

Terms of Reference for the CCP Supervisory Committee

1. ESMA achieves its mission to enhance investor protection and promoting stable and orderly financial markets through four activities: (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. According to Regulation (EU) No 1095/2010 of the European Parliament and Council (ESMA Regulation), ESMA shall act within the powers conferred by its establishing Regulation and among others within the scope of Regulation (EU) No 648/2012 (EMIR). In particular, EMIR¹ entrusts ESMA with several tasks with respect to the authorisation and the recognition of Central Counterparties (CCPs).
3. In order to fulfil its mission, and in line with EMIR, the Board of Supervisors establishes a CCP Supervisory Committee (CCPSC) pursuant to Article 41 of ESMA Regulation as a permanent internal committee. These Terms of Reference specify the responsibilities and functioning of this committee. The Procedures for ESMA groups (ESMA/2011/BS/236rev3), setting out the rules concerning ESMA Group's structure, governance and working methods, apply to the CCPSC unless otherwise specified in EMIR and these Terms of Reference.

1 Responsibilities

4. The responsibilities and tasks of the CCPSC are defined primarily in Article 24a of EMIR. In particular, the CCPSC contributes to ESMA's mission by:
 - (a) *Assessing Risks to Investors, Markets and Financial Stability:*
 - Addressing issues related to the consistent application of organisational, conduct of business and prudential requirements applicable to CCPs;
 - Initiating and coordinating EU-wide CCP stress testing exercises, covering authorised EU-CCPs and recognised Tier 2 CCPs;
 - Preparing, where necessary, draft recommendations to address any shortcomings in the resilience of one or more CCPs exposed by an EU-wide CCP stress testing exercise;
 - Monitoring the regulatory and supervisory developments in third countries for jurisdictions declared equivalent;

¹ As amended by Regulation 2019/2099 (EMIR 2.2) of the European Parliament and of the Council of 23 October 2019 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2019:322:FULL&from=EN>).

(b) Promoting Supervisory Convergence:

- Conducting annual peer review analyses of the supervisory activities of all competent authorities in relation to the authorisation and the supervision of EU-CCPs in line with ESMA's methodology on peer reviews;
- Preparing draft opinions with respect to draft decisions submitted by national competent authorities in relation to EU-CCPs in accordance with Article 23a(3) of EMIR;
- Promoting exchanges of information and discussion on relevant developments relating to EU-CCPs, including:
 - Relevant supervisory activities and decisions that have been adopted by the competent authorities regarding the authorisation and supervision of EU-CCPs;
 - Relevant market developments, including situations or events impacting or likely to impact the prudential or financial soundness or the resilience of authorised EU-CCPs or their clearing members;
 - The opinions and recommendations adopted by CCP colleges, in order to contribute to the consistent and coherent functioning of the colleges and foster the coherence of the application of EMIR among them;
- Requesting the Board of Supervisors to adopt guidelines, recommendations and opinions in order to address inconsistencies in the application of EMIR to CCPs among competent authorities and colleges and preparing draft recommendations, opinions or other supervisory convergence tools addressing such issues;
- Submitting opinions to the Board of Supervisors on draft regulatory standards and guidelines relating to the authorisation and supervision of CCPs; and
- Preparing draft decisions to be adopted by the Board of Supervisors on the validation of significant changes to CCP risk models pursuant to Article 49 of EMIR.

(c) Supervising Specific Financial Entities:

- Preparing draft decisions in relation to Third Country CCPs (TC-CCPs) with respect to:
 - Determination of whether an applicant TC-CCP is non systemically important (Tier 1 CCP) or systemically important (Tier 2 CCP) or of such substantial systemic importance that it should not be recognised;
 - Recognition of TC-CCPs or its withdrawal;
 - Supervision of Tier 2 CCPs.

2. Composition

5. In accordance with Article 24a(2) of EMIR, the CCPSC shall be composed of:

- (a) the Chair, who shall be voting;
- (b) two independent members, who shall be voting;
- (c) 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.

- (d) 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 in the context of discussions on the Union-wide assessments of the resilience of CCPs and on market developments impacting the resilience of 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.

6. The Chair may invite as observers to the meetings of the CCPSC, where appropriate and necessary, members of the CCP colleges.

7. ESMA staff shall maintain a list of the Members and Observers.

2.1 Chair and Independent Members

8. The Chair and the two Independent Members are appointed in accordance with Article 24a(5) of EMIR.

9. The term of office of the Chair and the Independent Members of the CCPSC is five years and may be extended once for another 5 years.

2.2 Nomination of representatives from competent authorities

10. Representatives from competent authorities shall have the necessary skills, knowledge and experience with regards to CCP supervision, including prudential supervisions and regulation.

11. 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 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.

2.3 Membership requests by central banks of issue.

12. Membership requests from central bank of issue shall be addressed to the Chair of the CCPSC at ESMA's headquarters. 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.
13. 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.
14. 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.

3. Consultations of relevant authorities

15. 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.
16. 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.
17. 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.

4. Meetings

Convening meetings

18. 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.
19. 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.
20. 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.
21. 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

22. For the cases a voting member from a national authority is prevented from attending a meeting of the CCPSC, she or he may appoint, in writing, a permanent alternate from its authority who can replace her or him at that meeting.

Summary of conclusions

23. 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.

5. Decision making procedures

Quorum

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

Voting modalities

25. The CCPSC shall take its decisions by a simple majority of its voting members.
26. 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.
27. In case of a tie vote, the Chair shall have the casting vote.
28. ESMA staff shall maintain a record of votes taken on the adoption of draft decisions.

Written procedure

29. 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).

30. 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 principles detailed under paragraph 26 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.
31. Votes on decisions being taken by written procedure shall be in written form.
32. 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.
33. The result of a written procedure shall be notified without delay to the CCPSC.

Conflicts of Interest

34. The Chair and Independent Members are subject to the conflicts of interest policy for ESMA Staff and, in accordance with Article 24(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.
35. 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 (ESMA/2014/MB/60).
36. 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

37. Where the CCPSC submits to the Board of Supervisors draft decisions in relation to TC-CCPs with respect to i) the determination of whether an applicant TC-CCP is non systemically important (Tier 1 CCP) or systemically important (Tier 2 CCP) or of such substantial systemic importance that it should not be recognised, ii) the recognition of a TC-CCPs, and its review or withdrawal,

and iii) the supervision of Tier 2 CCPs with respect to requirements relating to margins, liquidity risk controls, collateral, settlement and interoperability arrangements, it shall submit its draft decision to the Board of Supervisors at the latest 10 working days before any relevant deadline for ESMA to take that decision.

38. Where the CCPSC submits to the Board of Supervisors i) draft decisions in relation to TC-CCPs other than those referred in paragraph 37 above, and ii) draft opinions on NCAs' draft decisions on EU-CCPs, it shall submit its draft decision to the Board of Supervisors at the latest 3 working days before any relevant deadline for ESMA to take that decision.
39. Where the CCPSC submits to the Board of Supervisors draft decisions validating significant changes pursuant to Article 49 of EMIR, it shall submit its draft decision to the Board of Supervisors at the latest 3 working days before any relevant deadline for ESMA to take that decision. Where the CCPSC submits to the Board of Supervisors draft decisions denying the validation of significant changes pursuant to Article 49 of EMIR, it shall submit its draft decision to the Board of Supervisors at the latest 10 working days before any relevant deadline for ESMA to take that decision.
40. In accordance with the decision of the Board of Supervisors on its Rules of procedure (ESMA/2011/BS/1), 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.

6. Sharing Information with the third-country CCP college

41. 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.

7. Financial stability

42. 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.
43. 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.
44. The CCPSC will identify potential threats to the orderly functioning and integrity of financial/commodity markets and to the stability (of the whole or part) of the financial system of the European Union.

8. General Provisions

45. The CCPSC shall liaise and coordinate with other relevant ESMA groups reporting to the Board of Supervisors where its activities relate or are complementary to those of other groups.

46. 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.
47. In order to ensure the timely establishment of the CCPSC, pending the appointment of the first Chair of the CCPSC, the Board of Supervisors shall appoint a member (or alternate) of the Board of Supervisors, from an authority among the ones represented in the CCPSC, as acting Chair of the CCPSC, who shall be non-voting and facilitate the functioning of the CCPSC.

9. Review

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