



European Securities and  
Markets Authority

# Response Form to the Consultation Paper

**Draft Guidelines on the types and content of the provisions of Cooperation Arrangements (Article 79 of CCPRRR)**



## Responding to this paper

ESMA invites comments on all matters in this consultation paper. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **1 August 2022**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

### Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_CA79\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_CA79\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_CA79\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” → “Consultation on the types and content of the provisions of Cooperation Arrangements”).

## **Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

## **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

## **Who should read this paper?**

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest for EU central counterparties, clearing members and clients of clearing members.

## General information about respondent

Name of the company / organisation	Futures Industry Association and International Swaps and Derivatives Association
Activity	Banking Sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	International

## Introduction

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_CA79\_00>

The Futures Industry Association (FIA) and the International Swaps and Derivatives Association (ISDA), together the Associations, represent the largest number of global and national participants in clearing, banking and financial markets. The Associations appreciate this opportunity to comment on this consultation.

In the Associations' view, supervisory cooperation is an important keystone to the global derivatives markets. This is especially important in crisis situations: if jurisdictions do not cooperate and coordinate in crisis situations, including planning for such situations, the overall outcome of each jurisdiction dealing with a crisis separately will be inferior to an approach where authorities cooperate.

We therefore welcome that CCPRRR plans for cooperation between authorities and for ESMA's work on defining types and contents of such cooperation agreements, up to an actual template for such an agreement.

It is important to allow authorities enough flexibility to accommodate jurisdictions with different legal and/or regulatory approaches to CCP resolution.

This consultation response covers the positions of our members that are clearing members and their clients. The paper does not reflect the views of many CCPs, and many of the CCPs are in disagreement with the views expressed herein.

### About FIA

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. Our membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.

Our mission: To support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct.

### **About ISDA**

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 990 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: [www.isda.org](http://www.isda.org). Follow us on Twitter, LinkedIn, Facebook and YouTube.

<ESMA\_COMMENT\_CA79\_00>

## Questions

Q1 : 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.

<ESMA\_QUESTION\_CA79\_01>

We agree with the general approach of the Guidelines and how ESMA has interpreted the mandate and the aim of the Guidelines. We are mindful that ESMA has to follow the Level 1 text. Without this constraint, it would have been beneficial to include other types of EU authorities in addition to resolution authorities of a CCP. For instance, it would be beneficial to include national competent authorities (NCA) supervising clearing members in cooperation agreements with supervisors of third-country CCPs.

Nevertheless, we welcome that ESMA has proposed that such authorities could conclude cooperation arrangements on a voluntary basis and urge these authorities to do so.

<ESMA\_QUESTION\_CA79\_01>

Q2 : Do you agree with Part I of the Guidelines, on purpose, scope and legal aspects? If not, please explain why.

<ESMA\_QUESTION\_CA79\_02>

We agree with Part I of the Guidelines, on purpose, scope and legal aspects, especially the reference of other avenues of cooperation in relation to crisis situation, namely Crisis Management Groups and CCPRRR resolution colleges.

<ESMA\_QUESTION\_CA79\_02>

Q3 : Do you agree with Part 2 of the Guidelines, on content of the cooperation arrangement? If not, please explain why.

<ESMA\_QUESTION\_CA79\_03>

We agree with Part 2 of the Guidelines. While we appreciate that ESMA had to follow provisions in Level 1 of CCPRRR, we are concerned that the structure of these agreements is too strict and might lack flexibility to conclude a cooperation agreement with authorities that might be under an equally strict, but different regime.

While it would be ideal to be able to follow all CCPRRR requirements, there should be flexibility to accommodate different structures and ways to cooperate reflecting

different regulatory approaches across jurisdictions. A cooperation agreement that does not cover all provisions and situations covered by CCCPRRR Article 79 is better than no cooperation agreement.

We acknowledge that ESMA already proposes that the “*cooperation agreement should take into account the principles of effectivity, proportionality and relevance.*”

<ESMA\_QUESTION\_CA79\_03>

Q4 : 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.

<ESMA\_QUESTION\_CA79\_04>

We 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.

In the case of jurisdictions where the conditions laid down in Chapter V of the General Data Protection Regulation (GDPR) are not complied with by the third-country authority, sharing of data on an anonymised basis should be considered.

<ESMA\_QUESTION\_CA79\_04>

Q5 : 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)?

<ESMA\_QUESTION\_CA79\_05>

We agree with option 1, as only this option will produce consistent cooperation agreements across the EU.

<ESMA\_QUESTION\_CA79\_05>

Q6 : If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

<ESMA\_QUESTION\_CA79\_06>

We do not advocate for a different approach.

<ESMA\_QUESTION\_CA79\_06>

Q7 : Do you agree with the template? If not, please explain why.

<ESMA\_QUESTION\_CA79\_07>

We welcome that ESMA has produced a template agreement, which will make drafting such agreements on a consistent basis much easier. We however want to highlight that there needs to be a sufficient level of flexibility to accommodate different regulatory frameworks in other countries.

<ESMA\_QUESTION\_CA79\_07>