
TO : **Regulated Entities**
i. **Cyprus Investment Firms (CIFs)**
ii. **UCITS Management Companies ('UCITS MC')**
iii. **Alternative Investment Fund Managers (AIFMs)**

FROM : **Cyprus Securities and Exchange Commission**

DATE : **July 03, 2023**

CIRCULAR No : **C586**

SUBJECT : **ESMA Guidelines on the application of the circumstances under which a central counterparty is deemed to be failing or likely to fail (Article 22(6) of CCPRRR)**

1. The Cyprus Securities and Exchange Commission (the 'CySEC') wishes to remind the regulated entities that the European Securities and Markets Authority (ESMA) has published the Guidelines on the application of the circumstances under which a central counterparty is deemed to be failing or likely to fail (Article 22(6) of CCPRRR¹) (the '[Guidelines](#)') on June 1, 2023, translated in all official languages of the EU.
2. These Guidelines apply to competent authorities, as defined in Article 22 of Regulation (EU) 648/2012 as amended (EMIR²), and to resolution authorities, as defined in Article 2(3) of CCPRRR.
3. The objective of these Guidelines is to promote the convergence of supervisory and resolution practices regarding the application of the circumstances under which a CCP is deemed to be failing or likely to fail.

¹ Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132

² Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

4. These Guidelines clarify the different circumstances under which a CCP is deemed to be failing or likely to fail, one of the three cumulative conditions set out in Article 22(1) of CCPRRR for triggering a resolution action. In particular, they aim to promote the convergence of supervisory and resolution practices with respect to how and when resolution should be triggered with respect to the circumstances under which a CCP is deemed to be failing or likely to fail. For this purpose, these Guidelines list a set of objective elements that should support the determination that a CCP is failing or likely to fail, in accordance with the circumstances laid down in Article 22(3) of CCPRRR.
5. Given the need to provide guidance on the consultation and information exchange between the competent authority and the resolution authority for the purpose of making a determination if a CCP is failing or likely to fail, the scope of the final Guidelines is expanded beyond the scope set forth by Article 22(6) of CCPRRR. Thus, ESMA has decided to issue Guidelines 8 and 9 in accordance with Article 16(1) of ESMA Regulation in line with which ESMA may issue guidelines with a view to establishing consistent, efficient and effective supervisory practices within the European System of Financial Supervision (ESFS), and to ensuring the common, uniform and consistent application of Union law.
6. The Guidelines are applicable from 1st of August 2023.
7. CySEC has adopted these Guidelines by incorporating them into its supervisory practices and regulatory approach.

Sincerely

Dr George Theocharides
Chairman of the Cyprus Securities and Exchange Commission