



European Securities and
Markets Authority

Final Report

RTS on the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources (Article 9(15) of CCPRRR)

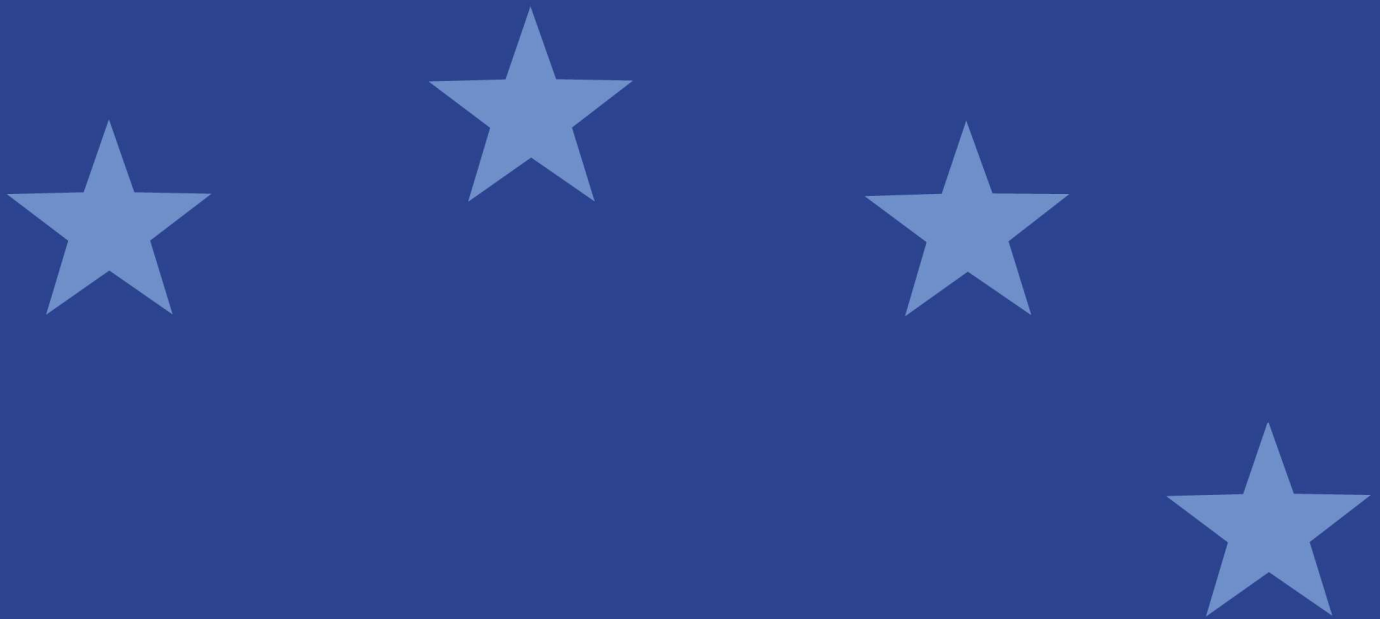


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1 Executive Summary

Reasons for publication

Article 9(14) of CCPRRR introduces a requirement for EU CCPs to use, following a default or a non-default event, an additional amount of its pre-funded dedicated own resources, prior to the use of any other recovery arrangement.

Article 9(15) of CCPRRR mandates ESMA, in close cooperation with EBA and after consulting the ESCB, to develop draft regulatory technical standards specifying the methodology for calculation and maintenance of this additional amount of pre-funded dedicated own resources.

ESMA shall submit those draft regulatory technical standards to the Commission 12 months after the CCPRRR entered into force.

ESMA published a Consultation Paper with its draft regulatory technical standards under Article 9(14) of CCPRRR on 12 July 2021. The consultation ended on 20 September 2021. ESMA received 10 responses.

The Final Report takes into account the feedback provided by the respondents to the consultation, as well as the advice from the Securities and Markets Stakeholder Group.

Contents

This Final Report provides the draft regulatory technical standards specifying the methodology for calculation and maintenance of a CCP's additional amount of prefunded dedicated own resources (or 'second skin in the game', SSITG).

Section 3 introduces the scope of the legal mandate and provides background on the rationale for maintaining an additional amount of prefunded dedicated own resources. Sections 4 to 6 then further detail the elements that ESMA is mandated to specify in the draft regulatory technical standards.

Section 4 presents the methodology to be applied for calculating and maintaining the appropriate percentage level of the SSITG. Sub-section 4.1 presents the basic elements of the methodology. Sub-section 4.2 further details the parameters to be assessed for describing a CCP's structure, internal organisation and complexity, while sub-section 4.2.2 specifies the parameters to be assessed for describing the structure of incentives of the CCP's stakeholders.

Section 5 describes how EU CCPs may invest the SSITG amount in assets others than the ones referred to in Article 47(1) of EMIR.

Section 6 considers third-country CCPs rules and practices with regards to capital requirements, in order to ensure that SSITG requirements do not impede the competitiveness of EU CCPs.

Each section provides background on the proposed approach, describes the feedback received from the public consultation, and finally introduces the approach chosen by ESMA for the proposed draft regulatory technical standards.

The Annexes contain the mandate for ESMA to develop these draft regulatory technical standards (Annex I), the cost-benefit analysis (Annex II), the advice of the MSG (Annex III) and the draft regulatory technical standards (Annex IV).

Next Steps

ESMA is submitting the Final Report and the draft regulatory technical standards to the European Commission. The Commission has three months to decide whether to adopt the regulatory technical standards (in the form of a Commission Delegated Regulation). Following the adoption, the regulatory technical standards are then subject to non-objection by the European Parliament and the Council.

2 Legislative references, abbreviations and definitions

Legislative references

<i>CCPRRR</i>	<i>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 (OJ L 22, 22.1.2021, p.1)</i>
<i>EMIR</i>	<i>European Market Infrastructures Regulation – Regulation (EU) No 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1)</i>
<i>Delegated Regulation 153/2013</i>	<i>Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards for central counterparties (OJ L 52, 23.2.2013, p.41)</i>

Abbreviations

<i>CCP</i>	Central Counterparty
<i>CP</i>	Consultation Paper
<i>CPMI</i>	Committee on Payments and Market Infrastructures
<i>EBA</i>	European Banking Authority
<i>ESCB</i>	European System of Central Banks
<i>ESMA</i>	European Securities and Markets Authority
<i>FSB</i>	Financial Stability Board
<i>IOSCO</i>	International Organisation of Securities Commissions
<i>OJ</i>	The Official Journal of the European Union
<i>OTC</i>	Over-the-counter
<i>RTS</i>	Regulatory Technical Standards

3 Background and scope of the mandate

3.1 Legal basis

1. Article 9(14) of CCPRRR introduces a requirement for EU CCPs to use, following a default or a non-default event, an additional amount of its pre-funded dedicated own resources (also referred to as “second skin in the game”, SSITG, through this Final Report), prior to the use of any other recovery arrangement.
2. Article 9(15) of CCPRRR mandates ESMA, in close cooperation with EBA and after consulting the ESCB, to develop draft regulatory technical standards (RTS) specifying the methodology for calculation and maintenance of this additional amount of pre-funded dedicated own resources.
3. The requirement for CCPs to maintain additional amount in capital resources under CCPRRR (Article 9(14)) may be compared to the original requirement for the requirement under EMIR for additional resources under Article 45(4) (the “First” Skin in the Game). ESMA has considered Articles 35 and 36 of Delegated Regulation 153/2013, which define the methodology for the calculation and maintenance of the amount of pre-funded dedicated own resources for the purpose of Article 45(4) of EMIR, which is set at 25% of the minimum capital requirement as calculated in accordance with Article 16 of EMIR.
4. ESMA has noted that banking regulation (CRR¹, CRD IV² or BRRD³) does not contain a similar requirement as the SSITG since the capital structure of banks is not comparable to the CCPs in this aspect and therefore further assessments of possible additional financial requirements applicable to banks have not been carried out for the purposes of the Consultation Paper or this Final Report.
5. In preparing this Final Report, ESMA has taken into account, as much as possible, the CPMI-IOSCO guidance on recovery of FMI and the FSB guidance on the resolution of CCPs.

3.2 Scope of the mandate

6. The CCPRRR introduces, **as an incentive for proper risk management** and to further reduce the risks of losses for the taxpayer, a new requirement on additional

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.7.2013, p.1-337)

² Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p.338-436)

³ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190-348)

resources. This new requirement is stated in Article 9(14) of CCPRRR, where EU CCPs are required to maintain an additional amount of pre-funded dedicated own resources, to be used in a default or a non-default event, prior to the use of any other recovery arrangements. This additional layer of capital, or “second skin-in-the game”, exposes the CCP’s capital before relying on further contributions from clearing members and is meant as an incentive for proper risk management.

7. In accordance with Article 9(14) of CCPRRR, the SSITG shall be used before any of the arrangements referred to in point 15 of Section A of the Annex in the CCPRRR. In other words, it shall be used before any recovery loss allocation tool as defined in the operating rules of the CCP, including recovery cash call or reduction in the value of gains payable by the CCP to non-defaulting clearing members.

Recital 20

[...] As an incentive for proper risk management and to further reduce the risks of losses for the taxpayer, the CCP should use a portion of its pre-funded dedicated own resources as referred to in Article 43 of Regulation (EU) No 648/2012, which can include any capital it holds in addition to its minimum capital requirements, to comply with the notification threshold referred to in the delegated act adopted on the basis of Article 16(3) of Regulation (EU) No 648/2012, as a recovery measure before resorting to other recovery measures requiring financial contributions from clearing members.

That additional amount of pre-funded dedicated own resources, which is distinct from the pre-funded own resources referred to in Article 45(4) of Regulation (EU) No 648/2012, should not be lower than 10 % nor higher than 25 % of the risk based capital requirements calculated in accordance with Article 16(2) of Regulation (EU) No 648/2012 irrespective of whether those requirements are lower or higher than the initial capital referred to in Article 16(1) of that Regulation.

Article 9(14)

Following a default or a non-default event, a CCP shall use an additional amount of its pre-funded dedicated own resources, prior to the use of the arrangements and measures referred to in point 15 of Section A of the Annex to this Regulation. That amount shall not be lower than 10% nor higher than 25% of the risk-based capital requirements calculated in accordance with Article 16(2) of Regulation (EU) No 648/2012.

To comply with this requirement, the CCP may use the amount of capital it holds, in addition to its minimum capital requirements, to comply with the notification threshold referred to in the delegated act adopted on the basis of Article 16(3) of Regulation (EU) 648/2012.

8. As per Article 9(15) of CCPRRR, ESMA has a mandate to develop, in close cooperation with EBA and after consulting the ESCB, a draft RTS specifying the methodology for calculating and maintaining this additional amount of capital. ESMA shall, in developing the methodology for calculation and maintenance of such additional amount, take into account certain factors listed, including structure, internal organisation, scope, complexity of the CCPs’ activities and structure of incentives for stakeholders of the CCP. ESMA shall also take into account the appropriateness of certain investment possibilities and the CCPs’ competitiveness and level playing field

in the development of the methodology designed to establish the value of the additional amount for each EU CCP within the range established by the CCPRRR.

9. ESMA has, based on this, established a methodology where, as an incentive for proper risk management, different aspects of the CCPs' risk management have an impact on the level of the additional amount required to be allocated by an EU CCP however, ESMA is mindful of EU CCPs already being compliant with EMIR's requirements hence any risk assessment has to be calibrated carefully bearing this in mind. The aspects further specified by ESMA are based on the factors listed by the CCPRRR under Article 9(15)(a) to (b). ESMA is not including investment aspects (Article 9(15)(c) of CCPRRR) under the methodology for the purpose of the calculation of the percentage to be applied by the CCP in determining the SSITG, but rather as part of the methodology for the maintenance of the SSITG, setting out investment possibilities for EU CCPs. International developments under Article 9(15)(d) of CCPRRR are not included in the methodology but assessed separately under section 6.

Article 9(15), first subparagraph

ESMA shall, in close cooperation with EBA and after consulting the ESCB, develop draft regulatory technical standards specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used in accordance with paragraph 14. When developing those technical standards, ESMA shall take into account all of the following:

- (a) the structure and the internal organisation of CCPs and the nature, scope and complexity of their activities;*
- (b) the structure of incentives of the shareholders, management and clearing members of CCPs and of the clients of those clearing members;*
- (c) the appropriateness for CCPs, depending on the currencies in which the financial instruments they clear are denominated, the currencies accepted as collateral and the risk stemming from their activities, in particular where they do not clear OTC derivatives as defined in point (7) of the first subparagraph of Article 2 of Regulation (EU) No 648/2012, to invest that additional amount of dedicated own resources in assets other than those referred to in Article 47(1) of that Regulation; and*
- (d) the rules applying to and the practices of third-country CCPs, as well as the international developments concerning the recovery and resolution of CCPs, in order to preserve the competitiveness of internationally active Union CCPs, and the competitiveness of Union CCPs compared to third-country CCPs providing clearing services in the Union.*

10. In addition, in accordance with the second subparagraph of Article 9(15) of CCPRRR, ESMA is also tasked with specifying two procedures applicable where CCPs are allowed to invest their additional amount of prefunded dedicated own resources in assets other than those referred to in Article 47(1) of EMIR. Those two procedures are included in the draft RTS.

Article 9(15) second subparagraph

Where ESMA concludes, on the basis of the criteria referred to in point (c) of the first subparagraph of this paragraph 15, that it shall be possible for certain CCPs to invest this additional amount of pre-funded dedicated own resources in assets other than those referred to in Article 47(1) of Regulation (EU) 648/2012, it shall also specify:

- (a) the procedure through which, in the event that those resources are not immediately available, CCPs may resort to recovery measures that require the financial contribution of non-defaulting clearing members;*
- (b) the procedure that CCPs shall follow to subsequently reimburse the non-defaulting clearing members referred to in point (a) up to the amount to be used in accordance with paragraph 14 of this Article*

4 Methodology for determining the additional amount of pre-funded dedicated own resources

4.1 General considerations – principles and basic elements of the methodology

4.1.1 Background and approach proposed

11. Pursuant to Article 9(15) of CCPRRR, the draft RTS shall describe the elements to be taken into account when determining the level of requested SSITG, which shall range from 10% to 25% of the risk-based capital. Accordingly, the proposed methodology for the computation of the SSITG relies on a series of parameters that reflect both the level of complexity of the CCP's activities and its structure of incentives vis-à-vis shareholders, senior management and clearing members.
12. Each parameter is assigned a value (expressed in percentage points), which will depend on the CCP's assessment. Some parameters are binary functions of the CCP's characteristics (i.e. additional percentage points are assigned or not to the SSITG calculation where the CCP meets or doesn't meet the criterion). Some parameters are more proportional, and take a value within a given range, based on the CCP's assessment. The addition of all parameters will yield the final SSITG percentage level. The SSITG final percentage should be rounded to the closest whole number. The amount would be floored at 10% and capped at 25%. The list of parameters is exhaustive and fixed, meaning that all parameters will have to be used and assessed to calculate the SSITG percentage. The list of parameters is discussed in sections 4.2 and 4.2.2.

13. Then, for the calculation and maintenance of the SSITG level, ESMA proposed to leverage on Articles 35 and 36 of Delegated Regulation 153/2013, which define the methodology for the calculation and maintenance of the amount of pre-funded dedicated own resources for the purpose of Article 45(4) of EMIR (the “First” Skin in the Game).
14. As a result, it was proposed that the following rules would be set for the calculation of the SSITG level:
 - Calculation formula: the amount of additional pre-funded dedicated own resources will be calculated by multiplying the amount of capital calculated in accordance with Article 16(2) of EMIR, by the corresponding x% ranging from 10% to 25% and set according to the methodology described in the RTS. Therefore, as capital requirements evolve for the CCP, the amount of SSITG will evolve mechanically in proportion.
 - Frequency of the review: the minimum amount of additional prefunded resources shall be revised every time the CCP’s capital requirements are revised or each time one of the parameters of the calculation formula is modified, and at least on a yearly basis.
 - Dealing with multiple default funds (‘DF’): in a default scenario where the CCP has established more than one default fund, the additional pre-funded dedicated own resources shall be allocated to each of the DFs in proportion to the size of each default fund and used for defaults arising in the different market segments to which the DF refers to. In a non-default scenario, the full amount of the SSITG should be used by the CCP.
 - Voluntary usage of the maximum amount: where a CCP would like to voluntarily apply the maximum amount of SSITG (25%), it was suggested that the CCP would not be required to undertake the calculation of the percentage of the SSITG based on the detailed parameters set out in the draft RTS, but rather could rely on simple multiplication of its capital with 0.25.
15. For the maintenance part, ESMA also proposed to use requirements similar to the first SITG:
 - Notification of the competent authority: the CCP shall immediately inform its competent authority if the amount of SSITG falls below the required amount. The CCP should also describe and explain the reason for the breach, as well as the measures it will undertake to replenish the SSITG.
 - Delay for replenishing the SSITG: the CCP shall have one month to reinstate the level of SSITG.

- Multiple defaults within the notification period: where additional defaults events occur before the CCP has reinstated its SSITG level, only the residual amount of SSITG shall be used to cover for potential additional losses.

4.1.2 Summary of Consultation Responses and ESMA's feedback

16. Most respondents generally agreed with the basic elements for the calculation and maintenance of the SSITG. However, ESMA was asked to reconsider some technical aspects of the methodology.
17. First, a number of respondents argued that the sum of proposed maximum indicators, that may amount in an unlikely scenario to 45% of the risk-based capital, was much higher than the maximum 25% foreseen in Level 1. Based on their own estimates, some respondents argued that the SSITG level would be for a majority of EU CCPs close to 25%, hence arguing that proportionality was not ensured by the proposed methodology.
18. While noting the concerns, a number of indicators and parameters have been reviewed in the preparation of this Final Report and has mechanically modified the maximum percentage, now at 32%. It should be noted that it is considered as highly unlikely that a CCP would trigger simultaneously the maximum value for each indicator.
19. In addition, a number of respondents argued that the SSITG maintenance process was too burdensome as under the Consultation Paper proposal a CCP would have to review the SSITG amount *“every time the CCP’s capital requirements are revised or each time one of the parameters of the calculation formula is modified, and at least on a yearly basis.”*
20. Having considered the responses received, ESMA decided to limit the maintenance process to a yearly review of the SSITG percentage level and amount, to reduce the burden on CCPs.
21. Finally, some respondents expressed concerns in relation to the proposal to allocate, in a default scenario, the amount of SSITG in proportion to the size of each default fund where a CCP has more than one default fund. Noting that this is the approach adopted for the first skin in the game under Article 35 of Delegated Regulation 153/2013, ESMA did not see a need to either change or refine the proposed approach.

4.2 Parameters describing the structure and internal organisation of the CCP and the nature, scope and complexity of the CCP's activities

4.2.1 Background and proposed approach (Consultation Paper)

22. For the purpose of assessing the structure and internal organisation of a CCP, as well as the nature, scope, and complexity of its activities, ESMA suggested relying on 5 main parameters, that reflect (i) the nature and complexity of the assets cleared; (ii) the CCP's relationships and interdependencies with other FMIs and financial institutions; (iii) the CCP's internal organisation; (iv) the robustness of the CCP's risk management framework, and (v) any weakness linked to pending remedial actions.
23. Each parameter's value would be assessed based on several quantitative indicators, combination of which would yield the final parameter's value. The proposed parameters and related indicators were set out in Article 3 to 7 of the draft RTS (which accompanied the CP).
24. Parameter A1 on the nature and complexity of the asset classes cleared would increase with the number and complexity of the asset classes cleared by a CCP. It would depend on:
- the number of different asset classes cleared by the CCP;
 - whether there are more than one asset class under the same default fund;
 - the number of EU and non-EU currencies cleared or settled; and
 - whether the CCP offers physical settlement of derivatives and commodities contracts.
25. Parameter A2 would increase with the number and complexity of a CCP's interdependencies with other financial market infrastructures and financial institutions within or outside the EU, including the links with entities from the same group. For this purpose, the assessment would take into account:
- The number of interdependencies of the CCP with trading venues, payment systems and settlement systems.
 - The concentration of the CCP's top 5 clearing members (in terms of aggregated prefunded resources).
 - The proportion of clearing members established outside the EU.
 - The existence of an interoperability arrangement.

26. Parameter A3 on the internal organisation of the CCP would reflect the efficiency of the CCP's internal organisation, and in particular the weight and independence of the CCP's risk management function (including risk committee) in the day-to-day operations of the CCP. Its assessment would consider:

- The number of decisions from the Board where the recommendation or advised position of the Risk Committee was not followed.
- The reporting line between the validation team and the Board.
- The proportion of staff in second line of defence risk function.

27. Parameter A4 on the CCP's risk management framework would reflect the overall appropriateness and conservativeness of a CCP's risk management framework, including margin adequacy (as illustrated by back tests) and operational resilience. The related indicators would be based on:

- The proportion of clearing services (as a percentage of the total number of clearing services of the CCP) for which the margin back-tests performance is below the CCP target over the last 12 months.
- The number of days the CCP has been unable to process new trades for 1 hour or more over the last 12 months.
- The number of days on which the CCP has experienced at least one payment incident for more than 1 hour over the last 12 months, excluding incidents which are the sole responsibility of clearing members.

28. Finally, parameter A5 would capture any weaknesses identified by the CCP's competent authority, and therefore would take into account:

- Whether the CCP has at least 1 pending material⁴ remedial actions following findings from the competent authority on prudential matters.
- Whether the CCP has at least 1 pending material remedial actions on non-prudential matters, which was not resolved within the delay set by the competent authority in the remedial plan.

4.2.2 Summary of Consultation Responses and ESMA's feedback

29. ESMA received very contrasted responses with regards to the detailed parameters and indicators that were proposed for assessing the structure and internal organisation of a CCP, as well as the nature, scope, and complexity of its activities. ESMA was

⁴ A remedial action shall be considered as "material" where it has been allocated the highest priority based on the CCP's internal materiality matrix and / or based on the competent authority's own classification.

asked to remove, redraft or further clarify a number of the proposed parameters and indicators.

Parameter A1 – Nature and complexity of assets classes cleared

30. With regards to parameter A1 on the nature and complexity of the asset classes cleared, as a general comment several respondents argued that a higher number of assets classes cleared will not necessarily make a CCP considerably riskier, and therefore suggested to remove or materially amend some of the indicators.
31. A number of respondents suggested to introduce thresholds on volumes when considering the number of assets classes cleared by the CCP. Non-material clearing services (i.e., services representing less than 5% of the total initial margins) would not be considered for the purpose of the calculation, i.e., would not be allocated an additional 1%. While noting the concerns expressed, ESMA decided not to consider this suggestion, as it is believed it would make the computation overly complex and may introduce a threshold effect. Also, the relative size of a clearing service compared to the rest of the CCP's activities does not necessarily impact its complexity or additional risk.
32. In addition, some respondents suggested removing the indicator linked to the structure of the default fund (more than one asset class under the same default fund). One respondent argued that this parameter would incentivize CCPs to operate segregated default funds and "unfairly penalizes CCPs with segmented default funds. Considering that this indicator may be seen as favouring one model over the other, while EMIR is not that prescriptive, ESMA agreed to remove this indicator so that the methodology remains neutral in this respect.
33. Furthermore, a majority of respondents suggested to remove indicators linked to the number of currencies cleared by the CCP, as respondents argued that CCPs authorized under EMIR have in place adequate risk management procedures to manage one or more currencies. While acknowledging the concerns expressed, ESMA still noted that the number of currencies cleared could be a good indicator of the nature and complexity of a CCP's activities and decide to keep an indicator related to currencies. However, it was decided to keep a single indicator linked to the number of currencies cleared.
34. Finally, a majority of respondents suggested to remove or amend the indicators linked to the physical settlement of derivatives contracts. One respondent argued that CCPs authorized to perform the physical settlement of derivatives contracts should not be penalized to do so. Other respondents argued that the two indicators could be seen as duplicative. While acknowledging the comments received, ESMA noted that performing the physical settlement of contracts in fact does entail additional complexity, as a CCP needs to have the proper processes and interconnections in place. It was therefore decided to keep an indicator linked to physical settlement.

However, in order to reduce the complexity and overlap, ESMA decided to remove the specific indicator linked to the physical settlement of commodities.

35. As a result, under the final draft RTS, the following indicators will be assessed for the purpose of parameter A1:

- The number of asset classes cleared by the CCP [1% per asset class, with a maximum at 5%]
- Does the CCP clear assets denominated or offer settlement in more than 1 currency? [1%]
- Does the CCP offer physical settlement of derivatives contracts? [1%]

Parameter A2 – scope and complexity of the CCP's activities

36. As a general comment in relation to this parameter, respondents argued that a higher level of interdependencies may not necessarily increase a CCP's risk profile, but instead could even diversify the risks. As a result, ESMA was asked to remove or modify a number of the related indicators.

37. Several respondents suggested to remove the indicator penalizing CCPs with more than five interdependencies with other FMIs. Respondents argue that having multiple interdependencies is a common practice among CCPs, and that CCPs should not be penalized as long as they have in place the appropriate risk management framework. One respondent even argues that in fact CCPs with a smaller number of interdependencies are exposed to concentration risk and are more exposed in the event of a failure of a third party, hence they should be penalized for it. While noting the concerns, ESMA however noted that the number of interdependencies was a common and simple indicator of the complexity of a CCP's activities. As a result, it was suggested to keep this indicator.

38. Some respondents suggested to clarify the indicator on the concentration of margins among the top five clearing members would consider the weights, and also suggested to reduce the thresholds' weight to limit the burden for CCPs active in smaller markets. In order to ensure higher level of legal certainty, ESMA decided to clarify that the calculation of the top five clearing members concentration shall be computed based on the yearly average of the CCP's prefunded resources. It was however decided to keep the current threshold, i.e., top 5 / 40%, which suggests a high level of concentration at CCP level.

39. Noting the comments from several respondents, ESMA decided to remove the indicator on the share of non-EU clearing members within the CCP's membership, as it may be perceived as discriminatory in relation to the participation requirements under Article 37 of EMIR.

40. Finally, ESMA also removed the indicator related to the existence of an interoperability arrangement, noting that the SSITG may not be relevant in the context of interoperability links.
41. As a result, under the final draft RTS, the following indicators will be assessed for the purpose of parameter A2:
- Does the CCP have more than five interdependencies with trading venues, payment systems and settlement systems? [1%]
 - Do the top five clearing members of the CCP represent more than 40% of the CCP's prefunded resources (aggregated across all services and default funds and calculated as a yearly average)? [1%]

Parameter A3 – Internal organisation of the CCP

42. Most respondents to the public consultation agreed that the proposed indicators for this parameter were relevant. However, ESMA was asked to reconsider some aspects.
43. In relation to the indicator linked to the number of decisions of the Board that did not follow the recommendation of the Risk Committee, some respondents argued that the level of this indicator should be brought down to 1%, as long as the decision not to follow the advice is backed by “valid reasons”. They argue that if the justification is “missing or invalid according to the competent authority” then an additional 1% could apply. While noting the concerns and acknowledging that such decisions may happen to be justified, ESMA noted that it would be overly complex to consider the specific explanations. Also noting that in accordance with Article 28 of EMIR, a deviation from the Risk Committee's advice is seen as an exceptional decision, it was decided to keep the current level for this indicator.
44. In addition, building on a proposal from respondents, ESMA agreed to replace the indicator on the model validation's reporting line with a more comprehensive indicator, where the CCP would assess whether the model validation team is structurally independent from the model development team.
45. As a result, under the final draft RTS, the following indicators will be assessed for the purpose of parameter A3:
- Did the Board take more than three decisions over the last three years where the recommendation or advised position of the Risk Committee was not followed? [2%]
 - Is the model validation team structurally independent from the model development team? [if negative, 1%]
 - What is the percentage of staff in the risk management function (expressed as a % of total Full Time Equivalent (FTEs), including outsourced functions)? [decreasing from 2% to 0%, minimum reached at 20% of FTE]

Parameter A4 – Robustness of the CCP's risk management framework

46. Some respondents asked ESMA to redraft or reconsider the proposed indicators for this parameter.
47. Several respondents suggested removing or materially amending the indicator on the margins back-tests performance level. In particular, it was argued that the EMIR regulatory minimum confidence level shall be used as a reference instead of the CCP's internal targets, and that the conditions for the computation shall be further specified (back-tests aggregation level, measurement basis for the confidence level, statistical test etc.). Having noted the above-mentioned concerns, ESMA decided to redraft this indicator and to set the target at the minimum EMIR regulatory requirement as well as to clarify that the computation of this indicator shall be made at portfolio level.
48. Furthermore, having considered the comments received, ESMA decided to modify the indicator on the unavailability of trade processing, to align it with the 2 hours minimum recovery time objective (RTO) referred to under Article 17 of Delegated Regulation 153/2013.
49. Finally, having noted the difficulty to define a payment incident that would be the “sole responsibility of clearing members”, and in order to avoid divergences in the treatment of individual CCPs, ESMA removed the reference to the responsibility of clearing members. In addition, the definition of a payment incident was further refined.
50. As a result, under the final draft RTS, the following indicators will be assessed for the purpose of parameter A4:
 - The proportion of the CCP's margin accounts for which margins back-tests performance is below the EMIR minimum requirement as specified under Article 24 of Delegated Regulation 153/2013 over the last 12 months [0%-4%]
 - The number of days the CCP has been unable to process new trades for 2 hours or more over the last 12 months. [0%;2%], with a maximum at 10 days.
 - The number of days the CCP has been unable to process or receive payments for 2 hours or more over the last 12 months [0%;2%], with a maximum at 10 days.

Parameter A5 – Weaknesses identified by the competent authority

51. Several respondents argued that parameter A5 should be removed, arguing that it is not aligned with the mandate under Article 9(15) of CCPRRR, but also that the definition of “pending material remedial actions” was excessively vague, and that competent authority recommendations are common practices that cannot necessarily be interpreted as a measure for increased risk or instability.
52. However, ESMA noted that the existence of overdue remedial actions does have an effect on the nature of the CCPs activities. Given that the SSITG is deemed as a tool

to minimise risks, such parameters could incentivise a thorough and robust risk management. As a result, ESMA suggested to keep this parameter.

53. However, acknowledging that recommendations from the competent authority are part of the business-as-usual supervision process, and with a view to simplify the proposed parameter, ESMA agreed to retain a single indicator, that would be triggered where a CCP has at least one pending material remedial action for which it exceeded the delay set by the competent authority in its remedial plan.

54. As a result, under the final draft RTS, the following indicator will be assessed for the purpose of parameter A5:

- Does the CCP have at least one pending material remedial action for which it exceeded the delay set by the competent authority in its remedial plan? [2%]

4.3 Parameters linked to the structure of incentives of the CCPs' stakeholders

4.3.1 Background and proposed approach (Consultation Paper)

55. In accordance with point (b) of the first subparagraph of Article 9(15) of CCPRRR, when developing the methodology, ESMA shall take into account the structure of incentives of the CCPs' shareholders, the CCPs' management, the clearing members of the CCPs and the clients of those clearing members.

56. For the purpose of assessing the structure of incentives of the CCP, ESMA suggests relying on 3 main parameters, that reflect (i) the CCP's ownership and capital structure; (ii) the extent to which the remuneration of the senior management is directly and contractually impacted following a default or non-default event; (iii) the clearing members' and clients' involvement in the CCP's risk governance.

57. Parameter B1 on the CCP's ownership and capital structure considers any direct/indirect or inherent risks due to the CCP's direct or indirect ownership or capital structure. It would depend on:

- The credit quality of the CCP's majority shareholder.
- The existence of a contractually agreed financial support from the CCP's parent company in the event of a default or non-default event.

58. Parameter B2 would depend on existing claw-back clauses for the senior management in a default or non-default event. For this purpose, the assessment would consider:

- The average percentage of the CCP's senior management total variable remuneration subject to claw backs in the event of losses in excess of margins in a default and/or non-default events.

- The proportion of the senior management subject to variable remuneration claw back in case of default losses (expressed as a % of senior management FTEs).
- The proportion of the senior management subject to variable remuneration claw back in case of non-default losses and/or production incidents (expressed as a % of senior management FTEs).

59. Parameter B3 would depend on the involvement of the clearing members/clients in the CCP's risk management decisions. When determining this parameter's value, the CCP would assess:

- Where clearing members are involved in the investment decision process, do they bear investment or custody losses;
- The existence of incentives for clearing members and clients to participate in the default management process; and
- The existence of financial incentives or penalties to participate in auctions, or forced allocations rules where auctions fail.

4.3.2 Summary of Consultation Responses and ESMA's feedback

60. As for the parameters describing the structure and internal organisation of the CCP and the nature, scope and complexity of the CCP's activities, ESMA received mixed support for parameters describing the structure of incentives of the shareholders, management and clearing members, and was asked to remove, redraft or further clarify a number of the proposed indicators.

Parameter B1 – the CCP's ownership and capital structure

61. Regarding parameter B1 on the CCP's ownership and capital structure, most respondents did not fully agree with the parameter and its indicators and considered them being too punitive when not having any material contractually agreed financial support from its parent company in the event of a default or non-default event.
62. Based on the comments received, ESMA agreed to revise the drafting of the first indicator to clarify that the rating should apply to the CCP's ultimate owner and be based on the worst of all available ratings from authorized credit rating agencies (CRAs).
63. As a result, under the final draft RTS, the following indicators will be assessed for the purpose of parameter B1:

- Does the CCP have a parent undertaking⁵ unrated or rated below investment grade⁶ (excluding where the parent undertaking is a publicly owned (directly/indirectly) company)? [2%]
- Does the CCP have any material contractually agreed financial support (being either prefunded or legally binding and enforceable) from its parent undertaking in the event of a default or non-default event, including committed lines, or insurance contracts? [if negative, 2%]

Parameter B2 – link between the remuneration of the senior management and the performance of the CCP in a default or a non-default event

64. Several respondents disagreed with different aspects of the three proposed indicators. In particular, respondents asked to clarify why the first parameter refers to “losses in excess of margins in a non-default event”, and to specify which events would be targeted. Respondents also noted that in their views there were some overlaps between the three indicators.
65. ESMA notes that the purpose of the indicators is to capture both the proportion of the senior management’s remuneration subject to claw back clause (i.e., the amount), and the proportion of the senior management staff (i.e. the number of persons) subject to it. Nevertheless, having noted the need to further clarify and simplify this parameter, ESMA decided to keep two simplified indicators, and to remove the distinction between default and non-default scenarios.
66. As a result, under the final draft RTS, the following indicators will be assessed for the purpose of parameter B2:
- The average percentage of the senior management total variable remuneration subject to claw backs in a default or non-default event (expressed as a % of senior management total average remuneration) [0%-1%]
 - The average percentage of the senior management staff subject to variable remuneration claw back in case of default or non-default losses (expressed as a % of senior management FTEs) [0%-1%]

Parameter B3 – Clearing members’ and clients’ involvement in the CCP risk governance

67. Regarding parameter B3 on the clearing member’s and client’s involvement in the CCP’s risk governance, opinions diverged. Some respondents agreed with the indicators, but others asked for clarifications.

⁵ As defined under Article 2(13) of CCPRRR.

⁶ Defined as the worst of all available ratings provided by authorized CRAs.

68. As suggested by some respondents, ESMA suggested to clarify the reference to clearing members being involved in the investment decision process.
69. In addition, ESMA agreed to remove the third indicator on financial incentives to participate in auctions considering that it may duplicate the second indicator.
70. As a result, under the final draft RTS, the following indicators will be assessed for the purpose of parameter B3:
- If clearing members are involved in the investment decision process⁷, do they bear potential investment or custody losses? [if negative, 1%]
 - Are there incentives for clearing members and clients to participate in the default management process? [if negative, 1%]

⁷ Clearing members would be considered as involved in the investment process where they are consulted in the approval process of the CCP's investment policy, and/or in each investment decision.

TABLE 1 - PROPOSED UPDATED PARAMETERS

L1 ref.	Parameter	Indicators to be assessed	Assessment	Indicator value
9(15)(a)	A1	Number of asset classes cleared by the CCP	Number	1% per asset class (5% max)
	Nature and complexity of the asset classes cleared	Does the CCP clear assets denominated in or offer settlement in more than 1 currency?	Yes / No	1%
		Does the CCP offer physical settlement of derivatives contracts?	Yes / No	1%
Structure, internal organisation, and nature, scope and complexity of the CCP's activities	A2	Does the CCP have more than 5 interdependencies with trading venues, payment systems and settlement systems?	Yes / No	1%
	Scope and complexity of the CCP's activities	Do the top 5 clearing members of the CCP represent more than 40% of the CCP's prefunded resources (aggregated across all services and default funds and calculated as a yearly average)?	Yes / No	1%
	A3	Did the Board take more than three decisions over the last three years where the recommendation or advised position of the Risk Committee was not followed?	Yes / No	2%
	Internal organisation of the CCP	Is the model validation team structurally independent from the model development team?	Yes / No	1%
		Percentage of staff in the risk management function (expressed as a % of total Full Time Equivalent (FTEs), including outsourced functions)	% of FTEs	[0%;2%]

			(minimum at 20% / max at 0%)	
	A4	Proportion of the CCP's margin accounts for which margins back-tests performance is below the EMIR minimum requirement as specified under Article 24 of Delegated Regulation 153/2013 over the last 12 months	% (minimum at 0% / max at 100%)	[0%;4%]
	The robustness of the CCP's risk management framework	Number of days the CCP has been unable to process new trades for 2 hours or more over the last 12 months	Number (days) [Max at 10 days]	[0%;2%]
		Number of days the CCP has been unable to process or receive payments for 2 hours or more over the last 12 months	Number (days) [Max at 10 days]	[0%;2%]
	A5	Weaknesses identified by the competent authority	Does the CCP have at least 1 pending material remedial action for which it exceeded the delay set by the competent authority in its remedial plan? ⁸	Yes / No 2%
9(15)(b) structure of incentives of the shareholders,	B1 The CCP's ownership and capital structure	Does the CCP have a parent undertaking ⁹ unrated or rated below investment grade ¹⁰ (excluding publicly owned (directly/indirectly) companies)?	Yes / No	2%
		Does the CCP have any material contractually agreed financial support (being either prefunded or legally binding and enforceable) from its parent company in	Yes / No	2%

⁸ For the purpose of this indicator, a remedial action shall be considered as material where it has been allocated the highest priority based on the CCP's internal materiality matrix and / or based on the competent authority's own classification.

⁹ As defined under Article 2(13) of CCPRRR.

¹⁰ Taking the worst available rating from a Credit Rating Agency.

management and clearing members of CCPs and of the clients of those clearing members		the event of a default or non-default event, including committed lines, or insurance contracts?		
	B2 To what extent the remuneration of the senior management is directly and contractually impacted following a default or non-default event	The percentage of the senior management total variable remuneration subject to claw backs in a default or non-default event (expressed as a % of senior management total yearly average remuneration)	% [minimum at 100% / max at 0%]	[0%;1%]
		The percentage of the senior management staff subject to variable remuneration claw back in case of default or non-default losses (expressed as a % of senior management yearly average FTEs)	% [minimum at 100% / max at 0%]	[0%;1%]
	B3 The clearing members' and clients' involvement in the CCP's risk governance	If clearing members are involved in the investment decision ¹¹ process, do they bear potential investment or custody losses?	Yes / No	1%
		Are there incentives for clearing members and clients to participate in the default management process?	Yes / No	1%

¹¹ Clearing members would be considered as involved in the investment process where they are consulted in the approval process of the CCP's investment policy, and/or in each investment decision.

5 Investment of the additional amount of pre-funded dedicated own resources

5.1 Background and proposed approach (Consultation Paper)

71. In accordance with point (c) of the first subparagraph of Article 9(15) of CCPRRR, when specifying the methodology for the calculation and maintenance of the SSITG, ESMA shall consider the appropriateness for CCPs to invest the amount of SSITG in assets other than those referred to under Article 47(1) of EMIR, i.e., cash or highly liquid instruments with minimal market and credit risk.
72. This provision should allow EU CCPs to mitigate the impact of the SSITG requirement on their level of own resources, as they will be authorised to make use of more relaxed investment possibilities by investing in some additional assets which are potentially riskier or less liquid. ESMA notes that it shall only apply to the amount of SSITG held in excess of the 10% EMIR notification buffer. Since the 10% buffer is requested under Article 16(3) of EMIR, it shall remain invested in accordance with Article 47(1) of EMIR.
73. Given the nature of this provision, ESMA concluded that the investment aspect should not be taken into account in the calculation methodology but rather be reflected in the RTS when specifying the conditions for the maintenance of the SSITG. The proposed draft RTS should therefore specify whether it would be appropriate for some CCPs to invest the SSITG amount in other assets.
74. After assessing the appropriateness for EU CCPs to invest in additional assets for the purpose of the SSITG, ESMA first concluded that it shall be considered as appropriate for all EU CCPs to benefit from additional investment possibilities to satisfy the additional own resources requirement under Article 9(14) of CCPRRR.
75. However, to ensure that the risk is properly managed, ESMA suggested that the list of additional investments available for EU CCPs for the SSITG purpose would be limited and strictly specified in the draft RTS.
76. After having considered a range of options, in order to ease the SSITG requirement for the CCP while still guaranteeing that it has the adequate framework and procedures to manage the risks associated with those assets and their liquidation in times of stress, ESMA concluded that draft RTS would further specify that for the purpose of maintaining the SSITG in excess of the 10% floor requirement, the CCP may consider instruments already accepted as collateral from its clearing members, as set out in the CCP's internal collateral policy, with the exception of bank guarantees, derivatives and equities.
77. Also, in accordance with Article 9(15) of CCPRRR, before being able to rely on such additional assets for investment, a CCP shall put in place the necessary procedures, that should be further defined in the draft RTS and should specify:

- (1) how a CCP may resort to recovery measures, and require financial contribution of non-defaulting clearing members, in the event that the resources invested in alternative assets are not immediately available; and
- (2) how the CCP shall subsequently reimburse the non-defaulting clearing members referred to in point (1) up to the amount of SSITG.

78. With regards to the first procedure, it was suggested that where a part of the SSITG amount is not immediately available, a CCP shall:

- Immediately notify its competent authority, including a detailed description of the amount unavailable and the reason for this situation.
- Start applying recovery measures that may require financial contributions from non-defaulting clearing members (e.g., through a dedicated recovery cash call).
- Ensure that the amount of financial resources collected from non-defaulting clearing members cover the non-available share of the CCP's SSITG. The non-defaulting clearing members contributions should be proportional to their default fund contributions.

79. With regards to the second procedure, where a CCP has resorted to recovery measures in order to cover all or part of the unavailable SSITG amount, it should reimburse the non-defaulting clearing members. The procedure shall further specify that:

- The CCP shall take all measures to liquidate the assets in a reasonable timeframe, and no later than one month after the notification of the funds' unavailability. For the avoidance of doubt, the amounts due to the non-defaulting clearing members shall not be impacted by the actual proceeds of the sale of the assets.
- The reimbursement shall be made in cash only, in the currency in which the payments were made by the non-defaulting clearing members.
- The reimbursement amounts shall be paid by the CCP to the relevant clearing members after the servicing of operational costs, of any due and payable debt obligation, and of any recompense due in accordance with Article 20(2) of CCPRRR and related RTS.
- The reimbursement shall be made in a reasonable timeframe, and repayments shall occur until all amounts have been recouped by non-defaulting clearing members.
- Where the reimbursement extends over more than six months from the first cash call collected from the non-defaulting clearing members, an annual interest shall be paid on the amounts due. The interest rate shall be set at the default interest rate defined in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council.

5.2 Summary of Consultation Responses and ESMA's feedback

80. As a general comment, respondents to the public consultation expressed an overall support to ESMA's proposal with regards to the possibility for the CCPs to invest the SSITG amount in excess of the 10% floor requirement in alternative assets.
81. First, a majority of respondents agreed that all CCPs may rely on alternative investments for the purpose of maintaining the amount of SSITG, that the draft RTS should not distinguish between CCPs and that it should specify the list of available alternative assets.
82. Moreover, with regards to the proposed list of alternative investments, a majority of respondents agreed with ESMA's proposal to extend the list of available investments to instruments already accepted as collateral from its clearing members with the exception of bank guarantees, derivatives and equities. Only one respondent instead argued that the list of assets eligible for investments should remain unchanged. In addition, two respondents argued that the average time to maturity of already eligible investments shall be extended from two to five years, as suggested under option 1 of the Consultation Paper.
83. Having noted the answers received and the general support, ESMA decided to keep the proposal unchanged for the list of alternative investments.
84. In addition, respondents also expressed a general support for the proposed procedures for triggering recovery measure where the investments are not readily available, and for recompensating clearing members in that event.
85. A number of respondents however asked to further clarify the rationale for the proposed penalty in the event of a late reimbursement. Having noted the concerns, and in order to avoid any misunderstanding, ESMA decided to align the interest rate with a commonly used reference, i.e., to refer to the Applicable default interest as defined in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council.

6 Rules and practices of third country CCPs, and international developments

6.1 Background and proposed approach (Consultation Paper)

86. In accordance with point (d) of the first subparagraph of Article 9(15) of CCPRRR, when developing the methodology, ESMA shall take into account the rules and practices of third-country CCPs, as well as the international developments concerning the recovery and resolution of CCPs, in order to preserve the competitiveness of EU CCPs, internationally and compared to third-country CCPs providing clearing services in the Union.
87. Whilst the idea of the second skin in the game has been evoked in several forums, ESMA noted in the Consultation Paper that there is currently no guidance at an international level on the use of a second tranche of skin in the game before the recovery phase.
88. In that context, it is important to ensure that the SSITG requirement does not impede the competitiveness of EU CCPs. To do so, ESMA assessed the impact that the SSITG requirement may have on the capitalisation level of the 13 authorised EU CCPs.
89. Overall, the analysis shows (see Figure 1) that even when applying a maximum 25% SSITG, all EU CCPs would be able to cover their SSITG requirement with their existing capital resources, as their capital buffer would be sufficient to cover for the extra capital requirement.
90. In details, for the eight EU CCPs whose data was analysed at this stage, a 25% SSITG requirement would represent less than 30% of the capital buffer for four CCPs; less than 60% of the capital buffer of seven CCPs; and 75% of the capital buffer of one single CCP.

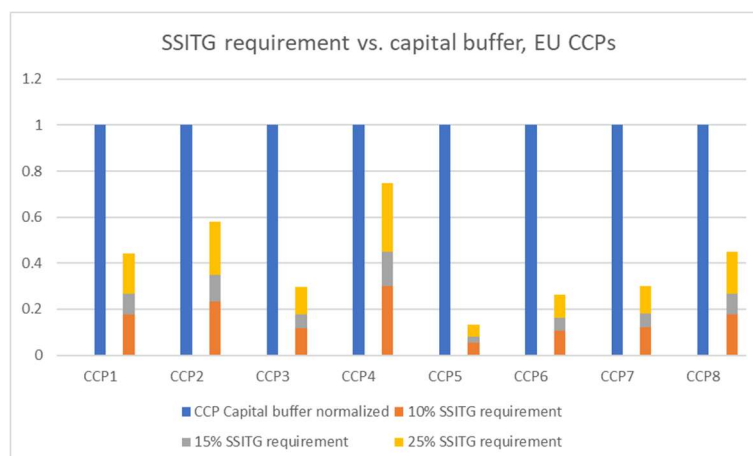


FIGURE 1: SSITG REQUIREMENTS VS EU CCPs' CAPITAL BUFFER, NORMALIZED

Preliminary conclusion

91. Based on this preliminary analysis, ESMA concluded that it was unlikely that the implementation of the SSITG requirement would significantly impede the competitiveness of EU CCPs.
92. As a result, it was assessed that there was no need to directly include this consideration in the methodology for the calculation of the SSITG, i.e., that the SSITG level should not be lowered due to competitiveness considerations.

6.2 Summary of Consultation Responses and ESMA's feedback

93. ESMA notes that respondents did not challenge ESMA's proposal not to adapt the SSITG level based on international competition considerations. However, several respondents proposed to complement the analysis with an assessment of the competitiveness of internationally active EU CCPs.
94. Considering the lack of specific data available on the competitiveness of internationally active EU CCPs, as well as the general support for ESMA's consultation paper proposal, it was decided to keep the current approach under which the competitiveness consideration has no impact on the result of the SSITG calculation.

7 Annexes

7.1 Annex I – Legislative mandate to develop technical standards

Article 9(15) of CCPRRR states:

“ESMA shall, in close cooperation with EBA and after consulting the ESCB, develop draft regulatory technical standards specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used in accordance with paragraph 14. When developing those technical standards, ESMA shall take into account all of the following:

- (a) the structure and the internal organisation of CCPs and the nature, scope and complexity of their activities;
- (b) the structure of incentives of the shareholders, management and clearing members of CCPs and of the clients of clearing members;
- (c) the appropriateness for CCPs, depending on the currencies in which the financial instruments they clear are denominated, the currencies accepted as collateral and the risk stemming from their activities, in particular where they do not clear OTC derivatives as defined in point (7) of Article 2 of Regulation (EU) No 648/2012, to invest that additional amount of dedicated own resources in assets other than those referred to in Article 47(1) of that Regulation; and
- (d) the rules applying to and the practices of third-country CCPs, as well as the international developments concerning the recovery and resolution of CCPs, in order to preserve the competitiveness of internationally active Union CCPs, and the competitiveness of Union CCPs compared to third-country CCPs providing clearing services in the Union.

Where ESMA concludes, on the basis of the criteria referred to in point (c) of the first subparagraph, that it is appropriate for certain CCPs to invest that additional amount of pre-funded dedicated own resources in assets other than those referred to in Article 47(1) of Regulation (EU) No 648/2012, it shall also specify

- (a) the procedure through which, in the event that those resources are not immediately available, CCPs may resort to recovery measures that require the financial contribution of non-defaulting clearing members;
- (b) the procedure that CCPs shall follow to subsequently reimburse the non-defaulting clearing members referred to in point (a) up to the amount to be used in accordance with paragraph 14 of this Article

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 12 February 2022.



The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7.2 Annex II – Cost-benefit analysis

1. Introduction

Pursuant to the fourth subparagraph of Article 9(15) of CCPRRR, the Commission is empowered to adopt a delegated act to supplement the CCPRRR specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used in accordance with Article 9(14) of CCPRRR.

ESMA shall, in close cooperation with EBA and after consulting the ESCB, develop draft regulatory technical standards to specify this methodology and ESMA shall submit those draft regulatory technical standards to the Commission by 12 February 2022. ESMA has established cooperation arrangements with EBA and ESCB.

2. Background

Article 9(14) of CCPRRR introduces a requirement for EU CCPs to maintain and use, following a default or a non-default event, an additional amount of its prefunded dedicated own resources (or second skin-in-the-game, SSITG), prior to the use of any other recovery arrangement. This additional layer of capital is thought as an incentive for proper risk management and should be set between 10% and 25% of the CCP's risk-based capital requirement as calculated under Article 16 of EMIR.

Under Article 9(15) of CCPRRR, ESMA is mandated to develop draft RTS specifying the methodology for calculation and maintenance of this additional amount of prefunded dedicated own resources whilst taking into account certain elements:

- (i) The structure and internal organisation of CCPs, as well as the nature, scope and complexity of their activities;
- (ii) The structure of incentives of the CCP's shareholders, the CCP's management, the clearing members and the clients;
- (iii) The appropriateness for CCPs to invest the SSITG amount in alternative assets other than those allowed under Article 47(1) of EMIR;
- (iv) The rules and practices of third-country CCPs, to ensure that the SSITG requirement does not impair the competitiveness of EU CCPs.

Several options have been considered by ESMA in the process of developing the proposed methodology for calculating and maintaining the SSITG percentage level. In the consultation paper ESMA proposed a set of parameters and ranges to be used by the CCPs in setting the % to be applied to determine the additional amount of pre-funded dedicated own resources a CCP has to hold and apply in accordance with Article 9(14) of CCPRRR.

3. Policy Options

Considering the empowerment to ESMA to specify the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources, the variable on which ESMA can complement is fairly limited and the actual policy option is to provide a well-considered methodology balancing the different interests between mainly CCPs and clearing members as well as respecting the fundamental principles of transparency and proportionality whilst ensuring the envisaged aim of this additional amount of own resources is achieved.

4. Cost-benefit analysis

The overall objective is to guarantee that the recovery plans should ensure that the CCP’s capital is exposed to losses caused by both default and non-default events, before losses are allocated to clearing members. As an incentive for proper risk management and to further reduce the risks of losses for the taxpayer, the CCP should use a portion of its pre-funded dedicated own resources as referred to in Article 43 of EMIR, which can include any capital it holds in addition to its minimum capital requirements, to comply with the notification threshold referred to in the delegated act adopted on the basis of Article 16(3) of EMIR, as a recovery measure before resorting to other recovery measures requiring financial contributions from clearing members.

ESMA notes, in particular, that the request for additional amounts may be more burdensome for some CCPs than others and that likely smaller CCPs may find the new requirement more of a concern than larger CCPs. It is already noted that CCPRRR provides some possibility for relief by allowing for an extended use of investments to meet the requirement of this pre-funded additional amount and also by allowing CCPs to “reduce” the additional amount by the same amount where their first tranche of SITG is higher because of the capital floor (with a floor of the SSITG of 10% of capital). Besides, ESMA’s empowerment is to specify a methodology based on risk elements, and not the size of the CCP. Hence whilst ESMA has carefully considered the complexity around the applicability of these additional pre-funded dedicated own resources for some smaller CCPs there could be no general reduction in the identified percentage for smaller CCPs as the assessment is purely risk based in a specific scenario.

a) Methodology for calculation of the percentage

Below are detailed the different corresponding policy options on how to specify the methodology for the calculation of the additional amount of pre-funded dedicated own resources.

<p>Specific objective</p>	<p>Ensuring that the determination of the percentage to be applied to determine the additional amount of pre-funded dedicated own resources a CCP has to hold and apply in accordance with Article 9(14) of CCPRRR is well balanced and effective to ensure this additional amount works as an incentive for proper risk management and to further reduce the risks of losses for the clearing members and taxpayers.</p>
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Policy option 1	Using a simplified methodology where CCPs would be differentiated based on their size (e.g. volumes cleared), and the RTS would define thresholds according to which the SSITG percentage level would be set (e.g. “big” CCPs would be requested a SSITG close to 25%, and small CCPs closer to 10%).
How would this option achieve the objective?	This “one-size-fits-all” option would not in ESMA’s view be satisfactory for several reasons, one is that a risk of a CCP is not linear to the size of a CCP, and another is that CCPRRR sets out certain elements to be taken into account in setting the methodology and whilst they are not required to be all hard-wired into the actual methodology, ESMA understands that most of the elements (in particular under Article 9(15), first subparagraph, point (a) and (b)) provides a good basis for a risk driven methodology to be developed from.
Policy option 2	Using a methodology with detailed, objective and transparent parameters and fixed percentages.
How would this option achieve the objective?	This option would provide certainty in its application as the CCP would be able to rely on clear and transparent parameters to make the SSITG percentage determination.
Policy option 3	Using a methodology with a set list of parameters which value would vary within fixed ranges. This methodology would leave room for assessment within the ranges but with an obligation to assess the listed parameters in the determination in order to set each parameter value within the selected range.
How would this option achieve the objective?	This option would probably not be achieving the result of a simple and executable methodology to be applied by the CCP, as whilst the parameters are set and the range of percentages are fixed, there would be too much assessment to be undertaken by the CCP to ensure convergence and such a methodology would not be proportionate as it would require an attentive and arguably time-consuming assessment process by the CCP.
Which policy option is the preferred one?	Policy option 2, given that option 1 is not suitable to base a risk driven methodology, and option 3 would not provide the CCP with a simple executable and fair methodology and would also be to resource intense for the CCPs to apply.
Is the policy chosen within the sole responsibility of ESMA? If not, what	ESMA is empowered to provide a draft regulatory technical standard to the Commission which has the liability to define how to

other body is concerned / needs to be informed or consulted?	ensure the policy option chosen for its Delegated Act achieves its aim under the CCPRRR.
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Impacts of the proposed policies:	
Policy option 1	
Benefits	It will provide a transparent and simple determination of the percentage based on CCPs' size to determine the additional amount of pre-funded dedicated own resources.
Regulator's costs	The costs for competent authorities will be very low.
Compliance costs	The costs for the CCP would be too low or too high depending on if the percentage based on size would correctly reflect the risk of the CCP. If not, the CCP may have costs to hold and maintain an amount that is not reflecting its risks and in addition may have to undertake its own assessments to ensure the CCP has a suitable level of additional amount meeting the expectations of the market and in particular its clearing members.
Policy option 2	
Benefits	It will provide a transparent and simple allocation of the percentage based on fixed parameters and fixed percentages.
Regulator's costs	The costs for competent authorities will be low as the calculation will be performed by the CCP.
Compliance costs	The costs for the CCP could be relatively high, as they will need to perform the assessment. Also, the methodology would need to be sufficiently clear and detailed to avoid imposing unnecessarily high level of additional resources on CCPs which risk would not be appropriately evaluated.
Policy Option 3	
Benefits	It would ensure that the basis for the percentage should reflect the risk of the CCP.

Regulator's costs	The costs for regulators will be low as the calculation will be performed by the CCP.
Compliance costs	The costs for the CCP could be high as the methodology may entail several assessments and procedures to follow to ensure the CCP have applied the methodology correctly.

b) Methodology for maintenance and investment of the additional amount of SSITG

Under Article 9(15) of CCPRRR, ESMA shall consider the appropriateness for CCPs to invest and maintain the amount of the additional amount of pre-funded dedicated own resources in assets other than those referred to under Article 47(1) of EMIR, i.e. cash or highly liquid instruments with minimal market and credit risk.

This provision should allow EU CCPs to mitigate the impact of the requirement for additional resources on their level of own resources, as they will be authorized to make use of a more relaxed investment possibilities.

It is first noted that should ESMA conclude, on the basis of the criteria referred to in point (c) of the first subparagraph of the Article 9(15), that it is appropriate for certain CCPs to invest that additional amount of pre-funded dedicated own resources in assets other than those referred to in Article 47(1) of EMIR. As elaborated on under *Section 4.3.1 Appropriateness of investments in assets different than those referred to in Article 47(1)* ESMA concluded that it shall be considered appropriate for all EU CCPs to benefit from additional investment possibilities to satisfy the additional own resources requirement under Article 9(14) of CCPRRR but that, in accordance with Article 9(15) of CCPRRR, before being able to rely on such additional assets for investment, a CCP shall put in place the necessary procedures further defined in the draft RTS and described in section 4.3.3. Where a CCP has not established sufficient procedures, it cannot use additional assets for investments until such procedures are in place. However, ESMA notes that the need for such procedures will ultimately depend on the scope of the investments to be available for the CCP to invest in and will be further assessed after the consultation and in the preparation of the Final Report.

ESMA also notes that the options provided below are just three out of many other alternatives and the chosen approach will need to be finetuned in the Final Report, however ESMA is of the view that the options provided below clearly visualise the factors that need to be balanced against each other in setting the investment policy for the additional amount of pre-funded dedicated own resources. This should be borne in mind in assessing the scope of a revised investment policy, the balance between different interests and the proportionality aspects that can be identified on many levels such as in light of possible obligations placed on clearing members to temporarily provide resources and for CCPs to be able to use additional secure and liquid capital resources to fulfil the new requirement of an additional amount under paragraph 14 of Article 9 of CCPRRR.

When assessing this provision, ESMA considered mainly three options to widen the list of investments available for the purpose of the SSITG.

Specific objective	Ensuring that the investments are suitable to provide CCPs with some additional investment options but at the same time ensure the investments are safe and liquid as the clearing members will be required to compensate the CCP where the additional amount of pre-funded resources are not available when needed to be used by the CCP. Hence there is a balance to be found between the CCPs' ability to fund the additional amounts and for the clearing members to be protected to ensure the aim of the additional amount to provide a "buffer" is upheld.
Policy option 1	To extend the average time-to-maturity of eligible investments from 2 years to 5 years.
How would this option achieve the objective?	<p>It would provide the CCP with a very limited set of additional possible investments, hence the balance would probably be in the favour of the clearing members as the risk here for them to be required to contribute under the recovery measures to compensate where such additional resources are not immediately available, is very limited, if not, non-existing.</p> <p>Also, ESMA notes that it is unclear if the procedure as envisaged under the second subparagraph of Article 9(15) of CCPRRR would be needed here as the additional investments are very limited.</p>
Policy option 2	To align the list of assets eligible for investments for the purpose of the additional amount of pre-funded dedicated own resources with the list of eligible collateral accepted by the CCP, with the exemptions of bank guarantees, derivatives and equities.
How would this option achieve the objective?	<p>It would provide the CCP with a limited set of additional possible investments, however here the balance would probably be more balanced between the CCP and the clearing members as the risk for them to be required to contribute under the recovery measures to compensate where such additional resources are not immediately available, is limited.</p> <p>Also, ESMA notes that it is unclear if the procedure as envisaged under the second subparagraph of Article 9(15) of CCPRRR would be needed here as the additional investments are limited.</p>

<p>Policy option 3</p>	<p>To extend the scope of eligible assets not only to the CCP’s eligible collateral but also to additional alternative assets on the CCP’s balance sheet (e.g. real estate assets).</p>
<p>How would this option achieve the objective?</p>	<p>It would provide the CCP with a significant new set of additional possible investments, however here the balance would probably be to the benefit of the CCP as there may be (depending ultimately on the list of eligible extended investment possibilities,) a risk that the investment is not immediately available and therefore clearing members may be required to contribute under the recovery measures to compensate where such additional resources are not available when needed.</p> <p>Here there is a clear need for a procedure as envisaged under the second subparagraph of Article 9(15) of CCPRRR.</p>
<p>Which policy option is the preferred one?</p>	<p>After having considered the risks associated with the different potential extensions of eligible investments, ESMA has concluded that Option 2 is the most appropriate. Indeed, this solution would ease the requirement for additional resources, while still guaranteeing that the CCP has the adequate framework and procedures to manage the risks associated with those assets and their liquidation in times of stress.</p> <p>Extending only the average time-to-maturity (Option 1) was not considered as sufficiently material to really ease the requirement on CCPs to provide for the additional amount of pre-funded dedicated own resources, while extending the list of investments to alternative non-liquid assets as presented in Option 3, was considered as creating a risk in the CCP and a unproportionally burden on the clearing members.</p>
<p>Is the policy chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?</p>	<p>ESMA is empowered to provide a draft regulatory technical standard to the Commission which has the liability to define how to ensure the policy option chosen for its Delegated Act achieves its aim under CCPRRR.</p>

Impacts of the proposed policies:

Policy option 1	
Benefits	It will provide very limited extension of investment possibilities.
Regulator's costs	The costs for competent authorities and regulators will be very low.
Compliance costs	<p>The costs for the CCP may be high depending on its capital position overall.</p> <p>The cost for clearing members will be low in relation to the risk of them providing resources where the additional amount is unavailable but may be high if the CCP would need to raise it fees to finance this additional amount, and this could in the end challenge the survival of the CCP.</p>
Policy option 2	
Benefits	It will provide an extension of investment possibilities, however yet quite limited and manageable from a risk perspective.
Regulator's costs	The costs for competent authorities and regulators will be very low.
Compliance costs	<p>The costs for the CCP may be notable depending on its capital position overall.</p> <p>The cost for clearing members will be fairly low in relation to the risk of them providing resources where the additional amount is unavailable but may be somewhat higher if the CCP would need to raise it fees to finance this additional amount.</p>
Policy Option 3	
Benefits	It may provide a notable extension of investment possibilities (depends on the final list).
Regulator's costs	The costs for competent authorities and regulators may be notable.
Compliance costs	<p>The costs for the CCP could be low as it allows for the CCP to use its available resources to meet the requirement of the additional amount of pre-funded dedicated own resources.</p> <p>The cost for clearing members will be potentially high in relation to the risk of them providing resources where the additional amount</p>

	is unavailable, but this approach is less likely to generate additional or higher fees.
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c) Rules and practices of third country CCPs, and international developments

In accordance with Article 9(15), first subparagraph, point (d) of CCPRRR, when developing the methodology, ESMA shall take into account the rules and practices of third-country CCPs, as well as the international developments concerning the recovery and resolution of CCPs, in order to preserve the competitiveness of Union CCPs, internationally and compared to third-country CCPs providing clearing services in the Union.

ESMA initially notes that CCPRRR already introduces the requirement of an additional amount of pre-funded dedicated own resources to be provided by the CCP, hence the scope of ESMA's empowerment is only to provide a methodology to determine the actual percentage to be applied by the CCP within the range specified in Article 9(14) of CCPRRR.

A detailed assessment of this aspect of ESMA's mandate may be found under Section 4.4 "Rules and practices of third country CCPs, and international developments.

ESMA considered 2 options as set out below.

Specific objective	ESMA shall consider specifying in the methodology the rules applying to and the practices of third-country CCPs, as well as the international developments concerning the recovery and resolution of CCPs, in order to preserve the competitiveness of internationally active Union CCPs, and the competitiveness of Union CCPs compared to third-country CCPs providing clearing services in the Union.
Policy option 1	To include the competitiveness as an additional parameter in the methodology to enable the competent authority to adjust the percentage level based on an assessment of the competitiveness of the CCP.
How would this option achieve the objective?	It would provide the ability to consider the competitiveness of the CCP in setting the percentage that decides the additional amount of pre-funded dedicated own resources. The drawback would be that as this type of parameter is difficult to assess in a consistent manner across CCPs.
Policy option 2	Based on the data available, ESMA would run an analysis of current practices at international level in terms of similar amounts

	requested by CCPs and assessing the capitalization of EU vs. international CCPs.
How would this option achieve the objective?	This analysis would demonstrate whether the requirement for an additional amount of pre-funded dedicated own resources is likely to impede the EU CCPs' competitiveness, and therefore whether the methodology needs to be further adapted (e.g. by lowering the requirement) or not.
Which policy option is the preferred one?	<p>Option 2, as ESMA concluded that Option 1 may not be appropriate, as it may lead to divergent applications across EU CCPs.</p> <p>ESMA has run a first assessment of the impact that the additional amount of pre-funded dedicated own resources on EU CCPs' level of capitalisation and this assessment is presented in Section 4.4 and this has allowed ESMA to preliminary conclude that it is unlikely that the implementation of the SSITG requirement would significantly impede the competitiveness of EU CCPs and hence there is no need to further adjust the SSITG methodology based on competitiveness considerations.</p>
Is the policy chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	ESMA is empowered to provide a draft regulatory technical standard to the Commission which has the liability to define how to ensure the policy option chosen for its Delegated Act achieves its aim under CCPRRR.

Impacts of the proposed policies:	
Policy option 1	
Benefits	It would allow the methodology to take into consideration competitiveness in setting the percentage of the additional amount of pre-funded dedicated own resources.
Regulator's costs	The costs may be high in assessing how the CCP's competitiveness may be impacted by the additional amount required under Article 9(14) of CCPRRR.

Compliance costs	
Policy option 2	
Benefits	It would not allow an assessment on CCP level but would assume that overall, there are no disadvantages of applying the additional amount of pre-funded dedicated resources in accordance with the range provided for under CCPRRR.
Regulator's costs	The costs for competent authorities will be none.
Compliance costs	The costs for the CCP will be none.



7.3 Annex III - Advice of the Securities and Markets Stakeholder Group

In accordance with Article 16 of the ESMA Regulation, ESMA has requested the advice of the Securities and Markets Stakeholder Group (SMSG). The SMSG has not provided any comment.

7.4 Annex IV - Draft RTS on the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources

COMMISSION DELEGATED REGULATION (EU) No .../..

supplementing Regulation (EU) No 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used in accordance with Article 9(14)

of []

(text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties¹², and in particular of Article 9 (15), fourth subparagraph thereof,

Whereas:

- (1) The additional amount of pre-funded dedicated own resources to be used by the CCPs in distress situations should be determined taking into account individual characteristics of each CCP. This Regulation should provide the methodology for the calculation of the additional amount, expressed as a percentage within the range of 10 % and 25 % of the risk-based capital calculated in accordance with Article 16(2) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories¹³.
- (2) The methodology should allow distinguishing between CCPs with a complex risk profile for which a higher level of additional pre-funded dedicated own resources, close to or at 25%, may be needed, and CCPs with less complex risk profiles or

¹² OJ L 22, 22.1.2021, p. 1

¹³ OJ L 201, 27.7.2012, p. 1

more conservative management of risks for which the amount of additional pre-funded dedicated own resources should remain close to or at 10%.

- (3) The methodology should be applied by the CCP and should define sufficiently clear and objective parameters in order to avoid assessment difficulties and allow for a consistent application across CCPs. The parameters should allow to adapt the additional amount of pre-funded dedicated own resources to the structure and internal organisation of the CCP, as well as the nature, scope and complexity of its activities, and the structure of incentives of its stakeholders.
- (4) A CCP should review the additional amount of pre-funded dedicated own resources regularly, including following a material change to the CCP's risk-based capital requirements calculated in accordance with Article 16(2) of Regulation (EU) 648/2012.
- (5) A CCP should not be required to undertake the calculation based on specific parameters of the methodology where it decides to voluntarily apply the maximum amount of additional pre-funded dedicated own resources at 25% level.
- (6) Where a CCP has established more than one default fund for the different classes of financial instruments it clears, the additional amount of pre-funded dedicated own resources should be allocated to each default fund in proportion to its size, in order to ensure a fair allocation of the prefunded resources in a default scenario. In a non-default scenario, the full amount of additional pre-funded dedicated own resources should be available to cover losses.
- (7) The calculation of the percentage to be applied for determining the additional amount of pre-funded dedicated own resources under the methodology should be a cumulative sum of all percentage points assigned to each parameter. The percentage to be applied for each parameter is defined as the sum of the relevant quantitative indicators. A wide range has been assigned to the most significant parameters in the assessment of the risks and complexity of a CCP, while a narrower range has been assigned to parameters which refer to a specific risk aspect of the CCP.
- (8) The methodology for the maintenance of these additional pre-funded dedicated own resources should allow CCPs to mitigate the impact of the requirement for such additional resources, by enabling them to invest them in assets other than those considered in the CCP's investment policy. It should be appropriate for all CCPs to benefit from additional investment possibilities, provided that they implement the appropriate procedures to mitigate the risk of such assets not being immediately available.
- (9) In order to mitigate the impact of the additional pre-funded dedicated own resources on CCPs, the CCP's investment possibilities for this purpose should be partially aligned with the list of assets eligible as collateral accepted by the CCP from

clearing members. Such approach would still guarantee that the CCP has the adequate framework and procedures to manage the risks associated with those assets and their liquidation in times of stress. Some assets which are eligible as collateral should however remain excluded from the list of eligible investments, as they could not be deemed as suitable for a CCP's investment.

- (10) In developing the draft regulatory technical standards, ESMA analysed the rules applicable to and the practices of third-country CCPs, as well as the international developments concerning the recovery and resolution of CCPs, in order to preserve the competitiveness of internationally active Union CCPs, and the competitiveness of Union CCPs compared to third-country CCPs providing clearing services in the Union. Based on such analyses ESMA concluded that the methodology proposed for the calculation of additional amount of prefunded dedicated own resources for Union CCPs should not impede on competitiveness on internationally active Union CCPs.
- (11) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (12) ESMA has developed the draft technical standards in cooperation with the European Banking Authority and after consulting the European System of Central Banks. In accordance with Article 10 of Regulation (EU) 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)¹⁴, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

Article 1

Calculation of the additional amount of the CCP's pre-funded dedicated own resources

1. A CCP shall calculate the additional amount of pre-funded dedicated own resources referred to in Article 9(14) of Regulation (EU) No 2021/23 by multiplying the risk-based capital requirements calculated in accordance with Article 16(2) of Regulation (EU) No

¹⁴ OJ L 331, 15.12.2010, p. 84.

648/2012 and Commission Delegated Regulation (EU) No 152/2013¹⁵ with the percentage level determined in accordance with Article 2.

2. The CCP shall review the determination of the percentage level and the additional amount of pre-funded dedicated own resources calculated under paragraph 1 at least on a yearly basis.
3. The CCP may decide to voluntarily apply the maximum 25% percentage to calculate the additional amount of pre-funded dedicated own resources referred to in Article 9(14) of Regulation (EU) No 2021/23, and in that event it is not required to perform the determination of the percentage level in accordance with Article 2.
4. The CCP shall, where it has established more than one default fund for the different classes of financial instruments it clears, allocate the additional amount of pre-funded dedicated own resources calculated under paragraph 1 to each of the default funds in proportion to the size of each default fund and the allocation shall be separately indicated in its balance sheet. The additional amounts allocated to a default fund shall be used for defaults arising in the market segments to which the default funds refer. In the case of a non-default event, the CCP shall allocate the full amount of the additional amount of pre-funded dedicated own resources calculated under paragraph 1 against the losses incurred as a result of the non-default event.

Article 2

Determination of the percentage level of the additional amount of the CCP's pre-funded dedicated own resources

1. The percentage level (P) referred to in Article 1(1) shall be calculated by the CCP as follows:

$$P = \max(10\%; (\min(25\%; \sum_{i=1}^5 A_i + \sum_{i=1}^3 B_i)))$$

Where the 'A' stands for parameters to be determined in accordance with Articles 3 to 7, 'B' stands for parameters to be determined in accordance with Article 8 to 10. Parameters A_1 to A_5 reflect the structure, internal organisation as well as the nature scope and complexity of a CCP's activities, and the parameters B_1 to B_3 reflect the structure of incentives of the CCP's shareholders, management and clearing members, including clients of those clearing members.

2. The final percentage level (P) value shall be rounded to the closest whole number.

¹⁵ Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties, OJ L 52, 23.2.2013, p. 41

Article 3

The nature and complexity of asset classes cleared

The parameter A_1 on the nature and complexity of asset classes cleared shall range from 1% to 7%. It shall be calculated as follows:

$$A_1 = I_{assets} + I_{FX} + I_{settl}$$

Where:

I_{assets} is an indicator reflecting the number of different asset classes cleared by the CCP. It shall be calculated as $I_{assets} = \max(5, N_{assets}) \times 1\%$, where N_{assets} is the number of different asset classes cleared by the CCP.

I_{FX} is an indicator linked to the number of currencies cleared by the CCP. $I_{FX} = 1\%$ if the CCP clears assets labelled in or offers settlement in more than 1 currency, and 0% otherwise;

I_{settl} is an indicator linked to the settlement mode of derivatives. $I_{settl} = 1\%$ if the offers physical settlement of derivatives contracts, and 0% otherwise.

Article 4

The CCP's relationships and interdependencies with other financial market infrastructures and other financial institutions

This parameter A_2 reflects the CCP's relationships and interdependencies with other financial market infrastructures and other financial institutions and shall range from 0% to 2%. It shall be calculated as follows:

$$A_2 = I_{FMI} + I_{CMS}$$

Where:

I_{FMI} is an indicator linked to the number of interdependencies. $I_{FMI} = 1\%$ if the CCP has more than five interdependencies with trading venues, payment systems and settlement systems, and 0% otherwise;

I_{CMS} is an indicator linked to the concentration of the CCP's clearing membership. $I_{CMS} = 1\%$ if the CCP's top five clearing members represent more than 40% of the CCP's total prefunded resources, aggregated across all services and default funds, and 0% otherwise. For this purpose, the share of the top five clearing members resources shall be calculated on a yearly average.

Article 5

The internal organisation of the CCP

This parameter A_3 reflects the efficiency of the CCP's internal organisation and shall range from 0% to 5%. It shall be calculated as follows:

$$A_3 = I_{RiskCo} + I_{reporting} + I_{Riskstaff}$$

Where:

I_{RiskCo} is an indicator linked to the interaction between the Board and the Risk Committee $I_{RiskCo} = 2\%$ if the CCP's Board has taken more than three decisions over the last three years where the recommendation or advised position of the Risk Committee was not followed, and 0% otherwise;

$I_{reporting}$ is an indicator reflecting the reporting level of the model validation team. $I_{reportin} = 0\%$ if the model validation team is structurally independent from the model development team, 1 % otherwise;

$I_{Riskstaff}$ is an indicator reflecting the proportion of staff allocated to the risk management function. Its value shall range between 0% and 2%, and shall be set as $I_{Riskstaff} = \max(0; 0.02 \times (1 - (1/0.2) \times P_{risk}))$ where P_{risk} is the proportion of risk management full time equivalents (FTEs) as part of the total CCP's FTEs, including outsourced functions. This indicator shall take its maximum value where the proportion is equal to 0%, and minimum value at 20%.

Article 6

The robustness of the CCP's risk management framework

This parameter A_4 reflects the robustness of the CCP's risk management framework and shall range from 0%to 8%. It shall be calculated as follows:

$$A_4 = I_{BT} + I_{incident} + I_{payments}$$

Where:

I_{BT} is an indicator reflecting the adequacy of the CCP's margins as assessed by its back-tests. Its value shall range between 0% and 4%, and shall be set as $I_{BT} = 0.04 \times P_{BT}$ where P_{BT} is the percentage of the CCP's clearing services (calculated as the number of clearing services meeting the criterion compared to the total number of clearing services of the CCP) for which margin back-tests performance is below the CCP's internal risk target over

the last 12 months. This indicator shall reach its maximum value where P_{BT} is at 100%.

$I_{incident}$ is an indicator reflecting the operational robustness of the CCP. Its value shall range between 0% and 2%, and shall be set as $I_{BT} = 0.02 \times N_{days}/10$ where N_{days} is the number of days on which the CCP has been unable to process new trades for two hours or more over the last 12 months. This indicator shall reach its maximum value where $N_{days} = 10$ days.

$I_{payments}$ is an indicator reflecting the operational robustness of the CCP, based on the number of payments incidents. Its value shall range between 0% and 2%, and shall be set as $I_{payments} = 0.02 \times N_{days}/10$ where N_{days} is the number of days on which the CCP has been unable to process or receive payments for 2 hours or more over the last 12 months. This indicator shall reach its maximum value where $N_{days} = 10$ days.

Article 7

Pending remedial actions following findings by the CCP's competent authority

This parameter A_5 is linked to the number of material pending remedial actions following findings from the CCP's competent authority and shall range from 0% to 2%. It shall be calculated as follows:

$$A_5 = I_{reco}$$

Where:

I_{reco} is an indicator linked to the pending actions on prudential matters. $I_{reco} = 2\%$ if the CCP has at least one pending material remedial actions following findings from its competent authority, for which it exceeded the delay set by the competent authority in the remedial plan, 0% otherwise;

For the purpose of this Article, a remedial action shall be considered as material where it has been allocated the highest priority based on the CCP's internal materiality matrix and / or based on the competent authority's own classification.

Article 8

The CCP's ownership, capital structure and profitability

This parameter B_1 is linked to the CCP's ownership and capital structure and shall range from 0% to 4%. It should be calculated as follows:

$$B_1 = I_{majority} + I_{support}$$

Where:

$I_{majority}$ is an indicator that reflects the nature of the CCP's parent undertaking. $I_{majority} = 2\%$ if the CCP has a parent undertaking unrated or rated below investment grade (excluding publicly owned groups), 0% otherwise. For the purpose of this assessment, the rating should be calculated as the worst rating of the entity provided by an authorized credit rating agency, and the parent undertaking shall be considered as defined under Article 2(13) of Regulation (EU) 2021/23.

$I_{support}$ is an indicator that reflects the support from its parent undertaking $I_{support} = 0\%$ if the CCP benefits from a contractually agreed material financial support from its parent undertaking in the event of a default or non-default event, including committed lines or insurance contracts, 2% otherwise.

Article 9

Remuneration of the senior management

This parameter B_2 reflects the extent to which the remuneration of the senior management could be directly and contractually impacted following a default or a non-default event. It shall range from 0% to 2% and be calculated as follows:

$$B_2 = I_{\%amount} + I_{\%staff}$$

Where:

$I_{\%amount}$ is an indicator reflecting the share of the senior management total variable remuneration subject to claw back clauses. Its value shall range between 0% and 1%, and shall be set as $I_{\%amount} = \max(0; 0.01 \times (1 - 2P_{amount}))$ where P_{amount} is the percentage of the CCP's senior management total yearly variable remuneration subject to claw back clauses in a default and/or non-default event. This indicator shall reach its minimum value where $P_{amount} = 50\%$;

$I_{\%staff}$ is an indicator reflecting the percentage of the senior management staff subject to claw back in case of default or non-default losses. Its value shall range between 0% and 1%, and shall be set as $I_{\%staff} = \max(0; 0.01 \times ((1 - P_{\%staff}))$ where $P_{\%staff}$ is the percentage of the CCP's senior management (expressed as a % of the yearly average senior management FTEs) subject to variable remuneration claw back.

Article 10

The clearing members' and clients' involvement in the CCP's risk governance

The parameter B_3 linked to the clearing members' and clients' involvement in the CCP's risk governance shall range from 0% to 2%. It shall be calculated as follows:

$$B_3 = I_{investment} + I_{incentives}$$

Where:

$I_{investment}$ is an indicator reflecting the involvement of clearing members and clients in the investment decision process. $I_{investment}=0\%$ if clearing members are involved in the investment decision and bear some of the potential losses, 1% otherwise;

For the purpose of this indicator, clearing members would be considered as involved in the investment process where they are consulted in the approval process of the CCP's investment policy, and/or in each investment decision.

$I_{incentives}$ is an indicator reflecting the incentives for clearing members in the default management process. $I_{incentives}=0\%$ if there are incentives for clearing members to participate in the default management process, 1% otherwise.

Article 11

Maintenance of the additional amount of the CCPs' pre-funded dedicated own resources

1. If the additional amount of pre-funded dedicated own resources falls below the required additional amount calculated in accordance with Article 1, the CCP shall immediately inform, in writing, its competent authority. The CCP shall also inform its competent authority in writing if the additional amount is further reduced afterwards. The notification to the CCP's competent authority shall indicate in detail the remaining additional amount of pre-funded dedicated own resources and if any further reduction to that amount may be expected in the next five business days. The written notification shall also contain the reasons for the breach and provide a comprehensive description of the measures and the timetable for the replenishment of the amount.
2. Where a subsequent default of either one or more clearing members or a non-default event occurs before the CCP has reinstated the full additional amount of its pre-funded dedicated own resources as calculated in accordance with Article 1(1), only the residual amount of the additional amount shall be used for the purpose of Article 9(14) of Regulation (EU) No 2021/23.

3. A CCP shall reinstate the additional amount of pre-funded dedicated own resources at the latest within 20 working days from the first notification referred to in paragraph 1.
4. Where the percentage level determined in accordance with Article 2(1) is higher than 10%, a CCP, by derogation from Article 47(1) of Regulation (EU) 648/2012 and subject to paragraph 5 may invest the excess requested amount of additional pre-funded dedicated own resources in gold and financial instruments considered as highly liquid collateral in accordance with Article 46(1) of Regulation (EU) 648/2012, provided that such assets are included in the CCP's collateral policy.
5. The eligible investments referred to in paragraph 4 shall exclude bank guarantees, derivatives and equities.
6. A CCP shall put in place the necessary procedures set out under Article 12 and Article 13 before using the additional assets for investments as set out in paragraph 4.

Article 12

Procedure for applying recovery measures where the additional amount is not immediately available

1. Where, following a default or a non-default event, the additional amount of pre-funded dedicated own resources calculated in accordance with Article 1 are not immediately available, the CCP shall immediately inform its competent authority and its clearing members and provide a detailed description of the additional amount of pre-funded dedicated own resources unavailable, and the reason for this unavailability.
2. Where, following a default or non-default event as referred to in paragraph 1, the CCP collects financial resources from non-defaulting members, the amount shall cover the unavailable additional amount of pre-funded dedicated own resources and shall be distributed among the non-defaulting clearing members proportionally to their default fund contributions.

Article 13

Procedure for the compensation of non-defaulting clearing members

1. Where non-defaulting clearing members have provided a financial contribution to the CCP in accordance with Article 12, the CCP shall take all reasonable measures to reimburse the non-defaulting clearing members by monetising the assets used to invest the additional amount of pre-funded dedicated own resources calculated in accordance with Article 1(1) at the latest within 20 working days after the notification of the funds' unavailability.

2. Subject to paragraph 4, the CCP shall reimburse the non-defaulting clearing members within a reasonable timeframe and continue until all amounts have been recouped.
3. The reimbursement of all amounts due to the non-defaulting clearing members shall be made in cash, in the same currency in which it was provided to the CCP.
4. The amounts due from the CCP shall be paid to the non-defaulting clearing members after (i) the servicing of operational costs, (ii) any due and payable debt obligation has been paid and (iii) any recompense to be paid within the timeframe set out in accordance with Article 3 Delegated Regulation [XXX] on recompense.
5. Where the reimbursement extends over more than 120 working days from the date of the initial recovery measure that required the financial contribution of non-defaulting clearing members, an annual interest shall be paid on the amounts due. The interest rate shall be set at the default interest rate defined in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council¹⁶.

Article 14

Entry into force

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

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

Done at Brussels,

For the Commission

The President

¹⁶ OJ L 193, 30.7.2018, p. 1