

## Terms of Reference

### ESMA CCP Resolution Committee (CCP RC)

1. ESMA achieves its mission according to ESMA Regulation (EU) No 1095/2010 of the European Parliament and Council ('ESMAR') to enhance investor protection, promote orderly financial markets and safeguard financial stability.
2. ESMA has, in order to fulfil this mission, established its 2023-2028 Strategy<sup>1</sup> which includes three strategic priorities: (i) fostering effective markets and financial stability, (ii) strengthening supervision of EU financial markets, and (iii) enhancing protection of retail investors) and two thematic drivers: (i) enhancing sustainable finance, and (ii) facilitating technological innovation and effective use of data.
3. ESMA shall, according to ESMAR, act within the powers conferred by its establishing Regulation and among others within the scope of Regulation (EU) No 2021/23 ('CCPRRR'). In particular, CCPRRR entrusts ESMA with several tasks in respect to the recovery and resolution of Central Counterparties (CCPs).
4. In order to fulfil its mission, and in line with CCPRRR, the Board of Supervisors establishes a ESMA Resolution Committee (**CCP RC**) pursuant to Article 41 of ESMAR as a permanent internal committee. These Terms of Reference specify the responsibilities, tasks and functioning of this committee. The Procedures for ESMA groups (ESMA/2011/BS/236rev3), set out the rules concerning ESMA Group's structure, governance and working methods, and apply to the CCP RC unless otherwise specified in CCPRRR and these Terms of Reference.

#### Responsibilities

5. The CCP RC contributes to ESMA's mission by preparing the decisions entrusted to ESMA in according with the CCPRRR, promoting the drawing up and coordination of resolution plans and developing methods for the resolution of failing CCPs. The responsibilities and tasks of the CCP RC are defined primarily in Article 5(1) of the CCPRRR. In particular, the CCP RC contributes to ESMA's mission by:
  - Fostering Effective Markets and Financial Stability and Enhancing protection of retail investors
    - The CCP RC should be consulted by the CCP Supervisory Committee established under EMIR, (the CCP SC) in the preparation of the conceptual framework for the assessments of the resilience of CCPs to adverse market developments, when this assessment includes the aggregate effect of CCP recovery and resolution arrangements on Union financial stability.
    - The CCP RC should be consulted by the CCP SC when the findings of relevant stress tests are being assessed.

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/esma\\_strategy\\_2023-2028.pdf](https://www.esma.europa.eu/sites/default/files/library/esma_strategy_2023-2028.pdf)

- The CCP RC may assess CCP resolution arrangements across the Union in terms of their aggregate effect on Union financial stability including by taking into account stress-testing and crisis simulation exercises with respect to potential system-wide stress events.
- The CCP RC should develop methods for the resolution of failing CCPs, this could establish itself through creating convergent methods on how to approach and undertake a resolution process.
- Strengthening Supervision of EU Financial Markets

The CCP RC:

- should promote the drawing up and coordination of resolution plans and develop methods for the resolution of failing CCPs;
- may, based on its activities under CCPRRR, where any lack of convergence has been identified in their work on resolution plans and methods for the resolution of failing CCPs, propose relevant measures, such as opinions, guidelines or recommendations to be adopted by the BoS;
- may exchange information on resolution practices also in areas where no common regulations, standards, guidelines, etc. exist, with a view to identifying best resolution practices;
- may assist the resolution authorities in ensuring a convergent approach on the *Recognition and enforcement of third-country resolution proceedings* as set out in Article 77 of CCPRRR;
- may assist the resolution authorities in ensuring a convergent approach on the *cooperation arrangements with third-country authorities* to be entered into in accordance with Article 79 of CCPRRR and considering the Guidelines issued under Article 79(4) of CCPRRR;
- may assist the resolution authorities in ensuring a convergent approach on the *exchange of confidential information* under Article 80 of CCPRRR;
- may assist to prepare any administrative arrangements to be adopted by ESMA with third-country authorities whose regulatory and supervisory regimes have been recognised as equivalent;
- may assist ESMA in addressing questions and answers related to resolution aspects under CCPRRR that are to be issued pursuant to *questions and answers* (Article 16b of ESMAR);
- may provide input on mainly resolution aspects for the purposes of the ESMA's cooperation with EBA and EIOPA within the framework of the Joint Committee of the European Supervisory Authorities under Article 5(3) of CCPRRR; and
- may fulfil any other specific task falling within its objective scope of competence and included in the ESMA's Work Programme as decided by the Executive Director.

6. The CCP RC also serves to fulfil the following tasks:

- Completing a Single Rulebook for EU financial markets
  - The CCP RC should prepare the decisions entrusted to ESMA to fulfil the single rule book, either based on mandates under CCPRRR or based on convergence activities under CCPRRR identifying the need to undertake work to draft RTSs or amend existing RTSs (or other similar measures). The CCP RC should therefore lead the drafting of the single rule book measures related to resolution, including when developing or amending draft technical standards or draft implementing standards.
  - The CCP RC should, when undertaking its work on supervisory convergence, notify the CCP PC when (and if) the CCP RC has identified a need for measures to be undertaken in relation to the single rule book and how the CCP RC is envisaging this work to be undertaken and how the CCP RC shall cooperate and be consulted by the CCP PC in undertaking the relevant work.
  - The CCP RC should contribute to the ESMA's Work Programme in the areas of the single rule book for resolution related measures.
- 7. All of the above tasks shall be carried out within the thematic drivers of (i) enhancing sustainable finance and (ii) facilitating technological innovation and effective use of data, established in the ESMA 2023-2028 Strategy.

## Cooperation

8. The CCP RC shall liaise and coordinate with other relevant groups reporting to the Board of Supervisors where its activities relate to or are complementary to those of other groups, in particular the CCP Policy Committee (the **CCP PC**), the CCP Supervisory Committee (established under EMIR, the **CCP SC**) and the Post Trading Standing Committee where the tasks of the CCP RC are linked to the activities of such committees or groups.
9. In line with ESMA product monitoring obligation under Articles 39 MiFIR and its product intervention powers under Articles 40 and 43 MiFIR, the CCP RC shall refer any potential threats that are relevant to ESMA's objectives of ensuring investor protection, orderly functioning and integrity of financial/commodity markets and to stability, to the relevant Standing Committee.
10. For the purposes of CCPRRR, CCP RC shall cooperate with the European Insurance and Occupational Pensions Authority (EIOPA) and the European banking Authority (EBA) within the framework of the Joint Committee of the European Supervisory Authorities established in Article 54 of Regulation (EU) No 1093/2010, Article 54 of Regulation (EU) No 1094/2010 and Article 54 of ESMAR.
11. In specific matters that would raise conflict of interests with the supervisors, or where the resolution authorities have specific competence and expertise, the assessment or proposal shall not be shared and discussed with other committees within ESMA to ensure structural separation is upheld.
12. Where the CCP RC is requested to assist under mediation procedures under Articles 14(6) and 17(8) of CCPRRR, this work and proposal for decision shall not be shared and discussed with other committees within ESMA to ensure structural separation is upheld.

## Composition

13. In accordance with Article 5(2) of CCPRRR, the CCP RC shall be composed of:
- Members: the *authorities designated pursuant to Article 3(1) of CCPRRR and as notified to ESMA in accordance with Article 3(10) of CCPRRR.*
  - Observers:
    - authorities referred to in point (i) of Article 4(2) of Regulation (EU) 1093/2010: “(i) competent authorities as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013, including the European Central Bank with regard to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013, i.e. “*public authorities or bodies officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation in the Member State concerned*”;
    - authorities referred to in point (v) of Article 4(2) of Regulation (EU) 1093/2010: “*with regard to Directive 2014/59/EU of the European Parliament and of the Council and to Regulation (EU) No 806/2014 of the European Parliament and of the Council, the resolution authorities designated in accordance with Article 3 of Directive 2014/59/EU, the Single Resolution Board established by Regulation (EU) No 806/2014, and the Council and the Commission when taking actions under Article 18 of Regulation (EU) No 806/2014, except where they exercise discretionary powers or make policy choices*”.
14. Where a Member State designates more than one resolution authority under Article 3(1) of CCPRRR, those authorities shall agree on a common representative for the CCP RC.
15. Each member and observer of the CCP RC shall be responsible for nominating a high-level participant and a permanent alternate from the authority, whenever that member or observer is prevented from attending.
16. The representatives and alternates of the members and observers shall have the necessary seniority and authority to speak and represent their authority.
17. The representatives and alternates of members and invited observers shall have the necessary skills, knowledge and experience with regards to CCP recovery and resolution. They shall also have the expertise, resources and operational capacity to apply resolution measures and exercise their powers with the speed and flexibility that are necessary to achieve the resolution objectives.
18. Members are responsible for expressing their views as early as possible in the process and providing alternative proposals where and when necessary. More generally, members are required to provide their comments and views within the deadlines decided.
19. Members are also responsible for providing their input to the Board of Supervisors member of their Member State or the representative of their authority invited to participate to such Board of Supervisors, when decisions falling within their scope of competence are submitted to the Board of Supervisors.
20. The list of members and observers (and their appointed representatives) shall be managed and kept up to date by the Chair of the CCP RC. The list shall be shared with ESMA when amended.
21. The Chair of the CCP RC may invite ad-hoc experts from EBA, EIOPA, ESRB and SSM.

22. The Chair may invite individuals or representatives of financial institutions to specific non-confidential sessions of a CCP RC meeting where this would assist the work allocated to the CCP RC.
23. ESMA staff shall in accordance with Article 3(10) of CCPRRR publish the list of the resolution authorities and the contact authorities notified pursuant to Article 3(8) of CCPRRR.

## Structure and governance

### Chairperson(s) (Chair)

24. The CCP RC shall be chaired by a Head of Department within ESMA, but outside the CCP Directorate , with the relevant experience and knowledge.
25. The first Chair of the CCP RC will be appointed by the Board of Supervisors.
26. The term of the Chair(s)'s appointment will be for two years and can be renewed once.
27. The Chair(s) will be responsible for ensuring that the tasks allocated to CCP RC are delivered in accordance with these Terms of Reference and the Work Programme adopted by the Board of Supervisors.
28. The Chair(s) shall co-ordinate with the chairpersons of other ESMA Standing Committees in areas of common interest but falling outside the CCP RC's scope of action as defined in Section 1.2, such as recovery planning and early intervention measures.

### Meetings and Governance

#### Convening meetings

29. Meetings of the CCP SC shall be convened by the Chair at her/his own initiative or at the request of any of its members. The meetings can be held in-person, virtual or hybrid.
30. CCP RC meetings will be directed by the Chair and supported by the ESMA staff.
31. The CCP RC shall meet on a regular basis as required in order to deliver ESMA's (multi-) annual work programme, and at least four times a year.
32. The date and place of future meetings shall be set by the Chair of the CCP RC. When a meeting is requested by a member, the Chair shall convene a meeting to take place within six weeks of receipt of the request, or as soon as practicable in urgent cases.
33. The Chair decides on the agenda, taking into account any contribution by or request from members of the CCP RC. The agenda should be forwarded, accompanied by the relevant material for decision making, to the CCP RC at least five working days prior to a meeting.
34. Meetings of the CCP RC shall be chaired by the Chair. In her/his absence, the longest serving member (or, in case of equal serving time, the oldest) will carry out the functions of the Chair in the Chair's absence.

#### Attendance

35. A member may appoint, in writing, its alternate from its authority who can replace her or him at (a)meeting(s).

### Summary of conclusions

36. ESMA staff shall prepare a summary of conclusions of each meeting of the CCP RC. The draft summary of conclusions shall be forwarded to Members at the latest five days before the next meeting for approval at the meeting.

### Written procedure

37. Where appropriate, the views and comments from the CCP RC may be sought in a written procedure.

### Mediation

38. The process for preparing decisions by the CCP RC on mediation is regulated by CCPRRR, in particular Articles 14(6) and 17(8) of CCPRRR.

### Subgroups

39. Permanent working groups or temporary task forces reporting to the CCP RC (subgroup) may be set-up when required in accordance with the “procedures for ESMA Groups” and would require the agreement of the Board of Supervisors.
40. No working group nor task force can generate further substructures other than ad hoc drafting or project teams.
41. A working group or task force will be chaired by a member of CCP RC, or, where appropriate, by a technical expert from a resolution authority’s member or by the ESMA staff who will be appointed by the ESMA Executive Director after consulting the CCP RC Chair(s). The members of the substructures of CCP RC shall have expertise and experience in the subgroup’s allocated area.
42. Chair(s) of a subgroup should liaise in areas of common interest (after informing the CCP RC’s Chair) and establish cooperation arrangements between other subgroups under the CCP RC.

### Market input

43. Where appropriate and necessary, the CCP RC may enter into a dialogue with the MSG and industry groups, to obtain input into its work.
44. To the extent necessary, CCP RC should seek input from or exchange views with the European Commission and/or relevant committees/groups, standard setting bodies or other interested parties and ensure that ESMA interests are properly reflected at these levels.

### Confidentiality

45. The members and observers of CCP RC, including any guests or other participants to the CCP RC shall be bound by the confidentiality rules applicable to Board of Supervisors members and to ESMA staff and be bound by the confidentiality rules applicable under CCPRRR.

46. The members and observers of the CCP RC shall respect that the requirements of professional secrecy shall be binding in respect of the following persons: resolution authorities as set out, for example in, Article 73 of CCPRRR.
47. The Chair shall ensure that any guests or other ad hoc participants to the CCP RC has signed all relevant confidentiality agreements before participating to a meeting.

### **General Provisions**

48. In accordance with Article 5(4) of the CCPRRR, in order to ensure structural separation between the CCP RC and other functions referred to in ESMAR, the CCP RC cannot be entrusted with any tasks related to any other functions referred to in the ESMAR.

### **Review**

49. These Terms of Reference will be reviewed at least every two years by the Board of Supervisors, following a proposal of the CCP RC.