

Terms of Reference

ESMA CCP Resolution Committee (CCP ResCo)

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, 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. ESMA has, in order to fulfil this mission, established its 2023-2028 Strategy¹ 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. 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 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 2021/23 ('CCPRRR'). In particular, CCPRRR entrusts ESMA with several tasks in respect to the recovery and resolution of Central Counterparties (CCPs).
5. In order to fulfil its mission, and in line with CCPRRR, the Board of Supervisors has established the ESMA Resolution Committee (**CCP ResCo**) 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 2023 Procedures for ESMA groups (ESMA22-104-5119) set out the rules concerning ESMA Group's structure, governance and working methods, and apply to the CCP ResCo unless otherwise specified in CCPRRR and these Terms of Reference.

Tasks and responsibilities

6. The CCP ResCo contributes to ESMA's mission by preparing the decisions entrusted to ESMA in accordance 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 ResCo are defined primarily in Article 5(1) of the

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

CCPRRR. In particular, the CCP ResCo contributes to the strategic priorities and thematic drivers of the ESMA Strategy in the following ways :

- Fostering Effective Markets and Financial Stability and Enhancing protection of retail investors
 - The CCP ResCo 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 ResCo should be consulted by the CCP SC when the findings of relevant stress tests are being assessed.
 - The CCP ResCo 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 ResCo 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 ResCo:

- 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, recommendations or other convergence tools 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.

7. The CCP ResCo also serves to fulfil the following tasks:

- Completing a Single Rulebook for EU financial markets
 - The CCP ResCo 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 measures). The CCP ResCo 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 ResCo should, when undertaking its work on supervisory convergence, notify the CCP Policy Committee (CCP PC) when (and if) the CCP ResCo has identified a need for measures to be undertaken in relation to the single rule book and how the CCP ResCo is envisaging this work to be undertaken and how the CCP ResCo shall cooperate and be consulted by the CCP PC in undertaking the relevant work.
 - The CCP ResCo should contribute to the ESMA's Work Programme in the areas of the single rule book for resolution related measures.
8. In addition, the CCP ResCo will:
- contribute to the objective of simplification and burden reduction when developing its regulatory and convergence output and is expected to explain to the Board of Supervisors how this objective has been taken into account in the final outputs;
 - identify and recommend areas for burden reduction and simplification within its scope of work.
9. All of the above tasks shall be carried out bearing in mind 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

10. The CCP ResCo shall liaise and cooperate with other relevant groups reporting to the Board of Supervisors where its work is expected to interact with the functions of those of other groups, in particular the CCP PC, the CCP SC and the Markets Standing Committee.

11. For the purposes of CCPRRR, CCP ResCo 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.
12. The CCP ResCo should also discuss technical positions with a view to foster a coordinated approach, where possible, when ESMA and NRAs participate in international fora.
13. 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.
14. Where the CCP ResCo 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.

Powers

15. In line with ESMA product monitoring obligation under Articles 39 MiFIR and its product intervention powers under Articles 40 and 43 MiFIR, the CCP ResCo 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.

Composition

16. In accordance with Article 5(2) of CCPRRR, the CCP ResCo 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*”.

17. Furthermore, representatives of the European Commission, EBA and EIOPA shall be appointed as observers to the CCP ResCo.
18. 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 ResCo.
19. Each member and observer of the CCP ResCo 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.
20. A member of the CCP ResCo may, when a topic for discussion in the CCP ResCo so requires, be accompanied by an expert from its Authority for that part of the CCP ResCo meeting. The CCP ResCo member shall announce this intent to the Rapporteur in advance of the meeting.
21. The representatives and alternates of the members and observers shall have the necessary seniority and authority to speak and represent their authority.
22. 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.
23. The list of members and observers (and their appointed representatives) shall be managed and kept up to date by the Chair of the CCP ResCo. The list shall be shared with ESMA when amended and made public.
24. The Chair of the CCP ResCo may invite ad-hoc experts from ESRB and any of the members and observers of the CCP ResCo.
25. The Chair may invite individuals or representatives of financial institutions to specific non-confidential sessions of a CCP ResCo meeting where this would assist the work allocated to the CCP ResCo.
26. ESMA staff shall in accordance with Article 3(12) of CCPRRR publish the list of the resolution authorities and the contact authorities notified pursuant to Article 3(10) of CCPRRR.

Structure and governance

Chairperson(s) (Chair)

27. The Chair of the CCP ResCo shall be a senior manager of a National Resolution Authority of a CCP, or a Head of Department within ESMA (but outside the CCP Directorate), with the relevant experience and knowledge.
28. The Chair of the CCP ResCo will be appointed by the Board of Supervisors.
29. The term of the Chair's appointment will be for two years and can be renewed once, subject to derogations provided for in Procedures for ESMA Groups.
30. The Chair shall co-ordinate with the chairpersons of other ESMA Standing Committees in areas of common interest but falling outside the CCP ResCo's scope of action, such as recovery planning and early intervention measures.

Subgroups

31. The CCP ResCo may set up permanent working groups or temporary task forces or project team/drafting teams reporting to the CCP ResCo if required by the work and in line with the Procedures for ESMA groups.
32. No working group nor task force can generate further substructures other than ad hoc drafting or project teams.
33. Chairs of subgroups should liaise in areas of common interest (after informing the CCP ResCo's Chair) and coordinate as appropriate with each other.
34. Documents prepared by a subgroup reporting to CCP ResCo 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 CCP ResCo (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 WG members will be submitted to the CCP ResCo for endorsement without discussion (B-items) and will hence not be subject to discussion unless requested by at least one of CCP ResCo members or observers or ESMA staff. Items on the CCP ResCo agenda not coming from or discussed in the subgroups reporting to the CCP ResCo should generally be classified as A-items.

Working methods

Convening meetings

35. Meetings of the CCP ResCo 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.
36. CCP ResCo meetings will be directed by the Chair and supported by the ESMA staff.
37. The CCP ResCo shall meet on a regular basis as required in order to deliver ESMA's (multi-) annual work programme, and at least two times a year. Meetings of substructures will be organised as necessary to enable the CCP ResCo to fulfil its tasks.
38. The date and place of future meetings shall be set by the Chair of the CCP ResCo. 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.
39. The Chair decides on the agenda, taking into account any contribution by or request from members of the CCP ResCo. The agenda should be forwarded, accompanied by the relevant material for decision making, to the CCP ResCo at least five working days prior to a meeting.
40. Meetings of the CCP ResCo 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..

Attendance

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

Summary of conclusions

42. ESMA staff shall prepare a summary of conclusions of each meeting of the CCP ResCo. 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

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

Mediation

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

Market input

45. Where appropriate and necessary, the CCP ResCo may enter into a dialogue with the MSG and industry groups, to obtain input into its work.
46. To the extent necessary, CCP ResCo 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

47. The members and observers of the CCP ResCo are subject to the obligation of professional secrecy as per Article 73 of CCPRRR.
48. The Chair shall ensure that any guests or other ad hoc participants to the CCP ResCo has signed all relevant confidentiality agreements before participating to a meeting.

General Provisions

49. In accordance with Article 5(4) of the CCPRRR, in order to ensure structural separation between the CCP ResCo and other functions referred to in ESMAR the CCP ResCo is the forum exclusively competent with CCP resolution matters, and cannot be entrusted with any tasks related to any other functions referred to in the ESMAR

Review

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