

COMMISSION DELEGATED REGULATION (EU) 2023/1193**of 14 March 2023****supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the contents of the resolution plan****(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 ⁽¹⁾, and in particular Article 12(9), fourth subparagraph, thereof,

Whereas:

- (1) When drawing up resolution plans, resolution authorities should make sure to consider all the elements referred to Article 12(7), points (a) to (s) of Regulation (EU) 2021/23. The standards for the content of resolution plans should be sufficiently detailed to ensure that resolution plans are targeted and useful for the implementation of resolution strategies, while also allowing for sufficient flexibility to take into account the national legal framework in the area of insolvency law, as well as the nature and complexity of the CCP's clearing business.
- (2) While all elements specifying the content of the resolution plans, which are regulated in Article 12 of Regulation (EU) 2021/23, should be included in the resolution plan, the resolution authority should ensure that these elements are reflected in the resolution plan in a suitable way considering the specific characteristics of the central counterparty (CCP), such as the nature and complexity of the clearing business performed by it.
- (3) The summary of the key elements of the resolution plan referred to in Article 12(7), point (a), of Regulation (EU) 2021/23 should be succinct and focused but at the same time containing sufficient explanations to cover the key elements of the plan that are to be disclosed to the CCP. The summary should make the CCPs aware of key actions that they should be able to perform and data they should be able to submit. The summary should focus on where that plan may have a material impact on the CCP's recovery and crisis management planning, and clarify any expectations from the CCP as regards cooperation in the resolution phase and the measures that may affect the CCP's functions.
- (4) In order to ensure the overall suitability and proportionality of the resolution plan, it should contain resolution scenarios and resolution strategies. The resolution authority should have the tools, in the form of different types of possible scenarios, including combinations thereof, to create relevant and suitable scenarios for the CCP, and a list of key aspects to be considered when establishing resolution strategies for the resolution scenarios.
- (5) In order to take into consideration the specific characteristics of the applicable national legal framework in the area of insolvency law, resolution authorities should have the flexibility to consider some aspects of resolution planning carefully, such as the mechanism under Article 60 of Regulation (EU) 2021/23, and any differences between the creditors ranking under the national insolvency procedures and the loss absorption order established under that Regulation. This overall flexibility is evidenced by this Regulation, which provides the elements to be reflected in the resolution plan, without prejudice to the required flexibility under Regulation (EU) 2021/23. The elements specified in this Regulation also do not preclude the resolution authority from determining other aspects to be reflected in the resolution plan.

⁽¹⁾ OJ L 22, 22.1.2021, p. 1.

- (6) To facilitate and ensure the effective implementation of the resolution plan, it is essential that, where the resolution authority has assessed certain aspects of the CCP differently from in the CCPs' own assessment under the recovery plan, such differences are considered in light of a possible impact on the swift implementation of the resolution plan. Therefore, where any differences are identified, the resolution authority should consider them in the resolution plan and assess them to understand their effect, if any, on the implementation of the resolution plan.
- (7) To ensure that resolution plans, where necessary, can be effectively implemented in due time, it is essential that the resolution authorities have 'proof tested' the application of the intended resolution plan, to the extent possible, by testing processes and procedures in detail. Such testing should include sending emails and information to ensure that any pre-planned actions related to how and when to undertake certain steps and how and when to collect certain information are workable in stressed conditions and that any impediments found are corrected to ensure, to the extent possible, that the estimated time frames are likely to be respected.
- (8) To ensure that key employees remain at the CCP during the resolution phase, the resolution authority should try to assess and pre-empt incentive structures to be used, possibly not only linked to the CCPs future gains, but also direct remunerations and should consider how to ensure sufficient staff by considering short-term hires, exchanges, temporary allocations or consultancy arrangements of employees, where relevant, so that CCPs have the competence they need.
- (9) To ensure a swift and efficient cooperation with the authorities whose areas of competence would be affected by the failure of a CCP, and which are represented in the resolution college as defined under Article 4 of Regulation (EU) 2021/23, the resolution authority should prepare and regularly test the arrangements for notifying the resolution college and communicating any relevant information.
- (10) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA) after consulting the European Systemic Risk Board.
- (11) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, and requested the advice of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽²⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Quantification assessment

The resolution authority shall assess how the different aspects of the resolution plan are or may be quantified when drawing up the resolution plan and shall provide explanations as to how and to what extent a quantitative assessment has been undertaken for a certain aspect of the resolution plan. Where the resolution authority reaches the conclusion that, in relation to a specific aspect of the resolution plan, a quantitative assessment is either not appropriate or not possible, that should be stated in the resolution plan.

Article 2

Summary of key elements of the resolution plan

When preparing a summary of the key elements of the resolution plan in accordance with Article 12(7), point (a), of Regulation (EU) 2021/23, the resolution authority shall ensure that at least the following elements are included in the resolution plan:

- (a) the key elements of the resolution strategies established and the underlying main scenarios under the resolution plan, distinguishing between default events, non-default events and a combination of the two;

⁽²⁾ 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).

- (b) a short summary of the key elements of the resolution plan in relation to each of the points under Article 12(7), points (b) to (s), of Regulation (EU) 2021/23 focusing on the aspects relevant to the CCP:
 - (i) key actions the CCP should be able to perform;
 - (ii) data the CCP should be able to submit;
 - (iii) any aspects of the plan that are likely to have a material impact on the CCP's recovery and crisis management planning.

Article 3

Summary of material changes

When preparing a summary of material changes to the resolution plan in accordance with Article 12(7), point (b), of Regulation (EU) 2021/23, the resolution authority shall ensure that the resolution plan includes material changes concerning at least the following elements:

- (a) the markets where the CCP operates, the business lines considered core to the CCP, and the clearing services offered by the CCP;
- (b) the interoperability arrangements of the CCP or the interdependencies of the CCP, including the service providers of the CCP;
- (c) the capital and capital structure of the CCP, including the amounts of pre-funded dedicated own resources;
- (d) the prudential requirements of the CCP, including changes in the default fund methodologies, margin and liquidity risk management frameworks, investment policies, collateral policies and settlement;
- (e) the non-prudential requirements of the CCP, including organisational aspects such as organisational structure, business continuity and outsourcing, and material changes to the CCP's conduct of business rules, including the composition of the CCP's membership and changes regarding segregation and portability;
- (f) the structure of the CCP's ownership and managers' incentive structures;
- (g) the resolution scenarios and resolution strategies.

Article 4

Critical functions

When preparing a description of how the critical functions of the CCP could be legally and economically separated in accordance with Article 12(7), point (c), of Regulation (EU) 2021/23, the resolution authority shall ensure that at least the following elements are included in the resolution plan:

- (a) a description of the functions regarded as critical by the resolution authority;
- (b) where material differences compared to the recovery plan's list of critical functions exist, a detailed description of the main reasons why the resolution authority has assessed the critical functions differently, the material effects of such different assessment and how this could affect the resolvability of the CCP;
- (c) a description of the main dependencies between critical functions and critical interdependencies and of the key internal and external arrangements and processes, including operations, IT procedures, a list of key staff and main service providers that are necessary for the CCP to continue providing its critical functions, or any other aspects that may be necessary to consider in view of a possible transfer of some or all of the operations of the CCP to another financial market infrastructure or bridge CCP, where that is part of the proposed resolution strategy;
- (d) a description of how critical functions could be separated from non-critical functions in economic, operational and legal terms and including details on how the resolution authority has assessed the material effects of such separation on stakeholders, including:

- (i) material effects on netting sets for clearing members where transactions are split into different silos of the CCP or a different CCP;
 - (ii) where possible to identify, material effects on operations or legal effects of splitting transactions into different CCPs and the effects on clearing members, clients and indirect clients;
 - (iii) where possible to identify, material effects on the calculation of collateral requirements and in particular variation margins and how the separation would affect the collateral requested by clearing members, clients and indirect clients;
 - (iv) where possible to identify, an evaluation of the price of transfer of such transactions;
- (e) a summary of how the CCP's proposed approach to separating, or not, the CCP's critical functions from its other functions may affect the resolvability assessment for the CCP;
- (f) a mapping of critical functions to identified legal entities and to the CCP's core business lines.

Article 5

Time frame for implementation

1. When preparing an estimation of the time frame for implementation of the resolution plan in accordance with Article 12(7), point (d), of Regulation (EU) 2021/23, the resolution authority shall ensure that at least the following elements are included in the resolution plan:

- (a) a list of actions that the resolution authority would envisage taking and, where relevant, whether these actions derive from the application of the recovery plan;
- (b) a list of the envisaged steps, with allocated time frames, to be taken by the resolution authority for implementing each material aspect of the resolution plan and specifying corresponding steps for such implementation, including an estimated timetable to assess each of the resolution strategies and its applicability;
- (c) a description of how replenishing of the CCP's financial resources is envisaged under the resolution plan, including where derived from the recovery plan, and the estimated time frame for different measures to replenish the CCP's financial resources.

2. The resolution authority shall ensure that the time frames referred to in paragraph 1 are:

- (a) suitable and relevant, as shown by a description of how the resolution authority has assessed the feasibility and credibility of the envisaged steps and allocated time frames in the resolution plan;
- (b) tested regularly, and at least upon the establishment of the resolution plan, and thereafter following any material changes;
- (c) effective, by taking into account the processes and procedures, including the application of templates.

Article 6

Assessment of resolvability

When preparing a detailed description of the assessment of resolvability to be included in the resolution plan in accordance with Article 12(7), point (e), of Regulation (EU) 2021/23, the resolution authority shall ensure that at least the following elements are included in the resolution plan:

- (a) the conclusions of the assessment of resolvability, including at least whether or not the CCP is deemed resolvable based on the resolution authority's considerations under Article 15(2) of Regulation (EU) 2021/23;
- (b) a description of how the resolution authority has assessed the extent to which the CCP is resolvable without assuming any of the financing arrangements as set out in Article 15(1), points (a), (b) and (c), of Regulation (EU) 2021/23;

- (c) a description of the rationale of the resolution authority for considering the feasibility of applying the resolution tools in such a way that meets the resolution objectives;
- (d) a description of the resolution authority's assessments of the information received from the CCP under Article 15(3) of Regulation (EU) 2021/23, detailing whether the resolution authority agrees with the CCP's assessment as to the absence of impediments;
- (e) a description providing details of when and how the resolvability has been assessed most recently by the resolution authority;
- (f) a description of the availability of the envisaged assets and rights to the CCP and if such assets would be available for use in resolution or whether such use or transfer of such assets could be hampered or prevented by residual interests of direct and indirect participants in those assets or by legal constraints, such as the legal mechanism by which collateral is provided, including whether collateral is provided as a security interest, pledge or by way of title transfer;
- (g) a description of each of the matters that the resolution authority is to consider when assessing the resolvability of a CCP, as set out in Section C of the Annex to Regulation (EU) 2021/23.

Article 7

Impediments to resolvability

When preparing a description of any measures required pursuant to Article 16 of Regulation (EU) 2021/23 to address or remove impediments to resolvability to be included in the resolution plan in accordance with Article 12(7), point (f), of Regulation (EU) 2021/23, the resolution authority shall ensure that at least the following elements are included in the resolution plan:

- (a) where a material impediment has been identified, a descriptive summary of the measures required under Article 16 of Regulation (EU) 2021/23, to identify any necessary changes to the structure, operations or risk management frameworks and financial resources of the CCP, or any measures to improve the CCP's resolvability, and the timeline for completing the requested changes;
- (b) a description of any impediments addressed or removed in accordance with Article 16 of Regulation (EU) 2021/23 over a period of 2 years preceding the current review of the impediments under Article 15 of that Regulation.

Article 8

Determining the value of and marketability of critical functions and assets

When preparing a description of the processes for determining the value and marketability of the critical functions and assets to be included in the resolution plan in accordance with Article 12(7), point (g), of Regulation (EU) 2021/23, the resolution authority shall ensure that at least the following elements are included in the resolution plan:

- (a) a description of the method for determining the value and marketability of the critical functions and assets such as the core business lines, operations and assets of the CCP mainly focusing on aspects that could have an impact on the valuation such as volatility in the market, inaccessibility and/or uncertainty of the market prices, time constraints and legal issues;
- (b) if the method described in point (a) materially deviates from the valuation methodology applied under the recovery plan, a description of the main reasons for which the resolution authority has assessed the valuation methodology differently and the material effects of such a difference, if any.

*Article 9***Information requirements**

When preparing a description of the information requirements set out in Article 12(7), point (h), of Regulation (EU) 2021/23, the resolution authority shall ensure that at least the following elements are included in the resolution plan:

- (a) a description of the arrangements between the resolution authority and the CCP ensuring access to and sharing of information and how the CCP will maintain the information systems and controls that can promptly produce and make available relevant data and information to the resolution authority; such arrangements including procedures to date the information and providing standardised updates where there are material changes;
- (b) a list of the information required pursuant to Article 13 of Regulation (EU) 2021/23 and a description of how the CCP has envisaged ensuring that such information is kept up to date and available at all times to the resolution authority.

*Article 10***How resolution actions could be financed**

When preparing an explanation regarding the financing of resolution actions in accordance with Article 12(7), point (i), of Regulation (EU) 2021/23, the resolution authority shall ensure that the resolution plan includes at least the following elements:

- (a) a description of the financial resources envisaged as being needed under the resolution plan, clearly separating solvency from liquidity funding needs, including overall descriptions regarding the possible financial resources that are likely to be required in relation to the implementation of the resolution strategy including each relevant resolution scenario;
- (b) where not all contractual obligations and other arrangements have been enforced before the CCP entered into resolution, a pre-assessment of the possible issues with pursuing such obligations and arrangements in relation to resources for financing resolution actions, and of whether such identified issues may negatively affect the possibility of achieving the resolution objectives in a timely manner;
- (c) a description of potential sources of resolution funding, including the main terms of financing, material preconditions for their use, the timing of their availability, and any collateral requirements to the extent they are available *ex ante*;
- (d) a description and analysis of how and when the CCP may apply for the use of central bank facilities, complying with the requirement that resolution plans should not assume any access to central bank facilities on non-standard terms;
- (e) a description and identification of assets that could be used and whether they are expected to qualify as collateral, and how such an expectation of use of the assets may create encumbrances, primarily in the value and use of such assets.

*Article 11***Resolution strategies and scenarios**

When preparing a detailed description of the resolution strategies and scenarios in accordance with Article 12(7), point (j), of Regulation (EU) 2021/23, the resolution authority shall ensure that at least the following elements are included in the resolution plan:

- (a) at least nine designed resolution plan scenarios based on the matrix for building the resolution plan scenarios as set out in the Annex, or a list of resolution plan scenarios covering all the 'Types of scenarios' set out in the Annex where relevant to the CCP which may be designed differently;
- (b) a description of the resolution scenarios chosen based on the assessment of the resolution authority considering the specific characteristics and level of complexity of the CCP, and of any additional scenarios designed in the resolution plan;

- (c) the resolution authority is to include quantitative assessment tools for each type of scenario, where possible depending on access to data, that is to be used to produce quantitative impacts for the resolution scenarios; where no data is available, and cannot be generated after employing reasonable effort, the resolution authority is to conduct, and reflect in the plan, a qualitative assessment of the tools to the extent possible, including details on to what extent a quantitative assessment has been undertaken for a certain scenario;
- (d) a description of the chosen resolution strategies for the resolution scenarios, specifying the following points:
 - (i) a detailed description of the main resolution strategy that has been chosen, and if several strategies are chosen, how their application differs, whether different time frames would apply for their implementation, and the key strategic analysis that underlies the different choices of chosen resolution strategies;
 - (ii) a detailed description of how the resolution authority has tested the envisaged strategies of the resolution plan, including how the resilience of the envisaged strategies based on the chosen scenario has been considered and whether issues or impediments could arise and if so, how they have been mitigated by revising the chosen strategy and scenario;
 - (iii) a detailed description of conditions, to be assessed by the resolution authority in deciding whether to undertake an intervention under the resolution strategy, together with envisaged resolution tools;
 - (iv) a detailed description of how the resolution strategy takes into account the impact on direct and indirect participants in the CCP as well as interdependencies such as other linked financial markets infrastructures and trading venues;
 - (v) a detailed description of the effects of different resolution actions under the resolution strategies, such as resolution tools that would split netting sets and also descriptions of how this could affect other aspects of the functioning of the CCP such as liquidity and collateral requirements as well as other types of resolution tools including the sale of a business tool or the write-down or conversion;
 - (vi) a detailed description of how the resolution strategy takes into account and ensures continuity of the CCP's legal and technical arrangements and how the plan supports the transfer of its functions, including by providing for advance agreement with other financial markets infrastructures or relevant service providers.

Article 12

Critical interdependencies

When preparing a description of the critical interdependencies referred to in Article 12(7), point (k), of Regulation (EU) 2021/23, the resolution authority shall ensure that at least the following elements are included in the resolution plan:

- (a) a description under the resolution plan of all critical interdependencies that have been identified;
- (b) if identified interdependencies as referred to in point (a) entail any material differences compared to the recovery plan's list of critical interdependencies, a detailed description of the main reasons for which the resolution authority has assessed the critical interdependencies differently and any material consequence for the application of the resolution plan due to the different assessments of critical interdependencies and how this can affect the resolvability of the CCP;
- (c) a description of the different types of entities with interdependencies to the CCP, including a list containing all relevant stakeholders including the CCP's direct and indirect participants, where possible to identify, owners, financial service providers such as liquidity providers, settlement banks or agents, platforms, investment agents, banks, custodians and other service providers, including IT providers and data providers, and linked financial markets infrastructures, and their relevance to the resolution procedure;
- (d) a description of the assessment of the entities, as referred to in point (c), with an interdependence to the CCP, covering their importance for the CCP, in particular, why they would or would not be considered critical, and if the ability of the CCP to continue providing its critical functions is dependent on these entities;

- (e) a description of outsourcing arrangements to critical service providers that cover part of the CCP's core business, including where another entity undertakes price determination and provides systems for the clearing, margin calculations or other essential parts of the CCP's operations;
- (f) a description of how entities identified to have a critical interdependency with the CCP under point (a) have been assessed and how any identified risks have been mitigated and addressed, including legal enforceability and regulatory constraints of arrangements such as set-off and netting, to ensure operational continuity in resolution;
- (g) a description of how any material issues, due to a potential failure to comply with obligations under outsourcing arrangements by the provider of critical outsourced service arrangements have been mitigated in the resolution plan;
- (h) a description of how the resolution plan has reflected the potential impact of applying the resolution tools on any interoperable CCP, covering the transmission of resolution cash calls or variation margin gains haircutting via an interoperability arrangement;
- (i) a description of possible impacts on other financial market infrastructures linked to the CCP, including by assessing the significance of the CCP's involvement in those entities including whether the CCP's resolution could cause contagion through financial market infrastructures by triggering of default procedures in financial market infrastructures, or leaving other firms without access to financial market infrastructures.

Article 13

Critical intra-group interdependencies

When preparing a description of the critical intra-group interdependencies in accordance with Article 12(7), point (l), of Regulation (EU) 2021/23, the resolution authority shall ensure that at least the following elements are included in the resolution plan:

- (a) a description of the group that the CCP belongs to and a list of the group entities the CCP has links with, an assessment as to which group entities are to be considered as critical intra-group interdependencies, and a description of the intra-group dependencies identified under the resolution plan;
- (b) if such identified interdependencies entail any material identified differences compared to the recovery plan's list of critical intra-group interdependencies and, where there are differences, a detailed description of the main reasons for which the resolution authority has assessed the critical intra-group interdependencies differently and any material effects due to the different assessment and how this can affect the resolvability of the CCP, if any;
- (c) a description of the impact of resolution actions on other business lines of critical intra-group entities and legal entities, including if resolution measures would affect other entity's ability to continue to operate;
- (d) a description of how relevant intra-group entities would be able to provide financial support either pre-agreed or on a voluntary basis;
- (e) a description of legal enforceability or regulatory constraints that could affect the intra-group interdependencies;
- (f) a description of the mitigating measures related to those critical intra-group interdependencies which will ensure operational continuity in resolution, as necessary to maintain the continuity of the CCP's critical functions.

Article 14

Ensuring certain functions of the CCP

When preparing a description of how certain functions of the CCP are ensured in accordance with Article 12(7), point (m), of Regulation (EU) 2021/23, the resolution authority shall ensure that the resolution plans include at least the descriptions of the following elements:

- (a) each of the essential operations and systems, and a description of how to assess and maintain such essential operations and systems by providing identified options of continued access to infrastructures, processes and operational arrangements in order to maintain the continuous functioning of the CCP's operational processes as listed in Article 12(7), point (m), of Regulation (EU) 2021/23 and the key outcomes of the assessment;

- (b) the options identified to maintain financial resilience;
- (c) the options identified to ensure contractual agreements are maintained, including contractual resilience clauses, resolution-proof clauses and limitations of termination rights in resolution;
- (d) the options identified to ensure internal agreements can be maintained during the resolution phase, including arms' length pricing structures and continued access to operational assets;
- (e) the different arrangements already entered into under the resolution plan to ensure continuity of the functioning of the operational processes, listed in Article 12(7), point (m), of Regulation (EU) 2021/23, during resolution;
- (f) how the resolution plan would allow, using options identified, the CCP to continue to provide uninterrupted critical clearing services, including by using interim solutions, such as a purchaser or bridge institution using existing staff and infrastructure or, where it is not possible to develop such solutions in advance, a list of options that may be applied in resolution and a list of information necessary to draw up such arrangements and agreements at short notice.

Article 15

How to obtain the necessary information to perform valuation

When preparing a description of how to obtain the necessary information to perform the valuation in accordance with Article 12(7), point (n), of Regulation (EU) 2021/23, the resolution authority shall ensure that the resolution plans include at least the descriptions of the following elements:

- (a) how it is envisaged that the resolution authority and the independent valuer will obtain the necessary information to perform the valuation referred to in Article 24 of Regulation (EU) 2021/23;
- (b) the information and processes for ensuring availability in an appropriate time and manner of the information required for the purposes of valuation, in particular pursuant to Title V, Chapter II, of Regulation (EU) 2021/23, and for marketability, in particular pursuant to the marketing requirements for the sale of business and bridge CCP tools;
- (c) how relevant market data is collected, stored, structured, organised and updated by the CCP and how such market data relevant for the resolution plan is prepared and validated as close as possible to the valuation date;
- (d) how the financial statements and regulatory reporting are prepared by the CCP and regularly updated, and how such financial information is prepared, detailed and validated as close as possible to the valuation date, and showing that the valuations of assets and liabilities are complete;
- (e) how the level of detail of information is envisaged to be sufficient for the resolution authority and the independent valuer to take action under the resolution plan, by providing requirements on the level of granularity needed for the valuation, including where the information must include details on line-by-line or portfolio-by-portfolio positions, transactions and collateral and the CCP's own capital;
- (f) the rules, key methodologies, assumptions and assessments used by the CCP in order to prepare the financial statements and regulatory reporting;
- (g) how information is organised, labelled and structured and how it can be used and analysed by the resolution authority and the independent valuer in an effective and secure manner to ensure the resolution authority has the information required to take actions under the resolution plan.

*Article 16***Impact assessment on employees**

When preparing the impact assessment on employees in accordance with Article 12(7), point (o), of Regulation (EU) 2021/23, the resolution authority shall ensure that at least the following elements are reflected in the resolution plan:

- (a) a description of the different types of employees and categorisations of how different types of employees are to be informed and managed in a resolution situation and the estimated impact of the plan on the different types of employees of the CCP;
- (b) a description of how to mitigate loss of critical employees before the resolution and how to create effective incentives in a resolution to maintain critical employees identified based on their value and relevance during a resolution phase; aspects to bear in mind include: (i) any regulatory procedures required to be followed in resolution, (ii) assessments as to the envisaged effectiveness of incentive structures, (iii) the possibility to undertake changes in employment contracts, conditions and organisation during a resolution phase, and (iv) an estimate of any associated costs of maintaining critical employees or recruitment, including an assessment of any associated costs taking into account relevant national rules for compensation and reimbursements during resolution;
- (c) a description of the plan for communication with employees, including a description of envisaged procedures to consult with employees during the resolution process, taking into account any national rules and systems for dialogue with social partners, the management, owners, and staff unions.

*Article 17***Communication plan**

When preparing a description of the communication plan in accordance with Article 12(7), point (p), of Regulation (EU) 2021/23, the resolution authority shall ensure that the resolution plans include at least the descriptions of the following elements:

- (a) the communication plan specifying the following:
 - (i) who informs the media and the public;
 - (ii) when the media and public are to be informed;
 - (iii) what is to be communicated, to ensure only public information on the resolution plan is communicated in accordance with Regulation (EU) 2021/23;
- (b) the operational arrangements and procedures of the communication plan, the criteria for applying the communication strategy, the suitability of the communication plan and how the plan achieves the aim of ensuring that the CCP's communication and disclosure plan manages to meet the objective of acting in a transparent manner;
- (c) details differentiating between legally required formal notifications and voluntary undertaken communication with a description of how the resolution plan has taken into account different regulatory requirements for disclosure of information, in particular where such information could affect critical services in the financial market and where the CCP is a listed company or is owned by a listed company;
- (d) how the resolution plan has assessed possible material negative market reactions to the resolution of a CCP and how the plan envisages mitigating such potentially negative market reactions when disclosing information.

*Article 18***Essential operations and systems**

When preparing a description of the essential operations and systems in accordance with Article 12(7), point (q), of Regulation (EU) 2021/23, the resolution authority shall ensure that the resolution plans include at least the descriptions of the following elements:

- (a) the essential operations and systems identified under the resolution plan;

- (b) where the identified operations and systems are materially different from the essential operations and systems identified under the recovery plan, a description of the main reasons why the resolution authority has assessed the essential operations and systems differently, any material effects due to the different assessment and how this can affect the resolvability of the CCP;
- (c) how such essential operations and systems are identified, the criteria applied, and thresholds used, to differentiate them from other operations and systems of the CCP that are not to be considered essential operations and systems.

Article 19

Notification to resolution college

When preparing a description of the arrangements for notifying the resolution college in accordance with Article 12(7), point (r), of Regulation (EU) 2021/23, the resolution authority shall ensure that the resolution plans include at least the descriptions of the following elements:

- (a) the procedures and processes to follow when notifying the resolution college and, in particular, the information on distribution lists, template documents and timelines on how and when to inform the resolution college;
- (b) the procedures for keeping the distribution lists up to date;
- (c) the arrangements for testing the notifying process of the resolution college, including information on the scope and intervals for such testing exercises and procedures to address any shortcomings such as errors, misunderstanding or delays.

Article 20

Measures to facilitate portability of positions and related assets

When preparing a description of the measures to facilitate portability of positions and related assets in accordance with Article 12(7), point (s), of Regulation (EU) 2021/23, the resolution authority shall ensure that the resolution plans include at least the descriptions of the following elements:

- (a) an assessment of whether the portability of positions and related assets to another CCP is possible, including an assessment as to its feasibility and likely outcome and an assessment of the situation where the portability or transfer is ultimately not possible;
- (b) how the CCP keeps the relevant data on positions in client omnibus and segregated accounts in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽¹⁾ and how the CCP is able to provide details on the resources and systems in place to maintain up-to-date information that could be provided rapidly in resolution to ensure that client positions, where it is possible to identify them, at the CCP could be identified and potentially transferred successfully;
- (c) the measures to facilitate the portability of positions and related assets of the clearing members and clients of the defaulting CCP from the defaulting CCP to another CCP or a bridge CCP.

Article 21

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*.

⁽¹⁾ 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).

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

Done at Brussels, 14 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

ON THE SCENARIOS TO INCLUDE IN THE CCP RESOLUTION PLAN

Types of scenarios (Article 12(3), point (a), and 12(7), point (j) of Regulation (EU) 2021/23)	Factors to describe type of scenarios (Article 12(3), point (a), and 12(7), point (j) of Regulation (EU) 2021/23)
Default Scenario – Unsuccessful recovery where the CCP does not have sufficient resources and tools for a successful recovery	Establish scenario where a CCP has not fully addressed liquidity shortfalls or established loss allocation arrangements that fully address uncovered credit losses. As a result, recovery resources and tools are insufficient to absorb losses and replenish financial resources to minimum regulatory requirements.
Default Scenario – Failure of loss allocation arrangements	Establish scenario where the CCP's loss allocation arrangements set out in the recovery plan do not operate as intended and as a result, the planned resources or tools are not, or not sufficiently, available at the time of recovery.
Default Scenario – Multiple clearing members do not meet their obligations under the CCP's recovery actions	Establish scenario where the multiple clearing members do not meet their obligations under the CCP's recovery actions. If the group of non-performing clearing members is sufficiently large or if their failure to meet obligations leads to a general loss of confidence in the CCP, the CCP may become unable to continue operations.
Default Scenario – Timing of resolution actions	Establish scenario where the relevant authorities determine that resolution should be initiated before some of the arrangements or tools under the CCP's recovery plan are applied. In this scenario, the relevant authorities have determined that applying recovery arrangements or tools in the prevailing market conditions may threaten financial stability and/or the continuity of critical functions.
Non-default Scenario – Investment risks	Establish scenario where losses on investments of initial margin or default fund assets could arise for example if an investment counterparty fails. A CCP may need to bear such losses, if the loss allocation tools in the CCP's rules do not cover them in another manner. Losses could also occur from the investment of a CCP's own financial resources including SITG and SSITG. Investment losses could materialise suddenly.
Non-default Scenario - Failure of service providers	Establish scenario where, as a result of a failure of a custodian, depository, a payment or settlement bank, a payment system, a securities settlement system or other entity providing similar services, the CCP could lose timely access to its assets, become unable to collect margins or become unable to transform non-cash collateral or investments into cash. This could cause liquidity and/or solvency challenges to a CCP, depending on the nature or consequences of the failure and the time it takes to regain access to the assets.
Non-Default Scenario - Operational risk events	Establish scenario where financial losses or liquidity challenges arise from a range of operational failures, such as human error, information technology failure, fraud, cyber incident, or non-performance of vendors or service providers. A CCP can incur operational losses directly (primary losses) or due to the legal actions taken by others affected by the event (secondary losses). Operational risk events can happen suddenly, but certain losses, particularly secondary losses can take years to fully materialise.

<p>Non-Default Scenario – Financial losses (Comprehensive loss allocation arrangements for custody and investment losses the CCP incurs as a result of its clearing and settlement activity)</p>	<p>Establish scenario where the CCP does not have sufficient financial resources or tools to cover non-default losses (including losses deriving from legal risks, including legal, regulatory, enforcement or contractual penalties that could lead to significant losses or uncertainty for the CCP and that can take a long time to materialise). In this scenario, the non-default losses would be larger than the CCP's capital and contingent resources (e.g. insurance, parental guarantees). Alternatively, in a scenario where the CCP's clearing members would also be required to bear losses, the aggregate resources available would be insufficient to cover the losses and/or to replenish capital back to the required minimum.</p>
	<p>Establish scenario where the CCP's arrangements to cover (specific) non-default losses set out in the recovery plan cannot be used or do not operate as intended. As a result, the planned resources or tools are not, or not sufficiently, available at the time of recovery.</p>
	<p>Establish scenario where the CCP's clearing members do not meet their obligations under the CCP's recovery actions. In this scenario, clearing members do not meet the applicable loss allocation or replenishment obligations.</p>
	<p>Establish scenario where the CCP's shareholders do not support the CCP's recovery actions. In this scenario, the CCP's parent company or other shareholders do not cover the CCP's non-default losses that are not allocated elsewhere and/or are unwilling to recapitalise the CCP, irrespective of whether there is a contractual commitment, parental guarantee, or similar arrangement to provide financial resources or not.</p>
	<p>Establish scenario where the relevant authorities determine that resolution should be initiated before some of the recovery arrangements or tools are applied or the CCP is wound down. In this scenario, the CCP's recovery and wind-down arrangements are consistent with the PFMI, but the relevant authorities have determined that applying them in the prevailing market conditions may threaten financial stability and/or the continuity of critical functions.</p>
<p>Event(s) causing simultaneous default and non-default losses – This scenario addresses the situation in which there are concurrent default and non-default losses as a result of a single event or as a result of multiple events that occur in a reduced time span.</p>	<p>Establish scenario where there are specific entities that are material sources of both default and non-default losses, specific scenarios analysing the effects of default events affecting these entities may be relevant.</p> <p>Considering where non-default losses would be borne by clearing members affecting the path of loss propagation and where there are material differences between different combinations of default and non-default events with respect to the available tools, usage of tools, paths of losses or impact on stakeholders.</p>