the contingency plan has accurately identified the substantive obligations under the payment and/or settlement system operator's operating rules in the relevant jurisdictions, that would apply in a resolution scenario, such as additional (or extraordinary) financial, information, and operational requirements; and
- d) If the contingency plan also ensures the continuity in access to payment and settlement systems in a situation where the CCP in resolution transfers part of its services, both for the legacy part of the CCP as well as the parts that will be transferred.

5.8 Guideline 7 - Matters 10 to 13: Resolvability from an information related perspective

Accuracy and completeness of information and the continuous flow of information during the resolution process from the CCP to the resolution authority and vice versa are determinant factors for a successful CCP resolution.

Guideline 7 provides for a common set of elements and aspects the resolution authority should use to assess matters 10-13 set out in Section C of Annex to CCPRR.

Guideline 7

The resolution authority should consider the extent to which there are adequate management information systems to ensure that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations in order to facilitate rapid decision making and that the management information systems can provide the information essential for the effective resolution of the CCP at all times even under rapidly changing conditions. The resolution authority should also consider the extent to which the CCP has tested its management information systems under stress scenarios and whether the CCP can ensure the continuity of its management information systems both for the affected CCP and for the new CCP in case the critical operations and core business lines are separated from the rest of the operations and business lines (matters 10 to 13 of Section C of CCPRRR Annex). The resolution authority should consider this by assessing the following aspects:

(1) Whether the information contained in the management information system(s) regarding the core business lines and critical operations (including information on ownership of assets and infrastructure, pricing, contractual rights and agreements as well as outsourcing arrangements) is relevant, adequate and sufficiently comprehensive to ensure informed rapid decision making.

(2) Whether the CCP's management information systems:

- a) are adequately set up and well designed to provide accessible, relevant, accurate and complete information regarding the core business lines and critical operations;
- b) applies processes to ensure that the information collected and stored in the management information system(s) is focused, well structured, tiered and labelled so as to ensure relevant information can be identified in an effective and rapid manner in times of rapid decision making or quickly changing conditions;

- c) applies search functions that cover different management information systems to ensure the availability of relevant information at a short notice;
- d) ensure that the information is reliable and clear and can be retrieved in a readable format and that different information can be used together in an efficient manner, is compatible between different systems, and can be converted into a format that can be shared for rapid decision making,
- e) apply automated arrangements and processes for the collection of data and where such automated processes are not available, the extent to which such data inputs may be done manually;
- f) ensure information is updated either continuously or at pre-defined intervals, less often in a BAU mode, more often in a recovery situation and that measures are implemented to keep certain information, as agreed with the resolution authority, up to date on a continuous basis in a resolution phase;
- g) applies an adequate categorisation of the information according to its usefulness in a resolution, where information essential to a successful resolution such as information in relation to the choice, activation and use of resolution tools is updated in priority to other types of information to ensure the relevance, accurateness and accessibility of relevant information in a resolution;
- h) has the capacity to provide the information essential for the effective resolution of the CCP at all times even under rapidly changing conditions including information on each clearing member(s) and/or client positions per financial instrument cleared as well as the amount of the corresponding margins and financial collateral arrangements posted;
- i) is structured in a way to ensure (where suitable) the continuity of information sharing and storing within the management information systems in a resolution, where for example the resolution tools may result in (i) critical operations and core business lines being separated from the rest of the operations and business lines, (ii) a new CCP, (iii) bridge CCP or (iv) any other result of the resolution tool applied; and
- j) provides a comprehensive and searchable repository of the material service agreements and provides adequate information on (i) the type of services provided under the agreement and whether the service agreement is needed to perform critical functions and core business lines, (ii) the type of providers (intra-group, outsourced or bought in service) and which legal persons provide and which legal person receive the services, and (iii) the service agreements identified to assist in the drawing-up of transitional service agreements in cases

where they would be affected by a resolution tool, such as the sale of business or bridge CCP resolution tool.

(3) Whether the resolution authority will have relevant access to management information systems and information necessary to take the appropriate decisions and to apply resolution powers; in particular the extent to which the resolution authority has:

- a) full access to the information useful, necessary or crucial to take the appropriate decisions and to apply resolution powers;
- b) independent access to management information systems through internet portals during resolution;
- c) the extent to which there are applied limitations of external access to such management information systems and whether certain information can only be accessed at the premises of the CCP; and
- d) the possibility for the resolution authority to share the information within the authority, to independent valuers appointed under CCPRRR and other entities in the application of the resolution tools, for example the extent to which information can be managed, downloaded and shared both within the system as well as outside the system, as the possibility to share information where needed may be of crucial importance in a time constrained resolution situation.

(4) Whether the CCP has tested the CCP's management information systems under stress scenarios as defined by the resolution authority, and whether such testing includes the frequency of such tests and scope of such tests, and how any shortcomings or identified limitations are registered and followed up on and whether the information in the management information system is adequately tested, monitored and quality checked on a reoccurring basis.

(5) Whether the CCP can ensure the continuity of its management information systems in relation to its core business lines and critical operations to both the CCP under resolution as well as other entities involved through the application of resolution tools. In undertaking this assessment the resolution authority should assess:

- a) the extent to which the CCP's management information system(s) allows for a separation of information depending on whether it is in relation to a certain part of the CCP's core business lines or critical operations from the rest of the operations and business lines;
- b) the extent to which the CCP maintains back-up management information systems as part of a redundancy protocol for business continuity purposes and to which extent such systems could be used in a situation where core business

lines and/or critical operations are separated from the rest of the operations and business lines;

- c) whether, to allow for the sale of business tool or the bridge CCP tool to be implemented, any software or IP licenses would need to be duplicated, amended or renewed by the CCP; and
- d) the extent to which the management information system allows for a continuous flow of information between the rest of the CCP's operations and business lines and any separated critical operations and core business lines, if needed, in order to ensure continuity of the CCP's critical functions.

5.9 Guideline 8 - Matters 14 to 17: Intra-group guarantees or transactions

The aim of Guideline 8 is to provide guidance on how the resolution authority should assess the risks in a resolution stemming from the intragroup relationships (guarantees and transactions) and ascertain if the CCP's resolution is feasible in light of such intragroup relationships. ESMA notes that it seems envisaged that the intra-group guarantees should be assessed both ways, i.e. when they are provided by and provided to the CCP.

Guideline 8 provides for a common set of elements and aspects the resolution authority should use to assess matters 14-17 set out in Section C of Annex to CCPRR.

Guideline 8

The resolution authority should consider the extent to which there are intra-group guarantees provided or received or intra-group transactions entered into at market conditions and whether the risk management systems concerning those guarantees are robust, the extent to which the use of any intra-group guarantees or transactions increases the risk of contagion across the group and could have a negative impact on another part of its group, in particular where such group comprises other FMIs in the resolution of the CCP (matters 14 to 17 of Section C of CCPRRR Annex), by assessing the following aspects:

- (1) Whether (i) intra-group guarantees or (ii) intra-group transactions, are performed at market conditions, and in undertaking this assessment the resolution authority should consider the following:
 - a) the extent to which intra-group guarantees are entered into at arm's length market conditions, considering the price and terms of the guarantee;

- b) the extent to which intra-group transactions are entered into at arm's length market terms, considering the price and terms of the transaction;
 - c) the extent to which the use of any intra-group guarantees or transactions increases the risk of contagion across the group, considering aspects such as allocation of obligation and losses with the group; and
 - d) the extent to which the resolution of the CCP could have a negative impact on another part of its group, in particular where such group comprises other FMIs, considering aspects such as whether intra-group guarantees or transactions are entered into on favourable terms and how this may have an impact in a resolution.
- (2) Whether the CCP's risk management systems covers such intra-group guarantees and whether the system is adequate and robust. This may be assessed by considering how the risk management system quantifies and illustrates the risk stemming from such guarantees in cases where the CCP (i) is the guarantor or (ii) benefits from such an intra-group guarantee, and what type of arrangements there are in place to manage risks under such intra-group guarantees and whether these arrangements are centralised at group level and if such guarantees could constitute a material wrong-way risk.
- (3) Whether the CCP's risk management systems cover such intra-group transactions and whether the system is adequate and robust, this may be assessed by considering how the risk management system quantifies and illustrates the amount of liabilities and exposures which are likely to stem from any intra-group transactions.

5.10 Guideline 9 - Matters 19 and 22: Application of resolution tools

The aim of Guideline 9 is to provide guidance on how the resolution authority should assess the feasibility of CCP resolution considering the ability and credibility to use the resolution tools as envisaged under the resolution plan.

Guideline 9 provides for a common set of elements and aspects the resolution authority should use to assess matters 19 and 22 set out in Section C of Annex to CCPRR.

Guideline 9

The resolution authority should consider the feasibility and credibility of applying resolution tools in such a way that meets the resolution objectives, given the tools available, the CCP's structure and the possible impacts of the use of resolution tools on clearing members and, where applicable, their clients, other counterparties and employees and possible actions

that third-country authorities may take (matters 19 and 22 of Section C of CCPRRR Annex), by assessing the following aspects:

- (1) Whether the resolution tools are suitable to the CCP.
- (2) The extent to which the foreseen application of the resolution tools would be able to ensure that the resolution objectives set out under Article 21 of CCPRRR are met;
- (3) Whether implementing the chosen resolution tool(s) would affect clearing members and, where applicable, their clients, by, for example, increasing clearing costs, creating additional costs or obligations or reducing the availability of clearing services.
- (4) Whether implementing the chosen resolution tool(s) could have a negative impact on counterparties to the CCP (other than clearing members and clients) or internal stakeholders, such as employees.
- (5) Whether third-country authorities may take actions such as to freeze assets of the CCP or its financial collateral or oppose to their transferability in case the sale of business tool or the bridge CCP tool are used.

5.11 Guideline 10 - Matter 20: Issuance of new instruments of ownership

The aim of Guideline 10 is to provide guidance on the feasibility and credibility of a potential new issuance of instruments of ownership in compliance with the no creditor worse off principle as enshrined in Article 33(1) of CCPRRR and if any specific requirements are needed. This Guideline has cross border dimensions in cases where foreign shareholders, established in third country jurisdictions, are involved and where additional requirements may need to be considered.

Guideline 10 provides for a common set of elements and aspects the resolution authority should use to assess matter 20 set out in Section C of Annex to CCPRR.

Guideline 10

The resolution authority should consider any specific requirements needed to issue new instruments of ownership as referred to in Article 33(1) of CCPRRR (matter 20 of Section C of CCPRRR Annex), by assessing the following aspects:

- (1) Whether the CCP's current ownership structure could be the source of contagion risk in case issuance of new instruments as referred to in Article 33(1) of CCPRR is

decided, and more specifically whether credit institutions, clearing members of the CCP or other financial institutions are among the qualifying shareholders.

- (2) Whether and the extent to which the CCP is owned by its clearing members and more specifically any statutory exceptions from the priority of claims that may be provided for in the applicable national law where the new issuance of ownership is used as a resolution tool as well as any contagion risk that may arise from using such tool.
- (3) Whether statutory exceptions from the priority of claims exist in the laws of any relevant third-country jurisdiction (e.g. for foreign investors/shareholders or foreign/foreign owned clearing members) and where this might raise conflict of law issues and thus increase the legal risk aspects in the issuance of new instruments as referred to in Article 33(1) of CCPRR.
- (4) Whether compliance with requirements applicable to initial public offerings impact the timing of issuing new instruments of ownership and the timely pay-up of such instruments in the accounts of the CCP, account taken of the resolution's timeline and milestones.

5.12 Guideline 11 - Matters 18 and 21: Resolvability from a cross border perspective

The aim of Guideline 11 is to provide guidance on how the resolution authority should assess the feasibility of CCP resolution from a cross border perspective. In this context the resolution authority should assess the feasibility and credibility of the arrangements of the CCP in a cross-border context and more specifically the extent to which decisions made for the purposes of resolution may be recognised and enforced in other jurisdictions and notably in third countries.

Guideline 11 provides for a common set of elements and aspects the resolution authority should use to assess matters 18 and 21 set out in Section C of Annex to CCPRR.

Guideline 11

The resolution authority should consider whether third-country authorities have the resolution tools necessary to support resolution actions, the scope for coordinated action with third-country authorities and whether there are arrangements and means through which resolution could be hampered where the CCP has clearing members or collateral arrangements established in different jurisdictions (matters 18 and 21 of Section C of CCPRR Annex), by assessing the following aspects:

- (1) Whether the third country has a framework that provides for the possibility to recognise the application of resolution tools and enforce resolution actions taken by resolution authorities in the EU where such an action is affecting persons or entities in such third country.
- (2) Whether the law in the relevant third country jurisdiction can impede resolution actions taken under CCPRRR, such as where the third country may challenge the right of the resolution authority to terminate some or all contracts of the CCP under resolution or to apply Variation Margins Gains Haircutting in resolution.
- (3) Whether the CCP's agreements governed by the laws of a third country are clearly identified in a list mentioning the identity of the CCP's counterparty.
- (4) Whether there exist adequate processes for coordination and communications and assurances on actions to be taken between the resolution authority of the CCP and the third-country authority involved due to establishment of clearing members, clients, service providers or due to the location of assets either invested or posted as collateral under financial collateral arrangements.
- (5) Whether there exist appropriate means for the recognition and enforcement in a third country of the resolution decisions taken by resolution authorities in the EU.
- (6) Whether the laws of the relevant third country jurisdiction(s) provide for a compensation for expropriation or other remedy protecting the right to property in case write-down and/or conversion powers are implemented in the context of resolution.

5.13 Guideline 12 - Matters 23 to 26: Impact on the financial systems, market confidence and payment and settlement systems

The aim of Guideline 12 is to provide guidance on how the resolution authority should assess the credibility of CCP resolution. In this context the resolution authority should assess, to the extent possible and to the best of the resolution authority's knowledge, the impact of CCP resolution actions on the CCP's providers, clients and stakeholders, payment and settlement systems, financial markets, the financial system and the economy in general.

Guideline 12 provides for a common set of elements and aspects the resolution authority should use to assess matters 23 – 26 set out in Section C of Annex to CCPRR.

Guideline 12

The resolution authority should consider the extent to which (i) the impact of the CCP's resolution on the financial system and on financial market's confidence can be adequately evaluated, (ii) the resolution of the CCP could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy, (iii) contagion to other CCPs or to the financial markets could be contained through the application of the resolution tools and the exercise of the resolution powers; and (iv) the resolution of the CCP could have a significant effect on the operation of payment and settlement systems (matters 23 to 26 of Section C of CCPRRR Annex), by assessing, to the extent the resolution authority has information and data, the following aspects:

- (1) Whether the resolution of the CCP could have a significant effect, adverse, direct or indirect, on the financial system, market confidence, the economy or the operation of payment and settlement systems. This may be where such measures may negatively affect or constrain the normal functioning of financial markets, and/or other financial market infrastructures (serviced or not by the CCP), or the financial system as a whole. This may also be where a generalised suspension of trading and clearing or limitations on trading derivatives cleared by the CCP in resolution may be made necessary.
- (2) Whether the CCP's resolution may trigger any potential material disturbance of the financial markets' functioning or significantly negatively impact the financial market transaction costs.
- (3) Whether the likely negative effect of the application of the CCP's resolution tools on the financial systems, real economies or the operation of payment and settlement systems of any Member State identified or of the Union could restrict the possibility to apply a certain resolution tool.
- (4) Where the application of resolution tools is likely to affect the financial system and the financial markets' confidence and, whether those effects can be adequately evaluated, by establishing scenarios, methodologies and indicators.
- (5) Whether the application of the CCP's resolution tools may impact the real economy, and the availability of financial services in the short to medium term, locally or globally for a particular class of derivatives or with respect to all of the CCP's core business lines where that CCP is in a situation of de facto monopoly or oligopoly.
- (6) Whether adequate ring-fencing of any interoperability arrangements in place between the CCP undergoing resolution and other CCPs may limit any adverse effects of applying the resolution tools and manage aspects of contagion.

(7) Whether the likely contagion to other CCPs or to the financial markets may be able to be contained by applying the foreseen resolution tools and exercise the resolution powers and the likely impact of the CCP's resolution on the Securities Settlement System Operator and the Payment System Operator servicing the CCP and more generally whether the involved payment and/or settlement systems could suffer losses stemming from CCP resolution and the amount of such losses.