
**EACH response to the ESMA consultation
on Draft Guidelines on the types and
content of the provisions of Cooperation
Arrangements (Article 79 of CCPRRR)**

August 2022

Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 18 members from 14 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide feedback to the ESMA Consultation Paper on Draft Guidelines on the types and content of the provisions of Cooperation Arrangements (Article 79 of CCPRRR) (hereinafter called “The consultation”)¹.

Section 4.1 General considerations

Question 1: Do you agree with the general approach of the Guidelines and how ESMA has interpreted the mandate and the aim of the Guidelines? If not, please explain why

EACH agrees with ESMA’s approach to the Guidelines and the way it has interpreted the mandate and the aim of the Guidelines. We find it important for competent authorities and resolution authorities to conclude cooperation arrangements with third country authorities where relevant. In addition, and in line with the EU Bank Recovery and Resolution Directive (BRRD)², we support ESMA’s proposal for cooperation arrangements between resolution authorities and NCAs supervising clearing members on a voluntary basis. In addition, we believe it is important for the home authority to be able to identify the risks that each of its tools would create to the third parties in other jurisdictions and communicate those risks clearly prior to using those tools.

Section 4.2 Purpose, scope and legal aspects

Question 2: Do you agree with Part I of the Guidelines, on purpose, scope and legal aspects? If not, please explain why.

EACH agrees with Part I of the guidelines on the objective, legal status and scope. We are also supportive of the fact that those guidelines are not meant to supersede prior arrangements and take into account cooperation arrangements already established under EMIR.

Section 4.3 Content of the cooperation arrangements

¹ https://www.esma.europa.eu/sites/default/files/library/esma91-372_1791_draft_cp_art_79_ccprrr_cooperation_arrangements_public.pdf

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0059>

Question 3: Do you agree with Part 2 of the Guidelines, on content of the cooperation arrangement? If not, please explain why.

EACH agrees with Part 2 of the Guidelines on content of the cooperation arrangement. We are also supportive of ESMA's proposal not to replicate the requirements on resolution plans, resolvability, impediments or on the application of resolution tools and/or powers.

Regarding Guideline 5 in particular, we would like to stress that it is important for the NCA to remain the sole responsible for drawing up and maintaining the resolution plan. Regarding information sharing necessary to perform the resolvability assessment, EACH does not necessarily agree with ESMA's proposals to consider whether the corporate structure of a CCP is linked to a third-country. CCPs are indeed standalone entities fully collateralised. We would welcome additional clarity on what is considered material service level agreements which are established in third countries.

Section 4.4 Confidentiality aspects

Question 4: Do you agree with Part 3 of the Guidelines on the confidentiality aspects including the conditions under which confidential information can be onwards shared to third parties? If not, please explain why.

EACH agrees with Part 3 of the Guidelines on the confidentiality aspects including the conditions under which confidential information can be onwards shared to third parties.

Section 5.2 Annex II – Cost-benefit analysis

Question 5: Do you agree with the proposed Option 1? If not please explain. If yes, have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 1)?

EACH agrees with the proposed Option 1.