

Terms of Reference

CCP Supervisory Committee

1. ESMA's mission is to enhance investor protection, promote orderly financial markets and safeguard financial stability, by (i) assessing risks to investors, markets and financial stability, (ii) completing a single rulebook for EU financial markets, (iii) promoting supervisory convergence and (iv) supervising specific financial entities.
2. In order to fulfil its mission, the ESMA Strategy 2023-2028¹ sets out 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. Furthermore, ESMA is committed to support the European Commission² in its efforts in building the Savings and Investment Union which includes increasing the effectiveness of the financial markets, as well as in delivering on the goals of simplification and burden reduction while maintaining an effective supervision, a high level of financial stability and strong investor protection.
4. ESMA acts within the powers conferred by its establishing Regulation (ESMA Regulation or ESMAR³) and among others within the scope of Regulation (EU) No 648/2012 (EMIR)⁴. In particular, EMIR entrusts ESMA with several tasks with respect to the authorisation and the recognition of Central Counterparties (CCPs).
5. In order to fulfil ESMA's mission and in line with EMIR, the Board of Supervisors has established the CCP Supervisory Committee, thereafter CCPSC, pursuant to Article 41 of ESMAR as a permanent internal committee. These Terms of Reference specify its tasks, responsibilities, functioning and governance.

Tasks and responsibilities

6. The tasks and responsibilities of the CCPSC are defined primarily in Article 24a(7) to (10) of EMIR. In particular, in performing its tasks and responsibilities, the CCPSC contributes to ESMA's mission and to the following strategic priorities of the ESMA Strategy:
 - *Fostering Effective Markets and Financial Stability*

¹ https://www.esma.europa.eu/sites/default/files/library/esma_strategy_2023-2028.pdf

² See mission letter to Commissioner Albuquerque [link](#) and Council Budapest declaration [link](#)

³ ESMA Regulation No 1095/2010 of the European Parliament and of the Council

⁴ As amended by Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024.

- *Strengthening Supervision of EU Financial Markets*
7. In addition, the CCPSC will contribute to the objective of simplification and burden reduction when developing its regulatory and supervisory output, and be accountable to the Board of Supervisors on the manner those issues have been addressed in the final outputs.

Coordination

8. In accordance with Article 24a(10) of EMIR, in order to ensure structural separation between the CCPSC and other functions referred to in ESMA Regulation, the CCPSC cannot be entrusted with any tasks related to any other functions referred to in the ESMA Regulation.
9. The CCPSC will ensure close coordination arrangements in particular with the CCP Policy Committee, notably on CCP regulatory aspects, as well as with the CCP Resolution Committee and with the Joint Monitoring Mechanism, in order to achieve an aligned outcome for ESMA.
10. The CCPSC should also discuss technical positions within the scope of its responsibilities to ensure a coordinated EU approach when ESMA and NCAs participate in international fora.

Composition

11. In accordance with Article 24a(2) of EMIR, the CCPSC shall be composed of:
- the Chair and two Independent Members, who shall be voting, appointed in accordance with Article 24a(5) of EMIR;
 - the competent authorities of Member States with an authorised CCP, who shall be voting.

Where a Member State has designated several competent authorities under Article 22 of EMIR, each of the designated competent authorities of this Member State may decide to appoint one representative for the purposes of participation pursuant to this point. However, for the voting procedures of the CCPSC, the representatives of the respective Member State shall together be considered as one voting member.

- the following central banks of issues:
 - (i) where the CCPSC convenes in relation to third-country CCPs, in respect of the preparation of all decisions pertaining to the tiering of TC-CCPs and the supervision of Tier 2 CCPs, the central banks of issue of all Union currencies of the financial instruments cleared or to be cleared by the CCP that have requested membership of the CCPSC, who shall be non-voting;
 - (ii) where the CCPSC convenes in relation to authorised EU-CCPs, the central banks of issue of Union currencies of the financial instruments cleared by the CCPs that have requested membership of the CCPSC, who shall be non-voting.

12. The Chair may invite members of the CCP colleges as observers to the meetings of the CCPSC, where appropriate and necessary.
13. ESMA staff shall maintain a list of the Members and Observers.

Nomination of representatives from competent authorities

14. Representatives from competent authorities shall have the necessary skills, knowledge and experience with regards to CCP supervision, including prudential supervisions and regulation.
15. Nominated representatives shall have the necessary seniority and authority to speak and represent their authority and to exercise the respective voting right, when due. The list of nominated representatives is agreed by the Chair of the CCPSC. Where a Member State has designated several competent authorities, the member of the Board of Supervisors representing the authority from that Member State shall coordinate the first nomination of representative(s) with the other relevant designated competent authorities in its Member State and, in case of multiple representatives, indicate which representative will cast the single vote for the voting procedure in the CCP Supervisory Committee.

Membership requests by central banks of issue

16. Membership requests from central bank of issue shall be addressed to the Chair of the CCPSC. Membership requests shall contain the name of the representative of the relevant central bank of issue. In accordance with Article 24a(2)(d) of EMIR, membership is granted automatically upon sending the request.
17. Central banks of issue of a Union currency requesting membership may nominate only one representative per currency, for all authorised and recognised CCPs clearing financial instruments denominated in that currency, and irrespective of the number of central banks sharing the central bank of issue function for that currency.
18. Representatives from central banks of issue shall have the necessary skills, knowledge and expertise in clearing, prudential supervision and oversight and financial matters, as well as of experience relevant to CCP supervision/oversight. Nominated representatives shall have the necessary seniority and authority to speak and represent the central bank of issue function for the currency they have been nominated for.

Structure and governance

19. The responsibilities of the Chair, rapporteur and members of the CCPSC are as set out in the 2023 Procedures for ESMA groups (ESMA22-104-5119), which set out the rules concerning ESMA Group's structure, governance and working methods, and apply to the CCPSC unless otherwise specified in EMIR and these Terms of Reference.
20. The CCPSC may set up permanent working groups or temporary task forces or project team/drafting teams reporting to the CCPSC if required by the work and in line with the Procedure for ESMA groups.

21. The CCPSC has established the following permanent working group:

- Working Group on CCP Stress Tests (GEST), established to assist the CCPSC in developing the CCP Stress Testing Framework for each annual exercise, with the Terms of reference (ESMA91-1505572268-3613).

22. The CCPSC will meet on a regular basis as required in order to deliver its tasks under ESMA's (multi-)annual work programme. Meetings of substructures will be organised as necessary to enable the CCPSC to fulfil its tasks.

Working methods

23. The working methods will follow the Procedure for ESMA groups as described in paragraphs 53 thereof and following, unless otherwise specified in these terms of reference.

24. In addition, the members of the CCPSC shall consider the following working method obligations and procedures.

25. Documents prepared by a subgroup reporting to the CCPSC concerning issues which are of strategic and/or cross-cutting in nature and/or which have been controversial at the level of the subgroup, will be discussed at and agreed upon by the CCPSC (A-items). Documents from these subgroups concerning issues which are neither strategic nor cross-cutting in nature and which were supported by a large majority of subgroup members will be submitted to the CCPSC for endorsement without discussion (B-items) and will hence not be subject to discussion unless requested by a significant minority of subgroup members, one CCPSC member or ESMA staff. Items on the CCPSC agenda not coming from or discussed in the subgroups reporting to the CCPSC should generally be classified as A-items.

Consultations of relevant authorities

26. The Chair of the CCPSC shall organise the following consultations on behalf of ESMA and/or the CCP Supervisory Committee:

- ESMA consulting the European Systemic Risk Board (ESRB) and the central banks of issue with regards to the determination of whether a CCP is a Tier 2 CCP;
- The CCPSC consulting the central banks of issue regarding decisions to be taken in relation to Tier 2 CCPs with respect to margin requirements, liquidity risk control, collateral, settlement and approval of interoperability arrangements;
- The CCPSC consulting the ESRB and seek the agreement of the central banks of issue for matters relating to the currencies they issue with regard to decisions to be taken with respect to TC-CCPs qualifying to being of such substantial systemic importance that they should not be recognised; and
- ESMA consulting the relevant authorities when assessing whether a TC-CCP meets the conditions for recognition, or before withdrawing a recognition decision.

- ESMA consulting EBA, EIOPA and ECB for the identification of cross-border risks arising from the CCPs' activities.
27. When consulting or seeking agreement from the central bank of issue for the Euro in accordance to the above, the Chair of the CCPSC will address a consultation letter to the European Central Bank (ECB) as representative of the Eurosystem.
28. The Chair of the CCP Supervisory Committee will report on the consultations and their outcome to the Supervisory Committee and to the Board of Supervisors.

Meetings

Convening meetings

29. Meetings of the CCPSC shall be convened by the Chair at her/his own initiative or at the request of any of its voting members. The Committee will meet on a regular basis, as required in order to deliver ESMA's (multi-) annual work programme and at least five times a year. At least 50% of the meetings need to be virtual.
30. In an emergency situation pursuant to Article 24 of EMIR, except where a resolution authority is taking or has taken a resolution action in relation to a CCP, an ad hoc meeting of the CCPSC may be convened by the Chair of the CCPSC. An ad-hoc meeting shall be convened by the Chair of the CCPSC upon the request of two members of the CCPSC. The Chair will invite to such an ad hoc meeting the authorities listed in Article 24(5) of EMIR, where relevant for the issues to be discussed.
31. The date and place of future meetings shall be set by the Chair of the CCPSC. When a meeting is requested by a voting 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.
32. The Chair decides on the agenda, taking into account any contribution by or request from members of the CCPSC. The agenda should be forwarded, accompanied by the relevant material for decision making, to the CCPSC at least 5 working days prior to a meeting. Material for decision making related to decisions on TC-CCPs involving the consultation of central banks shall be forwarded to the CCPSC normally at least 10 working days prior to a meeting. Material shall be provided as soon as practicable in urgent cases.
33. Meetings of the CCPSC shall be chaired by the Chair. In her/his absence, the longest serving Independent Member (or, in case of equal serving time, the oldest) will carry out the functions of the Chair.

Attendance

34. For the cases where a member from a national authority or central bank of issue is prevented from attending a meeting of the CCPSC, she or he may appoint, in writing, a permanent alternate from her/his authority or central bank who can replace her or him at that meeting.

Summary of conclusions

35. ESMA staff shall prepare a summary of conclusions of each meeting of the CCPSC setting out the decisions taken. The summary of conclusions shall record the outcome of any vote on the adoption of draft decisions to be submitted to the Board of Supervisors. The draft summary of conclusions shall be forwarded to Members within two weeks of the meeting for approval.

Decision making procedures

Quorum

36. In order for the CCPSC to vote, there shall be a quorum of two-thirds of the Voting Members.

Voting modalities

37. The CCPSC shall take its decisions by a simple majority of its voting members.
38. Each Voting Member shall have one vote. A simple majority is achieved where more Voting Members vote in favour of a proposal than vote against it. Abstentions will not be counted as approvals or as objections and will not be considered when calculating the number of votes cast.
39. In case of a tie vote, the Chair shall have the casting vote.
40. ESMA staff shall maintain a record of votes taken on the adoption of draft decisions.

Written procedure

41. Where appropriate, decisions may be taken by written procedure. In principle, all Voting Members should express their approval (I agree), objection (I disagree) or express abstention (I abstain).
42. A proposal from the Chair of the CCPSC shall be circulated to the CCPSC:
- (a) stating the time and date by which votes must be cast;
 - (b) stating whether a failure to vote in accordance with the principle detailed under paragraph 41 will be considered a vote for the proposal;
 - (c) where, exceptionally, the period for casting votes is less than 10 calendar days, giving the reason for the short period;
 - (d) describing the key issues;
 - (e) providing any other material considered necessary for making the decision that has not previously been forwarded to the CCPSC.
43. Votes on decisions being taken by written procedure shall be in written form.
44. Where the Chair has informed the CCPSC that a failure to vote will be considered a vote for a proposal, if within 48 hours two or more Voting Members request in writing to the Chair that a failure to vote should not be considered a vote for the proposal then:
- (a) a failure to vote shall not be considered a vote for the proposal;
 - (b) two-thirds of the Voting Members shall be required to express objection, approval or abstention;

(c) the time and date by which votes must be cast shall if necessary be extended to ensure a minimum of 24 hours for Voting Members to vote on the revised basis; and

(d) the Chair shall notify the CCPSC accordingly.

45. The result of a written procedure shall be notified without delay to the CCPSC.

Conflicts of Interest

46. The Chair and Independent Members are subject to the conflicts of interest policy for ESMA Staff and, in accordance with Article 24a(6) of EMIR, act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body.

47. The other Members are subject to the Policy on Independence and Decision-Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff (ESMA22-328-402).

48. Members and observers of the CCPSC shall confirm at the beginning of each CCPSC meeting the absence of any conflict of interest. The existence of any interest which might be considered prejudicial to their independence in relation to any items on the agenda shall be declared completely and accurately prior to the meeting. The Member shall abstain from participating in the discussion of and voting upon such points.

Submission of approved draft decisions to the Board of Supervisors

49. The CCPSC shall submit to the Board of Supervisors draft decisions and draft opinions in accordance with Article 4 (20) and Article 4 (21) of the Rules of Procedure of the Board of Supervisors (ESMA22-1669215091-5867). Any other documents (including, for instance, reports on EU-wide CCP stress tests or peer reviews, and draft recommendations or opinions addressing inconsistencies in the application of EMIR to CCPs among competent authorities and colleges) to be submitted to the Board of Supervisors should be circulated at least 10 days in advance of meetings.

Sharing Information with the third-country CCP college

50. When the CCPSC convenes in relation to third-country CCPs, the Chair of the CCPSC shall share with the third-country CCP College the agendas of the CCP Supervisory Committee meetings that relate to third-country CCPs before these meetings take place, the minutes of its meetings relating to third country CCPs, the complete draft decisions relating to third-country CCPs it submits to the Board of Supervisors and the final decisions adopted by the Board of Supervisors, as well as the applications for recognition from a CCP established in a third-country.

Financial stability

51. Where the CCPSC identifies any regulatory or supervisory development in third countries declared equivalent that may impact the financial stability of the Union or of one of its Member States, it shall immediately inform the ESMA Chair.

52. Following a timely decision by the Board of Supervisors, ESMA will then inform the European Parliament, the Council of the European Union, the European Commission and the members of the ESMA third-country CCP College without delay. All such information shall be treated confidentially.

Confidentiality

53. All members of the CCPSC are subject to the obligation of professional secrecy as per Article 83 of EMIR and in Article 73 of CCPRRR.

Review

54. The Terms of Reference will be reviewed at least every two years by the Board of Supervisors, following a proposal of the CCPSC.

Annex - Delegations from the CCPSC to the Chair

- ESMA91-1525761655-3752 on adoption of draft decisions pursuant to Article 49a of EMIR assessing that a proposed change to a CCP's models and parameters is not significant, and the preparation of the respective draft validation decisions for adoption by the Board of Supervisors.