



European Securities and  
Markets Authority

## **Methodology for Mandatory Peer Reviews in relation to CCPs' authorisation and supervision under EMIR**



## Introduction

1. The European Regulation No 648/2011<sup>1</sup> on OTC derivatives, central counterparties and trade repositories (EMIR), as amended by European Regulation No 2019/2099<sup>2</sup> (EMIR 2.2) requires ESMA to undertake, at least annually, a peer review analysis of the supervisory activities of all competent authorities in relation to the authorisation and supervision of CCPs in accordance with Article 30 of Regulation (EU) No 1095/2010<sup>3</sup>(ESMA Regulation).<sup>4</sup>
2. According to Article 30(1) of ESMA Regulation, ESMA shall develop methods to allow for an objective assessment and comparison between the competent authorities reviewed and for assessing the adequacy and effectiveness of NCAs' actions in response to the peer review findings.
3. In December 2016, the ESMA Board of Supervisors adopted a *Methodology for Mandatory Peer Reviews in relation to CCPs' authorisation and supervision under EMIR*, as published on 5 January 2017 (see ESMA71-1154262120-155), in order to provide a solid methodological background for peer reviews in relation to CCPs under EMIR (CCP mandatory peer reviews) allowing for objective assessments and balanced comparisons. This specific methodology was built on the pre-existing ESMA Review Panel Methodology (ESMA/2013/1709)<sup>5</sup> designed for peer reviews conducted by ESMA under Article 30 of ESMA Regulation, and reflects the experience of a first CCP mandatory peer review undertaken in 2016 in the context of EMIR.
4. In the meantime, while in July 2018 the ESMA Board of Supervisors adopted the *ESMA Peer Review Methodology* (ESMA42-111-4661) in replacement of the above-mentioned ESMA Review Panel Methodology, in December 2019 Regulation (EU) 2019/2175<sup>6</sup> (ESAs Review) significantly amended Article 30 of ESMA Regulation. The amendments affected both: the *ESMA Peer Review Methodology* and the *Methodology for Mandatory Peer Reviews in relation to CCPs' authorisation and supervision under EMIR* which needed to be amended accordingly.
5. This *Methodology for Mandatory Peer Reviews in relation to CCPs' authorisation and supervision under EMIR* replaces the version published on 5 January 2017. This revised version reflects the changes to the regulatory framework for peer reviews introduced in December 2019 with EMIR 2.2 and ESAs Review and is based on the ESMA Peer Review Methodology (ESMA42-111-4966).

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<sup>1</sup> OJ L 201, 27.07.2012, p.1

<sup>2</sup> OJ L 322, 12.12.2019, p.1

<sup>3</sup> OJ L 331 15.12.2010, p. 84

<sup>4</sup> Article 24a(7)(a) of EMIR

<sup>5</sup> It has to be noted that since the adoption of the ESMA Review Panel Methodology, the Review Panel has been transformed into the Supervisory Convergence Standing Committee, in line with ESMA's Strategic Orientation 2016-2020.

<sup>6</sup> OJ L 334 27.12.2010, p. 1

6. The need for a specific methodology for peer reviews in relation to CCPs' authorisation and supervision under EMIR (the "CCPs peer reviews"), besides the *ESMA Peer Review Methodology*, has been confirmed by the role assigned to the CCP Supervisory Committee, which is specific to such peer reviews. The specific methodology also caters for the other specificities of the CCPs peer reviews such as their omni-comprehensive focus, covering all competent authorities supervising CCPs, and their annual frequency, entailing a constrained timeline for its completion (within 12 months).
7. The Methodology is divided in 4 titles. The first title provides an overview of the peer review framework and process. The second title relates to the determination of topics for peer reviews. The third describes the peer review process. The fourth title relates to the framework for the follow-up to peer reviews.

## **Title I: Overview of CCP Mandatory Peer Review framework and process**

### **1 CCP Mandatory Peer Reviews**

8. According to Article 23a (1) of EMIR, ESMA shall fulfil a coordination role between competent authorities and across colleges with a view to building a common supervisory culture and consistent supervisory practices, ensuring uniform procedures and consistent approaches, and strengthening consistency in supervisory outcomes, especially with regard to supervisory areas which have a cross-border dimension or a possible cross-border impact.
9. In particular, according to Article 24a(7)(a) of EMIR the CCP Supervisory Committee (CCPSC)<sup>7</sup> shall, for the purpose of Article 23a(1) of this Regulation, carry out certain tasks entrusted to ESMA, including *inter alia* the task to conduct, at least annually, a peer review analysis of the supervisory activities of all competent authorities (NCAs) in relation to the authorisation and the supervision of CCPs (as designated under Article 22 of EMIR) in accordance with Article 30 of ESMA Regulation.
10. In line with Article 30 (3) of the ESMA Regulation, the peer review will cover:
  - (a) the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application of the legislative acts referred to in Article 1(2) [of the ESMA Regulation] and the capacity to respond to market developments;
  - (b) the effectiveness and the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted under

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<sup>7</sup> In NCAs only composition, excluding central banks of issue.

Articles 10 to 16 of the ESMA Regulation, and the extent to which the supervisory practice achieves the objectives set out in Union law;

- (c) the application of best practices developed by competent authorities whose adoption might be of benefit for other competent authorities;
- (d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative sanctions and the other administrative measures imposed against persons responsible where those provisions have not been complied with.

11. This Methodology applies only to CCP Mandatory Peer Review under EMIR and is without prejudice to the specific tasks of ESMA as established by EMIR and the ESMA Regulation.

## **2 The Peer Review Committee for CCP Mandatory Peer reviews**

12. According to Article 30(2) of ESMA Regulation, ESMA shall establish ad hoc peer review committees, which shall be composed of staff from ESMA and members of the competent authorities. The peer review committees shall be chaired by a member of ESMA staff. The Chairperson of ESMA, after consulting the Management Board and following an open call for participation, shall propose the chair and the members of a peer review committee which shall be approved by the Board of Supervisors. The proposal shall be deemed to be approved unless, within 10 days of the Chairperson proposing it, the Board of Supervisors adopts a decision to reject it.

13. However, as noted above, in accordance with Article 24a(7)(a) of EMIR the CCPSC is ultimately mandated to conduct the Peer Reviews in relation to CCPs' authorisation and supervision, which should cover all relevant competent authorities.

14. Building on the past experience with peer reviews under EMIR and considering that the focus of such peer reviews does not vary from one peer review to another, the CCPSC establishes by delegation (see annex 1) a Peer Review Committee (PRC) once for all peer reviews in relation to CCPs under EMIR. The PRC is composed of ESMA members in the CCPSC, namely the Chair and the two Independent Members of the CCPSC. It is chaired by the Chair of the CCPSC.

15. The PRC should submit its main deliverables (namely, the mandate, the peer review report and the follow-up report) to the CCPSC for validation before submission to the Board of Supervisors for approval.

16. A member of the dedicated ESMA staff (from the CCP Directorate) will in principle act as Rapporteur of the PRC. Besides the Rapporteur, other members of the ESMA dedicated

staff to the CCPSC with relevant expertise will participate in the work of the PRC and give support to the PRC.

## **Title II – The topics for CCP peer reviews**

### **3 Topic for a peer review**

17. The MB proposes a Peer Review Work Plan (PRWP) for the coming two years to the approval of the BoS.
18. Regarding CCP Mandatory peer reviews, each peer review will assess the overall functioning of CCP colleges and provide an in-depth analysis of a specific topic, which is determined within the scope set by EMIR, as described in the previous section. Given the technicality of the topics, the CCPSC will identify the topics for CCP peer reviews.
19. In practice, in line with paragraph 13 of the *ESMA Peer Review Methodology*, the CCPSC will propose to the MB the topics for the upcoming mandatory peer reviews to be included in the PRWP for the coming two years. The PRWP is adopted by the BoS.

### **4 Criteria to define the peer review topics**

20. When defining the topics for peer reviews, the CCPSC shall consider the following, non-exhaustive, list of criteria:
  - a) Scale of the potential issue and expected impact of the peer review in terms of supervisory convergence at the EU level, e.g. relevance from a cross-border perspective, areas with potential differences in practices/understanding of the EU regulatory framework;
  - b) Adequacy of the peer review as a supervisory convergence tool to address the issue;
  - c) Timeliness of the peer review, e.g. previous and on-going ESMA work in the area, entry into application of relevant EU legislation.

## **Title III – The peer review process**

### **5 The mandate for a CCP mandatory peer review**

21. For each mandatory peer review, the PRC shall draft its mandate, i.e. a document specifying:
  - a. the assessment period;
  - b. the regulatory requirements and technical standards in the scope of the review;
  - c. the assessment specifications, including the supervisory expectations, and

- d. the proposed stages and timeline for the work.
22. The indication of requirements and standards to be reviewed shall take into account the objectives of the topic under review and the need to strengthen the consistency and equivalence of supervisory outcomes.
23. For the peer review assessment to be made in an objective, transparent and comparative manner, the assessment specifications shall make clear for each topic or assessment area which issues shall be key for its assessment and according to which objective criteria these key issues shall be assessed. They shall also specify the supervisory expectations set towards NCAs. Supervisory expectations will be used in the framework of the assessment leading to the application of the benchmarks defined in paragraph 61. The definition of those criteria shall take into account, as appropriate, the objectives of the topic under review, the need to strengthen the consistency of supervisory outcomes through a uniformly high level of supervisory practices and of resilience of CCPs, as a way to support the promotion of investor protection, orderly functioning of markets or financial stability.
24. The assessment specifications shall also indicate how to access the information on which the assessment will be conducted. Normally, the peer reviews will be based on a questionnaire to be addressed to all NCAs responsible for the authorisation and supervision of EU CCPs.
25. According to the scope of a peer review, the PRC may propose to target a defined subset of NCAs chosen on the basis of objective criteria, e.g. excluding NCAs supervising CCPs which are not relevant for the scope of the peer review.<sup>8</sup>
26. The PRC may also propose whether the peer review should include on-site visits of NCAs, where on-site visits are expected to enhance the quality of that peer review. For practical and resource reasons, the number of on-site visits needs to be restricted to a limited number of NCAs for a given peer review. The choice of NCAs to be visited during a given peer review shall be made on the basis of objective criteria.
27. In the selection of NCAs for on-site visits, the following objective criteria shall be considered at a minimum, taking into account available data and information:
- a) NCAs' relative significance as regards the topic under review (assessed through e.g. relative market size and level of activity);
  - b) Relevance of the topic under review at national level and from a cross-border perspective;
  - c) Report or indication of insufficient implementation, insufficient level of supervision by NCAs;

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<sup>8</sup> For instance, if the scope of the peer review relates to requirement on investment of cash margins, NCAs supervising CCPs holding cash margin in central bank accounts could be exempted to participate in the peer review.

- d) Failure to submit, or lack of clarity of, answers provided by NCAs to the peer review questionnaire.
28. The PRC shall endeavour to ensure that over several peer reviews all NCAs are subject to on-site visits and to maintain a balance of on-site visits between NCAs. With this in mind, ESMA staff shall maintain an overview of all on-site visits that have taken place including the number and timing of on-site visits to each NCA to be shared upon request with the MB and BoS for information. The PRC can adjust the selection of NCAs for on-site visits based on criteria set in the mandate in view of the answers provided by NCAs to the peer review questionnaire.
29. Moreover, in line with the ESMA peer review methodology, the PRC may also propose to engage with other stakeholders having an interest – direct or indirect – in the topic under review. These may include two categories of stakeholders:
- Category A** – authorities which although not designated as competent authorities under EMIR have been entrusted with some supervisory/oversight functions, either directly or by delegation (e.g. banking supervisors of CCPs with banking licence), as well as authorities that have a direct or indirect interest/responsibility in the topic under review (e.g. central banks with regards to access to central bank liquidity);
- Category B** – Other stakeholders (regulated or non-regulated), comprising a wide variety of entities, including – but not limited to- market participants (such the CCPs, their clearing members, and/or their direct or indirect clients), linked trading venues and post-trading infrastructures, law firms, investors' associations, academics, etc., when they are affected or have any type of interest/responsibility in the subject being examined in the context of a peer review.
30. The engagement with other stakeholders shall comply with the principles for Stakeholder Engagement in Mandatory Peer Reviews related to CCPs under EMIR, as specified in Annex 2.
31. The timeline proposed in the mandate will depend on the complexity of the topic and on the assessment specifications, but it should ensure that the peer review is completed within 12 months from its launch, including the following stages: approval of the peer review questionnaire, a period for the NCAs to answer to the questionnaire, a period for reviewing and following up to the NCAs' answers, a period for conducting on-site visits as applicable, a period for drafting the report and the period for its approval, until publication.
32. The PRC shall submit its draft mandate to the CCPSC for validation for further submission to the Management Board for consultation and then to the BoS for approval.

## 6 The questionnaire

33. In order to gather the reviewed NCAs' input to the assessment, the PRC drafts a concise questionnaire to be filled in by each participating NCA. The NCAs participating in the peer reviews are consulted on the questionnaire.
34. The questionnaire has to give guidance to NCAs on how to provide their answers in order to allow the assessments to be made in an objective, transparent and comparative manner. It must therefore clearly respect the assessment specifications specified in the mandate.
35. The questionnaire needs to be constructed in a way to achieve a full description of the NCAs' regulations, supervisory activities and practices regarding the topic under review, in a format that allows an objective comparison of all the national submissions. Questions should include reference to or quote the provisions of relevant legal provisions or ESMA measures. Where statistics are required, the parameters for the statistics should be consistent, transparent and clear.
36. The PRC shall submit its draft questionnaire to the CCPSC for validation before submission to the NCAs for their answer.
37. The answers to the questionnaire have to be supported by acceptable evidence in English. If an English version is not available, a short summary has to be provided with the relevant information in English.
38. NCAs should provide complete, coherent and high-quality responses, so that the peer review results in a meaningful outcome, which appropriately describes supervisory powers, activities and practices as well as enforcement provisions or actions, and allows to draw the appropriate conclusions from its findings. The description has to be factual to allow a frank self-assessment of the NCA's perceived weak or strong points. NCAs will provide their responses within the agreed deadline (minimum 4 weeks from the receipt of the questionnaire).
39. The PRC will follow up with the relevant NCAs where answers are incomplete or unclear. The NCAs shall timely provide any missing information or requested clarification (within two weeks from the receipt of the follow-up request).
40. Furthermore, the PRC may request follow-up bilateral conference calls or physical meetings with NCAs under review to discuss remaining unclear, inconsistent or incomplete answers.
41. If an NCA does not provide its full contribution within the deadline and if a coordinated intervention by the Rapporteur and the Chair of the PRC does not produce the required contribution, the situation is reported to the ESMA Chair for follow-up with that NCA. The lack of contributions by one or more NCAs must not however delay the PRC's work.

42. Upon request, the NCAs responses to the questionnaire can be shared with the CCPSC on ESMA's extranet.

## **7 On-site visits**

43. Where a peer review mandate includes on-site visits of certain NCAs and engagement with stakeholders, the PRC shall specify the areas or issues to be reviewed during the visits, determine the dates and timelines as well as the composition of the visiting team led by the Chair of the PRC.
44. A visiting team shall comprise a representative of the PRC members as well as supporting ESMA staff.
45. Visits shall be announced sufficiently in advance and prepared, involving the NCAs, on the basis of an agenda, list of topics for discussion, request for supporting evidence and documentation to be answered in advance of the visit. Visits are expected to last from one to a maximum of three days.
46. When the PRC adjusted the selection of NCAs for on-site visits identified in the mandate of a peer review in view of the answers provided by NCAs to the peer review questionnaire, the revised list of the NCAs which will be subject to on-site visits will be sent to the MB and BoS for information.
47. Some of the tools that can be used in on-site visits include, but are not limited to, interviews with NCAs' staff, the demonstration of work carried out, and access to supervisory files. If the NCA so requires, such supervisory files are anonymised.
48. Concerning the engagement with stakeholders, the NCAs shall provide assistance to the visiting team to identify the relevant stakeholders and set the bilateral interview/meetings for engagement. NCAs can, but do not have to, attend the bilateral interview/meetings for engagement.
49. At the end of the on-site visit, the visiting team shall produce a short report (about/no more than 10 pages) summarising the relevant findings to be reflected in the peer review report.
50. Upon request, on-site visits reports can be shared with the CCPSC on ESMA's extranet.

## **8 The Peer Review Report**

51. The PRC shall prepare a draft peer review report (about/no more than 50 pages), based on its analysis of the replies to the questionnaire and, where relevant, on the findings from the on-site visits and engagement with stakeholders.
52. Once it has received the responses by NCAs to the questionnaire, the PRC shall start to analyse them with a view to drafting its report. The assessment is not a box-ticking

exercise. It requires in-depth understanding of the national submissions and individual as well as collective analysis. This can only be achieved through an ongoing dialogue between the PRC and the NCAs, during which the PRC may ask for clarifications or for additional evidence. As foreseen by Article 30 of the ESMA Regulation, existing information and evaluations already made with regard to an NCA under review have to be taken into account.

53. All NCAs shall be assessed jointly and simultaneously according to the same criteria, in order to minimise the risk of uneven or biased results. The transparency, objectivity, accuracy and analytic quality of the work are essential to its effectiveness and credibility. The assessment must relate to the key issues defined in the mandate, on the basis of the assessment specifications defined in the mandate.
54. The report has to cover all the issues falling under the chosen topic as defined by the mandate and, at least, the elements detailed in Article 30 (3) of the Regulation, as referred to above in section 2, paragraph 10. In addition, the peer review will also assess the overall functioning of CCP colleges.
55. The Report will:
  - (a) signal the extent to which competent authorities achieve convergence in supervisory practices and apply specific supervisory provisions;
  - (b) include an assessment of the level of convergence achieved and an indication for each NCA of the level at which it meets expectations within the framework set by EU legislation and level 3 measures on a topic by topic basis<sup>9</sup>;
  - (c) express views on specific problems encountered by individual NCAs and signal inconsistencies, differences in interpretation, or general problems in the implementation or potential breaches of Union law, guidelines, recommendations, opinions or Q&As and identify the reasons;
  - (d) explain and indicate the measures that are deemed appropriate, proportionate and necessary including, where applicable, recommendations that work should be undertaken to amend a specific provision or practice that raises significant problems in relation to the operation of the Single Market or to clarify provisions which are interpreted differently. Measures may be adopted in the form of guidelines or recommendations pursuant to Article 16 and opinions pursuant to Article 29(1)(a) for serious issues;

(e) clearly identify the findings and recommendations that will be submitted to the follow-up as provided for in Title IV.

(f) describe possible good practices developed by some NCAs, which might be of benefit for other NCAs to adopt.

56. With reference to point (f) above, good practices shall describe regulatory or supervisory practices that have been elaborated by one or more NCAs and which are considered to be particularly effective, well targeted, or broadly applied. In no way are good practices intended to disqualify other practices, or forms of implementation, that may be more suitable for a specific NCA. Good practices do not have any normative or binding character, and the “comply or explain” procedure does not apply to them. Nor are they ESMA guidelines or recommendations, although they may serve as the basis for developing such guidelines or recommendations under article 16 of ESMA Regulation.

57. The review report shall include an executive summary and clearly set out its conclusions on each of the points listed above, including findings and recommendations subject to a follow-up.

58. The report must clearly state the assessment period and the start and end date of the information gathering as well as the relevant periods of data collection if appropriate. It must be as accurate and up-to-date as materially possible, taking into account all known developments up to its submission to the MB for consultation.

59. NCAs should have sufficient time for accuracy checks, before the report is finalised.

60. As follows from the ESMA Regulation, a peer review may lead to a variety of results, such as:

- Identification of existing good practices,
- Findings of incomplete implementation of non-binding “soft” law,
- Findings that may lead ESMA to issue guidelines or recommendations pursuant to Article 16 of ESMA Regulation and opinions pursuant to point (a) of Article 29 (1) of ESMA Regulation,
- Findings of potential breaches of Union Law, to be dealt with according to the provisions of the ESMA Regulation,
- Findings that may lead ESMA to recommend changes to Union Law.

61. The report shall include the result of the assessment of the supervisory expectations. For this purpose, the PRC applies the following benchmarks to NCAs:

- o Fully meeting expectations: An NCA is considered fully meeting expectations when all supervisory expectations are met without any significant deficiencies. There may be instances where an NCA can demonstrate that the supervisory expectations have been fulfilled by other means.

- Largely meeting expectations: An NCA is considered largely meeting expectations whenever only minor deficiencies are observed which do not raise any concerns about the overall effectiveness of the NCA. The assessment “largely meeting expectations” can be used when the NCA does not meet all supervisory expectations, but the overall effectiveness is sufficiently good, and no material risks are left unaddressed.
- Partially meeting expectations: An NCA is considered partially meeting expectations whenever there are severe deficiencies affecting the effectiveness of the NCA, and some material risks are left unaddressed.
- Not meeting expectations: An NCA will be considered not meeting expectations whenever supervisory expectation are not met at all or to an important degree, resulting in a significant deficiency in the overall effectiveness of the NCA, and material risks are left unaddressed.

The role of the benchmarks is to ensure consistency among the assessments.

## **9 Approval of the Peer Review Report and publication**

62. The PRC submits its draft Peer Review Report to the CCPSC for validation for further submission to the BoS for approval. The PRC also consults the MB on the draft report on matters of supervisory convergence before the draft report is submitted for approval to the BoS.
63. The consultation of the MB aims to maintain consistency with other peer review reports and ensuring a level playing field, assessing in particular whether the methodology has been applied in the same manner.
64. The peer review report is submitted for approval to the BoS in written procedure. However, following the request of at least three members of the BoS, or at its own initiative, the ESMA Chair may decide, in order to foster supervisory convergence, to submit the peer review report for discussion at a BoS meeting.
65. The BoS decides on publication of the results of the peer review, upon the proposal by the CCPSC.
66. A peer review report, including the resulting reasoned main findings, shall be, as a rule, published on ESMA’s website in full on a named basis, subject to the agreement of the NCA concerned. An NCA that does not give its agreement to publication is expected to state the reasons for this to ESMA. The version of the peer review report to be submitted for publication shall exclude confidential supervisory information as well as any sensitive information relating to individual entities or information that could lead to the identification of individual entities or that would pose a risk to the stability of the financial system.
67. Where on-site visit reports are summarised in the peer review report, an on-site visited NCA may submit a written statement to be annexed to the peer review report before its publication, subject to review by the ESMA Chair following a bilateral dialogue with the

NCA. This review aims at ensuring factual correctness and consistency of the statement with the peer review report as well as preserving the objectivity of the assessment while maintaining the intention of the statement of the NCA.

68. Good practices, identified through peer reviews, in line with paragraph 10(c), are also to be made publicly available through the peer review report.
69. The individual responses to the assessment questionnaire and the on-site visit reports are not published.
70. The main findings and recommendations of the peer review are presented to the SMSG.

## **10 Information to the European Parliament, the Council and the European Commission**

71. When the main findings approved by the BoS in the report differ from those identified by the CCPSC, the ESMA Chair transmits the CCPSC findings to the European Parliament, to the Council and to the Commission, on a confidential basis.

### **Title IV – Framework for the follow-up to peer reviews**

#### **11 Timeframe of the follow-up**

72. The CCPSC will ensure that the conclusions are followed by appropriate actions, as specified in the report including a survey on the adoption of good practices identified in the peer review report. The MB should be kept updated by ESMA staff on follow-up actions that the CCPSC takes and that are relevant from a supervisory convergence perspective.
73. ESMA, including the CCPSC, shall stand ready, if requested and as appropriate, to assist NCAs in correcting deficiencies and in achieving better convergence.
74. In case of a lack of remedial actions by participating NCAs, the issue can be reported by the Chair of the CCPSC to the MB with a request to recommend to the BoS to launch a discretionary Peer Review of the NCAs where remedial actions are lacking, under the ESMA Peer Review Methodology.
75. Without prejudice to other actions, whenever the assessment of an NCA detects serious deficiencies the Chair of the CCPSC may send individual letters to the relevant NCA pointing out the deficiency(ies) as reflected in the findings of the peer review report, in order to check on progress made and to report to the BoS. NCAs will report on the actions taken further to the findings of the peer review and explain the underlying reasons in case remedial action has not yet been put in place. Would such action become necessary, and before reporting to the BoS, the CCPSC will be consulted and the MB informed on whether

satisfactory progress towards convergence can be achieved through the action taken by the NCAs to correct the deficiency(ies) and on the proposed way forward.

76. After two years from the publication of the peer review report, the PRC shall undertake a follow up review focusing on the findings and recommendations subject to follow up as identified in the peer review report.

## **12 The follow-up process**

77. The Chair of the CCPSC will address an individual letter to the relevant NCAs pointing out the relevant findings and recommendations in the peer review report addressed to them. The NCA is requested to provide a status update on the work performed to address the findings and recommendations (under article 16 of ESMAR or not) providing supporting evidence. The letter indicates the deadline for the NCA's response.
78. A focused on-site visit may be performed to those NCAs with serious findings subject to the follow-up. Where applicable, any further engagement with stakeholders should take place during the on-site visit in line with the Principles defined in Annex 2.
79. Following analysis of responses and/or on-site visits when performed, a follow-up report is prepared by the PRC. NCAs concerned have sufficient time to perform an accuracy check. The report includes an assessment of the adequacy and effectiveness of the actions undertaken by the NCAs subject to the peer review in response to the follow up measures of the peer review report and suggests suitable responses in case of possible delays in implementation.

## **13 The approval of the follow-up report**

80. The follow-up report is submitted to the CCPSC for validation and submitted for consultation to the MB. The consultation of the MB aims at maintaining consistency with other follow-up reports, and assessing, in particular, whether the methodology has been applied in the same manner.
81. The follow-up report is submitted for approval to the BoS in written procedure. However, following the objection of at least three members of the BoS, or at its own initiative, the ESMA Chair may decide, in order to foster supervisory convergence, to submit the peer review report for discussion at a BoS meeting.
82. The follow-up report adopted by the BoS is published.

**Annex 1 :****DECISION OF THE CCP SUPERVISORY COMMITTEE****on delegation to members of the CCP Supervisory Committee of the Peer Reviews in relation to CCPs' authorisation and supervision under EMIR****The CCP Supervisory Committee**

**Having regard** to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC<sup>10</sup> (the "ESMA Regulation" and "ESMA"),

**Having regard** to 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<sup>11</sup> ("EMIR"), and in particular Article 24(a)(7(a) thereof,

**Having regard** to the Methodology for Mandatory Peer Reviews in relation to CCPs' authorisation and supervision under EMIR adopted by the Board of Supervisors of ESMA on 28 May 2020 (the **Methodology**"),

**Whereas:**

1. The amendments introduced to EMIR by Regulation No 2019/2099<sup>12</sup> include, among other changes, the establishment of a CCP Supervisory Committee as an internal committee of ESMA. The CCP Supervisory Committee has been granted, among other tasks, the task to conduct, at least annually, a peer review analysis of the supervisory activities of all competent authorities in relation to the authorisation and the supervision of CCPs in accordance with Article 30 of ESMA Regulation.

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<sup>10</sup> OJ L 331, 15.12.2010, p. 84.

<sup>11</sup> OJ L 201, 27.7.2012, p. 1–59

<sup>12</sup> OJ L 322, 12.12.2019, p.1

2. However, in order to ensure a timely, efficient and effective performance of the various tasks underpinning each peer review, as identified in the Methodology, the CCPSC considered to delegate such tasks to a subgroup composed of CCPSC members.
3. In order to strengthen its independence, the subgroup should be composed of ESMA staff.
4. The delegation should be exercised in accordance with the restrictions and conditions set out in this decision. The conditions should provide guidance for the exercise of the delegated tasks,

**Has adopted this decision:**

**Article 1 – Delegation of powers**

The CCP Supervisory Committee (the “CCPSC”) delegates to the Chair and the two independent members of the CCPSC (altogether, the “peer review committee” or “PRC”) the following tasks in relation to the conduct of annual peer reviews analysis of the supervisory activities of all competent authorities in relation to the authorisation and the supervision of CCP:

- (1) prepare the peer review mandate,
- (2) prepare the peer review questionnaire,
- (3) conduct the analysis of the answers to the peer review questionnaire,
- (4) where applicable, conduct on-site visits and engage with relevant shareholders,
- (5) prepare a peer review report based on the conducted analysis,
- (6) prepare a follow-up report after two years of the publication of the peer review report.

**Article 2 – Conditions for the delegation**

- (1) The tasks delegated under Article 1 are conferred on the PRC for an indeterminate period.
- (2) The CCPSC may request information in respect of the exercise of the delegated tasks.
- (3) The CCPSC can reconsider and revoke at any time the delegation of tasks established under this decision. The decision of revocation shall put an end to the delegation of tasks specified in this decision.

**Article 3 – Exercise of the delegation**

The PRC shall exercise the tasks delegated under this decision in accordance with the following conditions:

- (1) the PRC shall exercise the delegated tasks referred to in Article 1 in accordance with the Methodology;
- (2) the PRC shall take into account any guidance provided by the CCPSC in respect of the delegated tasks referred to in Article 1;
- (3) the PRC shall obtain the validation of the CCPSC on the mandate of each peer review before sending it to the BoS for final approval;
- (4) the PRC shall obtain the validation of the CCPSC on the questionnaire of each peer review;
- (5) the PRC shall obtain the validation of the CCPSC on each peer review report before sending it to the BoS for final approval;
- (6) the PRC shall obtain the validation of the CCPSC on each follow-up report before sending it to the BoS for final approval.

#### **Article 4 – Entry into force**

This decision enters into force immediately.

Done at Paris on 10 December 2020

[signed]

Klaus Löber  
Chair  
For the CCPSC

## **Annex 2 – Principles for Stakeholder Engagement in peer reviews**

### **Principle 1 – Stakeholder interaction needs to be reasoned and its usefulness in a given peer review is a matter for the Board of Supervisors to decide upon**

1. The usefulness of engaging with stakeholders will be considered when preparing the assessment specifications for a peer review, and if such interaction is deemed desirable, it will be included in the assessment specifications, highlighting the line of reasoning, the expected benefits and the type of stakeholders targeted. As the assessment specifications of peer reviews are to be adopted by the BoS, so will any stakeholder interaction.
2. If the need to engage with stakeholders emerges at a later stage of a peer review specific approval of the BoS needs to be granted before any interaction with stakeholders can be organised.
3. Depending on the subject-matter under review the purpose of stakeholder visits could be:
  - to make sure that all relevant parties having some supervisory function on the topic under review are engaged with;
  - to obtain information as regards a specific peer review topic under way, (beyond what is provided by the NCAs to ESMA/the AG under Article 35 of the Regulation), for the purposes of better understanding the supervisory practices adopted by the relevant NCA in relation to the matter under review;
  - to make use of the practical experience of stakeholders, gathering information about the market or the subject under scrutiny, especially as regards cross-border activities;
  - to complement the views provided by NCAs in their answers to the peer review questionnaire; and
  - to identify good practices or points of attention as perceived by the market.

### **Principle 2 – NCAs must permit engagement with category A stakeholders, but a discretion remains as regards engagement with category B stakeholders**

4. If stakeholder engagement in the context of a specific peer review is approved in principle by the BoS, NCAs would not be permitted to veto engagement with *category A* stakeholders, whose tasks are closer to NCAs. NCAs would, however, retain discretion to refuse to permit engagement with *category B* stakeholders, such as financial market participants.

5. As regards the second category of stakeholders, such a refusal should be explained in broad terms (e.g. enforcement case underway at some firms, lack of representativeness of proposed stakeholders), and conveyed for information to the BoS.

### **Principle 3 – Stakeholder meetings are organised in liaison with NCAs**

6. Selecting stakeholders is a joint effort of the PRC and NCAs concerned. While the PRC establishes criteria for selecting stakeholders that will be applied consistently throughout the review, the NCAs are best placed to set up a list of stakeholders meeting those criteria. Based on this list, and on the availability of stakeholders, the PRC will then finalise the shortlist of stakeholders with whom to interact.
7. NCAs will arrange the meetings with stakeholders and can, but do not have to, be present at the meetings with the PRC. The meeting can be arranged either at the NCAs' premises or, if deemed easier for the NCA and suitable for the stakeholder, at the premises of the stakeholders. The NCA can also, but does not have to, be present whenever there are contacts with the stakeholders via conference calls, video conferences and comparable means.
8. Last, the nature of the visit and interaction needs to be clarified at the outset. The information to be sought should be related to market intelligence and general information, and should not cover specific client files nor disputes/(pre)litigation between firms and NCAs, nor files/data related to the NCAs' exercise of their supervisory tasks towards visited supervised stakeholders.

### **Principle 4 – Confidentiality**

9. The content and type of information exchanged with stakeholders will vary from one peer review to another.
10. Any communication and interaction with the PRC must be considered confidential and must not violate the rules on professional secrecy in national legislation.

### **Principle 5 – Published peer review reports do not contain stakeholders' names**

11. The outcome of stakeholder engagement will be reflected in the peer review report, without necessarily requiring a specific section. Whenever reference is made to stakeholders' views, this should be made clear.
12. However, as the information that stakeholders may provide is relevant as one among many contributions to the peer review reports, stakeholders' names will be redacted before the report is published.