



European Securities and  
Markets Authority

# Final Report

**Guidelines on common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR**





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## Executive Summary

### Background

Article 21(1) of Regulation (EU) No. 648/2012 ('EMIR') sets out an obligation for the national competent authorities to review the arrangements, strategies, processes and mechanisms implemented by the central counterparties and to evaluate risks central counterparties are or might be exposed to. Frequency and depth of such review and evaluation are to be established by the competent authorities by taking into account certain criteria provided for in Article 21(3) of EMIR.

In order to ensure consistency in the format, frequency and depth of the review carried out by the national competent authorities, ESMA is mandated in Article 21(6) of EMIR to issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 ('ESMA Regulation') to specify further the common procedures and methodologies for the supervisory review and evaluation process.

These draft guidelines aim at clarifying the common procedures and methodologies for the supervisory review and evaluation process of CCPs by competent authorities, in a manner that is appropriate to the size, structure and internal organisation of CCPs, and the nature, scope and complexity of their activities.

### Public Consultation

A public consultation seeking views from all interested stakeholders on these draft guidelines was held from 23 October 2020 to 16 November 2020.

ESMA received a total of 3 responses to the consultation paper, 2 of which were marked as confidential by their submitters.

### Content of the Final Report

Sections 1 provides the definitions and abbreviations used in the Final Report, while Section 2 contains information on the background and mandate. Section 3 contains the proposed guidelines on common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR as well as the results of the public consultation.

Annex I provides the proposed Guidelines as they would be published, and Annex II a Cost versus Benefit analysis.

### Next Steps

The Guidelines in Annex I will be translated in the official EU languages and published on ESMA's website. The publication of the translations in all official languages of the EU will trigger a two-month period during which national competent authorities must notify ESMA whether they comply or intend to comply with the Guidelines.

# 1 Definitions and Abbreviations

1. Unless otherwise specified, the terms used in this Final Report have the same meaning as in EMIR and the RTS 153/2013.

2. In addition, the following terms apply:

|                     |  |
|---------------------|--|
| college             | a college established pursuant to Article 18 of EMIR   |
| competent authority | an authority designated under Article 22 of EMIR   |
| EC                  | European Commission  |
| EMIR                | Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories <sup>1</sup>  |
| ESMA Regulation     | 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>2</sup> |
| RTS 153/2013        | Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 on requirements for central counterparties <sup>3</sup>   |
| RTS 152/2013        | Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 on capital requirements for central counterparties <sup>4</sup>   |

3. The following abbreviations are used in this Final Report:

|      |   |
|------|---|
| ESFS | European System of Financial Supervision  |
| ESMA | European Securities and Markets Authority |
| EU   | European Union                            |

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

<sup>2</sup> OJ L 331, 15.12.2010, p. 84

<sup>3</sup> OJ L 52, 23.2.2013, p. 41

<sup>4</sup> OJ L 52, 23.2.2013, p. 37



## 2 Background and Mandate

4. ESMA is mandated to foster sound and effective supervision and to drive supervisory convergence across the EU under its founding regulation (ESMA Regulation).
5. Article 21(6) of EMIR addresses the consistency of supervisory reviews and evaluation processes, mandating ESMA to draw up guidelines for competent authorities to specify, in a manner that is appropriate to the size, structure and internal organisation of CCPs, and the nature, scope and complexity of their activities, the common procedures and methodologies for the supervisory review and evaluation process.
6. As such, the mandate covers common procedures and methodologies for the review of arrangements, strategies, processes and mechanisms implemented by CCPs and for the evaluation of risks, including all requirements on CCPs laid down in EMIR to address financial, organisational, operational and prudential risks. Having that in mind, it is expected that the guidelines should particularly cover amongst other the review and evaluation of capital requirements (Article 16 of EMIR), organisational requirements (Articles 26 to 33 of EMIR), business continuity (Articles 34 and 35 of EMIR), conduct of business (Articles 36 to 39 of EMIR), prudential requirements (Articles 40 to 50 of EMIR) and interoperability arrangements (Articles 51 to 54 of EMIR).
7. Furthermore in accordance with Article 16(1) of ESMA Regulation, ESMA issues guidelines addressed to competent authorities, with a view to establishing consistent, efficient and effective supervisory practices and ensuring there is common, uniform and consistent application of EU law. Based on this ESMA introduces, to complement the guidelines taken in accordance with Article 21(6) of EMIR, a guideline on reporting to the college to ensure that the reporting of the result of the annual review be provided in a harmonised way.
8. ESMA, via a public consultation, sought input and views of the stakeholders on each article of these draft guidelines: (i) the guiding principles, (ii) the scope, depth, format and frequency of the reviews and evaluations, and (iii) the information sources and the results of the supervisory review.
9. These guidelines will be adopted in order to guide competent authorities by further specifying the common procedures and methodologies and as such will not envisage additional reporting or disclosure requirements on the part of CCPs. This is without prejudice to the rights of the competent authorities to request information or documents as part of their supervisory mandate, including for the fulfilment of their tasks under Article 21 of EMIR.
10. The observable effect of adoption of the guidelines should be that CCPs with similar size, systemic importance, nature, scale, complexity of activities and interconnectedness are reviewed and evaluated by competent authorities consistently.
11. The aim of these guidelines is to harmonise the reviews and evaluations of CCPs as far as possible, but not to impose very restrictive and granular procedures and methodologies, as this would not be seen as in line with EMIR mandating the issuing of guidelines rather than of binding technical standards.
12. Competent authorities should, however, apply these guidelines in a way that will not compromise the intended harmonisation and convergence, particularly ensuring that higher supervisory standards are implemented across the EU. Additional procedures or methodologies employed by competent authorities should not compromise the harmonised framework as provided in these guidelines. These additional procedures and



methodologies should satisfy the requirements of high supervisory quality and hinder regulatory arbitrage.

### **3 Common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR**

#### **3.1 ESMA's Mandate**

13. Article 21(6) of EMIR on review and evaluation describes ESMA's mandate:

*By 2 January 2021, in order to ensure consistency in the format, frequency and depth of the review carried out by the national competent authorities in accordance with this Article, ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to specify further, in a manner that is appropriate to the size, the structure and the internal organisation of CCPs and the nature, scope and complexity of their activities, the common procedures and methodologies for the supervisory review and evaluation process referred to in paragraphs 1 and 2 and in the first subparagraph of paragraph 3 of this Article.*

14. It is therefore ESMA's understanding that the scope of these guidelines consists in advising competent authorities on what they should do when reviewing and evaluating a CCP, namely the procedures, as well as how they should perform it, namely the methodologies. Additionally as explained in paragraph 7, ESMA introduces a guideline on reporting to the college in accordance with Article 16(1) of ESMA Regulation, which states that 'The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines addressed to all competent authorities or all financial market participants and issue recommendations to one or more competent authorities or to one or more financial market participants.'

#### **3.2 Guiding Principle**

15. These guidelines aim at specifying, with respect to their supervisory review and evaluation process for CCPs, what competent authorities should do and how they should do it - respectively the common procedures and methodologies. Even if they do not aim at specifying which specific information should be provided to the college by the competent authority, ESMA expects that the scope and the structure of the report to the college could mirror those of the review, even though the report provided to the college is expected to be less granular than the review itself.

16. The objective of the guidelines is that competent authorities use a set of harmonised procedures and a methodology to assess CCPs across the EU consistently, especially with regard to the format, frequency and depth of review.



17. ESMA sought agreement with the guiding principle of these guidelines in its public consultation, and, should respondents disagree, asked to provide a detailed view of what the guiding principle of these guidelines should be.
18. All respondents agreed that more consistency and harmonisation in format, frequency and depth of supervisory reviews by national competent authorities is a fair and important objective and welcomed the aim for these reviews to be applied “ensuring that higher supervisory standards are implemented across the EU”.

### **3.3 Common Procedures for Supervisory Review and Evaluation Process**

#### **3.3.1 Scope of review and evaluation**

Guideline 1: The scope of the review and evaluation covers all requirements on CCPs laid down in EMIR and its supplementing regulatory technical standards (RTS 152/2013 and 153/2013 - collectively CCP RTS). The scope of risks to be evaluated shall encompass all risks CCPs are or might be exposed to, including but not limited to financial and operational risks.

19. The detailed list of CCP requirements with their respective EMIR provisions and CCP RTS corresponding supplementing articles forms the Annex I of the Guidelines. They include capital requirements, organisational requirements, conduct of business requirements, prudential requirements, requirements for the calculation of hypothetical capital and for its associated reporting and interoperability arrangements requirements.
20. ESMA publicly consulted on the description of the scope of the review and evaluation as detailed in the proposed Guideline 1.
21. Most respondents expressed their support with the proposed scope of review and evaluation. One respondent however qualified their answer: while they agreed with Guideline 1 from a legal perspective, they also advocated that the competent authorities should have enough flexibility to also define the scope of the annual review, in addition to its depth and granularity.
22. In light of the Article 21(1) and 21(2) of EMIR however, ESMA’s view is that the scope of the review and evaluation are already defined and are not part of the elements subject to proportionality in order to be appropriate to the characteristics of the CCP. Instead this proportionality is achieved mainly via the modulation of the depth of the review of each requirement, as described in Guidelines 3 and 4.

#### **3.3.2 Format and Depth of review and evaluation**

23. The depth of the review and evaluation refers to the level of detail of the analysis, granularity of information, number and precision of evidence to be collected, and information to be taken into account by the competent authorities when performing their review and evaluation of the CCPs.

24. The depth of the review should be appropriate to the following criteria: (a) size, (b) structure and the internal organisation of CCPs and (c) the nature, scope and complexity of their activities.
25. In relation to those criteria, in order to estimate the depth of the review appropriate to each CCP, ESMA favours the use of a combination of qualitative risk-based indicators, whose list includes but is not limited to:
  - The range of clearing services / segments offered (e.g. series linked to clearing, geographical breadth);
  - The range of asset classes cleared;
  - The range of currencies cleared;
  - The different options available to access the CCP's clearing services (including different memberships);
  - The corporate structure of the group to which the CCP belongs including whether the CCP belongs to the same group as other financial market infrastructures;
  - Level of interconnectedness through the number of interoperability arrangements or other links with financial markets infrastructures (TVs, CSDs, payment systems, etc.).
26. The approach retained by ESMA is to directly include the proportionality in the assessment of each obligation, which allows for a modulation as close as possible to the characteristics of each CCP.
27. ESMA expects that for a given number of requirements the assessment will be identical regardless of the size, structure, internal organisation of CCPs as well as the nature, scope and complexity of their activities, which is referred to as the 'core review'. Consequently, the notion of proportionality can only apply to certain requirements or sub-items of those requirements.
28. This multi-factor approach tailored to each requirement implies that ESMA has identified for each requirement a qualitative risk-based indicator that would make a difference in its fulfilment and potentially trigger an extended review of this specific requirement.
29. Practically, the embedding of the proportionality in the assessment of each requirement translates into the template provided in Annex II, detailing for each requirement on CCP:
  - What the core review consists of;
  - The factors that may warrant an extended or specific review of this specific requirement;
  - What the extended or specific review would consist of for this specific requirement.
30. As a result, there is for each requirement applicable to CCPs based on EMIR or its implementing acts a core review as well as an additional extended review conditioned to criteria of size, structure, internal organisation of CCPs as well as the nature, scope and complexity of their activities which are relevant for each specific requirement. Such approach achieves the aim of proportionality, as only those CCPs to whom objective and pre-established criteria apply will be subject to an extended review requirement per requirement; however this is without prejudice to the possibility that in exceptional cases competent authorities may conduct extended review in unpredictable circumstances.
31. As a way of illustration, for requirements related to governance, the affiliation of the CCP in a corporate group would be an indicator potentially triggering an extended review. For





prudential requirements, the fact that the CCP clears multiple currencies will be a factor potentially triggering an extended review for some requirements.

Guideline 2: Competent authorities should consider all the requirements included in Annex I for the review and evaluation of any CCP.

Guideline 3: When conducting the core review of any CCP, competent authorities should consider all the elements included in the third column 'Core Review' of Annex II. The core review should be performed even when competent authorities have not been informed of any change by the CCP during the review period. Where the competent authorities positively assess themselves that, during the review period, there has been no change with respect to a specific requirement and the assumptions and facts underlying their previous analysis, they should confirm that the previous corresponding core review is still to be considered valid.

Guideline 4: Where, for a given requirement, a CCP meets any of the factors that may warrant an extended or specific review as listed in the fourth column of Annex II, competent authorities should perform for this given requirement, in addition to the core review, the extended review described in the fifth column of Annex II.

Guideline 5: Where competent authorities perform the review and evaluation of a CCP with respect to a specific requirement, any corresponding level 3 acts adopted by ESMA (such as guidelines, opinions, Q&As) should be taken into account.

32. ESMA queried in the public consultation if there was support for the format and depth of the review and evaluation as defined in Guidelines 2 to 5 and for the level of granularity provided in the second annex of the Guidelines detailing the methodology per article and requirement.
33. Responses provided to ESMA with respect to Guideline 3 cover a wide spectrum of points of view.
34. One respondent argued that, taking into account that CCPs are subject to ongoing oversight and supervision and provide a self-assessment against the CPMI-IOSCO PFMI, Guideline 2 should restrict the need for review of all requirements in Annex I and allow for a targeted, manageable review and evaluation process where the competent authority would focus on those Annex I requirements considered as posing the greatest risk for that CCP. ESMA believes that, given that the requirements considered as posing the greatest risk for that CCP may differ from those for another CCP, this would depart from the goal of ensuring consistency across CCP and would lead to reviews with little in common across EU CCPs.
35. Another respondent, while supporting a common understanding regarding the format and the frequency of the annual review, advocated for taking greater account of the different risk profiles as an element of proportionality with respect to the depth of the review. This aspect was discussed at length during CCP Policy Committees, and it was agreed that the consideration of risk profiles, hence of quantitative thresholds, as determining factors was not the methodology to be adopted.
36. In contrast, a third respondent, defending the interests of clearing participants, reported that, in the absence of a harmonised level of information shared by EU CCPs about the respective risk management procedures and with other data which cannot be shared by CCPs for confidentiality matters, clearing participants have to rely on supervision and

reviews by the relevant supervisory authorities. The standardisation and potential improvement of these reviews are especially important in this regard. While they understand that some CCPs are more relevant from a financial stability standpoint than others and agree that these reviews should be “appropriate to the size, structure and internal organisation of CCPs, and the nature, scope and complexity of their activities”, they added that this should be achieved by additional scrutiny for systemically important CCPs rather than reduced levels of supervision for smaller CCPs. ESMA would like to clarify that the methodology described is in no case a race to the bottom, but instead that there is a foundation shared by all CCPs regardless of their size and complexity, and where, for a given requirement, a CCP presents a characteristic justifying a deeper analysis, then an extended review for this specific requirement should be performed.

37. With respect to the second part of the Guideline 3 on the absence of report of any change with regard to a given requirement, one respondent expressed that an update to the review should only prove necessary when there have been changes compared to the last review and that performing core reviews cannot not be justified where neither changes in clearing models nor in the governance landscape occurred. ESMA would like to highlight that this specific scenario has been the subject of detailed discussions during CCP Policy Committees and the final wording of this article reflects the consensus reached during these meetings: the conclusion that there has been no change should stem from an assessment, as opposed to an absence of communication on a potential change from the CCP; the responsibility for this verification lies with the competent authority, and; where the competent authority has actively established there has been no change with respect to specific requirements, assumptions and facts underlying their analysis from the previous year, then the competent authority should be allowed to perform a core review less granular. This specific drafting aims at avoiding the use of a previous review solely justified by an absence of communication from the CCP with respect to a change.
38. To question 4 on the level of granularity provided in the second annex of the Guidelines, in addition to one generic response stating that there is room for improvement and fine-tuning of the parameters used for the core and extended reviews, three specific suggestions were made.
39. It was suggested that in relation to Article 34 and RTS/153/2013 articles 17 to 23, the text in column 5 could be amended from “An assessment of the group’s business continuity and disaster recovery plan policies” to “an assessment of the group’s business continuity and disaster recovery plan policies, where such policies are applicable to the CCP”. ESMA believes that this is a valid suggestion though slightly amended it to: “An assessment of the group’s business continuity and disaster recovery plan policies, where such policies may impact the CCP”.
40. Another suggestion was made in relation to Article 35, for the text in column 5 to be amended to make it time dependent, for example only outsourcing arrangements that are more than 12 months old should require assessment. ESMA did not retain this suggestion on the basis that the trigger for such extended review is an outsourcing of major activities linked to the risk management of the CCP, and that an external dependency for topics as sensitive as the risk management of a CCP should be subject to a regular review.
41. Lastly, in relation to Article 39, a respondent suggested that the first point under column 5 ‘Evidence that the CCP also provides the choice of omnibus and individual client segregation basis’ takes place as part of the core review and therefore should be deleted



from Annex II column 5. ESMA agrees with this proposal and amended Annex II Article 39 accordingly.

### 3.3.3 Frequency of review and evaluation

Guideline 6: Competent authorities should carry out a supervisory review and evaluation process of CCPs annually, on a rolling year (i.e. year on year) basis.

Guideline 7: Additional ad-hoc review

1. Any material and non-recurrent change to the CCP of an operational, technical, financial or prudential nature, other than those listed in paragraph 2 of guideline 7, should trigger an additional ad-hoc supervisory review and evaluation process, possibly post implementation of the material change, to specifically reflect the impact of the change of systems, processes, procedures and risk management policies on the CCP.

2. The following material and non-recurrent changes are excluded from this ad-hoc review :

- the extension of activities and services of the CCP (per Article 15 of EMIR);
- the proposed acquisition of the CCP (per Article 32 of EMIR);
- a change in the outsourcing of major activities linked to the risk management of the CCP (per Article 35 of EMIR);
- the review of the CCP's models and parameters (per Article 49 of EMIR);
- a new interoperability arrangement with a CCP (per Article 54 of EMIR).

3. This ad-hoc review should focus on the change itself and on all potential impacts this change may have on the compliance of the CCP with all requirements listed in Annex I.

4. Should such an ad-hoc review be performed, the College should be informed by the competent authority of the results of this ad-hoc review. This communication to the college should occur as promptly as possible after the ad-hoc review and should not be delayed to be part of the annual review process.

42. For instance, an overall change of IT system or a reorganisation of a CCP would constitute a material change to the CCP of an operational, technical, financial or prudential nature, whereas regular updates to the IT system or usual mobility of personnel of the CCP would not be considered as material changes and would not trigger an ad-hoc review.

43. ESMA consulted on the frequency of the review and evaluation as defined in Guidelines 6 and 7.

44. One respondent, mindful of cost versus benefit, suggested to set a longer timeline threshold thereby providing the competent authority with some flexibility to determine the frequency of the review and evaluation process. ESMA actually aligned with the frequency 'a minima' for the review and evaluation of EMIR of 'at least on an annual basis'. An annual frequency on a rolling year calendar (or year on year) was justified as this is already the current common practice by competent authorities and that setting a frequency higher than once a year is impracticable for competent authorities. Moreover EU authorised CCPs' college



meetings must be held on an annual basis, aligning the frequency of reviews, evaluations and college meetings.

45. Another feedback received during the consultation is that a new interoperability arrangement could introduce considerable risk into a CCP, yet Guideline 7 excludes a new interoperability arrangement with a CCP from ad-hoc reviews. ESMA confirms that this exclusion is motivated by the fact that an interoperability arrangement shall be subject to the prior approval of the competent authorities of the CCP and that such an approval would include a review under article 17 of EMIR on granting or refusing authorisation.

## 3.4 Common Methodologies

### 3.4.1 Information - Sources and Methodology

Guideline 8: The information necessary for supervisory reviews should be sourced through two complementary channels:

- the information gathered from the continuous ongoing supervision and oversight by the competent authorities and
- the information collected by competent authorities specifically for the purpose of conducting the review and evaluation.

Guideline 9: The information gathered from the continuous ongoing supervision and oversight of CCPs by competent authorities should at least consist of:

- any information about changes introduced by the CCP in any of its internal regulations, such as procedures, policies, as well as all publicly available information;
- all documents, evidences, assessments, validations and reports provided by the CCP or written by the competent authority on the occasion of applications by the CCP for extension of activities and services (per Article 15 of EMIR) and validation of significant changes to the models and parameters of the CCP (per Article 49 of EMIR), as well as all topics that may have triggered during the year a specific validation by the competent authority and the opinion of the college (such as Articles 30-32, 35, 51 and 54 of EMIR);
- the results of desk reviews and on-site inspections conducted throughout the year by the competent authority.

Guideline 10: The information collected by the competent authorities specifically for the purpose of conducting the review and evaluation of the CCP's arrangements, strategies, processes and mechanisms in complement of the information collected from their continuous ongoing supervision and oversight, should at least consist of:

- A reviewed self-assessment from the CCP;
- Updated information from the CCP as provided in ESMA's informal template of risk assessment report, which should include an analysis of the performance of the CCP's risk models over the past year, including its margin models, stress testing framework, liquidity risk controls, collateral haircuts;



- Detailed minutes of ad-hoc meetings and interviews with the CCP's representative organised to prepare the review and relevant college meetings;
- The documents prepared by the CCP for presentation to its risk committee as well as the opinions of the risk committee.

46. ESMA consulted on the above articles 8 to 10 with respect to the format of the sources of information and methodology to collect the information necessary to supervisory reviews and evaluations.

47. A majority of respondents have confirmed that they agree with the sources of information to collect information necessary for the supervisory review, as they represent good examples of which sources could be used to gather sufficient information. Two comments were also provided:

- More reliance should be placed on the CCP's self-assessment conducted in accordance with CPMI-IOSCO PFMI, in addition to information collected as a result of ongoing oversight activities and requests made under articles 15 or 49 of EMIR, provided such requests are either in-flight or completed in the past 12 months.
- The information sources for performing the regular review and assessment of a CCP should not be restricted by Guidelines. Different national situations and markets may require additional as well as different information sources. Competent authorities should have discretion to use any documents and information sources they deem necessary.

### **3.4.2 Results of the supervisory review - Methodology**

Guideline 11: For the purposes of informing the college, the results of the supervisory review should be presented as a report. For the benefit of the college members and ESMA, this report should not only firstly present a summarizing list of the noteworthy changes that occurred at the CCP throughout the period under review, but should also provide an updated, comprehensive and consolidated version of the assessment clearly distinguishing between what has changed during the period under review and the assessment of the previous year.

48. The exercise is not expected to be burdensome for competent authorities given that:

- A detailed track-changed report is not asked nor advisable;
- If no change has been noticed by competent authorities when performing their review and evaluation and that they conclude that the CCP is still compliant, the update to be made to the report by the competent authorities is limited, both for the summarizing list of the noteworthy changes which will be empty and for the consolidated version of the assessment which will require little update;
- The report of the previous year will serve as a basis for the report of the current year.

49. By way of illustration, this could be achieved in the style of consolidated EU regulations, where paragraphs from the initial version of the document and paragraphs amended by a further review are highlighted as such.

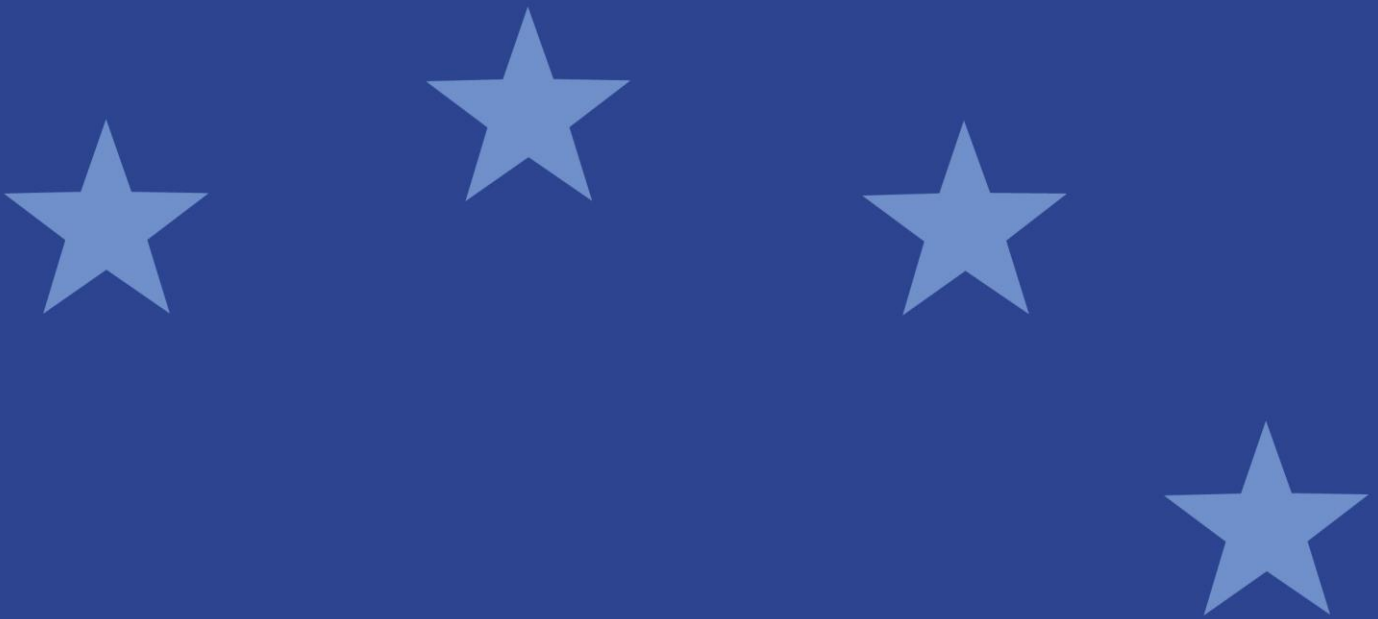


50. These guidelines do not aim at specifying what specific information should be provided to the college by the competent authority; however, it is expected that the scope and structure of the report to the college would mirror those of the annual review, though with a lower level of detail. The absence of a detailed template in these guidelines does not prevent competent authorities to report to the college on the basis of a template agreed with the college. It remains at the discretion of the competent authorities to decide what information and in what form [in addition to the report] to present to the college in order to inform the latter on the results of the review and evaluation.
51. Following ESMA's public consultation seeking views on the methodology to be used for a clear and non-burdensome presentation of the results of the review, a majority of respondents have confirmed their agreement with ESMA's proposed methodology as detailed in Guideline 11. In addition, it has also been suggested that ESMA may consider how summary information about supervisory activities could be shared with clearing members. This suggestion of interest is however out of the scope of the mandate for these specific Guidelines.

## **Annex I: Guidelines**

# **Guidelines**

**On common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR**







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## 4 Scope

### Who?

1. These guidelines apply to competent authorities designated under Article 22 of EMIR that supervise CCPs authorised under Article 14 of EMIR.

### What?

2. These guidelines relate to common procedures and methodologies for the supervisory review and evaluation process pursuant to Article 21 of EMIR. These guidelines do not introduce new requirements for CCPs in addition to the ones specified in EMIR or the relevant technical standards.

### When?

3. These guidelines will apply from their date of publication on ESMA's website.

## 5 Legislative references, abbreviations and definitions

### Legislative references

|                 |  |
|-----------------|--|
| EMIR            | Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories <sup>5</sup>  |
| ESMA Regulation | 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>6</sup> |
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### Abbreviations

|             |   |
|-------------|---|
| <i>EC</i>   | European Commission                       |
| <i>EEA</i>  | European Economic Area                    |
| <i>ESFS</i> | European System of Financial Supervision  |
| <i>ESMA</i> | European Securities and Markets Authority |
| <i>EU</i>   | European Union                            |

### Definitions

Unless otherwise specified, the terms used in these guidelines have the same meaning as in EMIR and the RTS 153/2013.

In addition, the following terms apply:

|         |  |
|---------|--|
| college | a college established pursuant to Article 18 of EMIR |
|---------|--|

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<sup>5</sup> OJ L 201, 27.7.2012, p.1

<sup>6</sup> OJ L 331, 15.12.2010, p. 84

<sup>7</sup> OJ L 52, 23.2.2013, p. 41

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The following abbreviations are used in this consultation paper:

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|------|---|
| ESFS | European System of Financial Supervision  |
| ESMA | European Securities and Markets Authority |
| EU   | European Union                            |
| EC   | European Commission                       |

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<sup>8</sup> OJ L 201, 27.7.2012, p.1

<sup>9</sup> OJ L 331, 15.12.2010, p. 84

<sup>10</sup> OJ L 52, 23.2.2013, p. 41

<sup>11</sup> OJ L 52, 23.2.2013, p. 37

## 6 Purpose

These guidelines are based on Article 16(1) of ESMA Regulation and Article 21(6) of EMIR.

The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and consistent application of Article 21 of EMIR.

In particular, these guidelines seek to assist competent authorities in the application of the EMIR provisions in the context of performing the review and evaluation of central counterparties by further specifying common procedures and methodologies in order to ensure consistency in the format, frequency and depth of these reviews and evaluations.

## 7 Compliance and reporting obligations

### Status of the guidelines

These guidelines will be issued pursuant to Article 16 of ESMA Regulation and will be addressed to competent authorities. In accordance with Article 16(3) of ESMA Regulation, competent authorities must make every effort to comply with the guidelines.

The guidelines specify ESMA's view of appropriate supervisory practices within the ESFS or of how EU law should be applied in a particular area. ESMA therefore expects all competent authorities to which the guidelines are addressed to comply with the guidelines. Competent authorities to which the guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes).

### Reporting requirements

Pursuant to Article 16(3) of ESMA Regulation, competent authorities must inform ESMA of whether they (i) comply, (ii) do not comply but intend to comply, or (iii) do not comply and do not intend to comply with these guidelines. In case of non-compliance, competent authorities must state their reasons for non-compliance, within two months from the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.

In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.

A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.

## **8 Guidelines on common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR**

### **V.I. Guideline 1 - Scope of review and evaluation**

The scope of the review and evaluation covers all requirements on CCPs laid down in EMIR and its supplementing regulatory technical standards (RTS 152/2013 and 153/2013 - collectively CCP RTS). The scope of risks to be evaluated shall encompass all risks CCPs are or might be exposed to, including but not limited to financial and operational risks.

The detailed list of CCP requirements with their respective EMIR provisions and CCP RTS corresponding supplementing articles forms the Annex I of the Guidelines. They include capital requirements, organisational requirements, conduct of business requirements, prudential requirements, requirements for the calculation of hypothetical capital and for its associated reporting and interoperability arrangements requirements.

### **V.II. Guidelines 2 to 5 - Format and Depth of review and evaluation**

Competent authorities should consider all the requirements included in Annex I for the review and evaluation of any CCP.

When conducting the core review of any CCP, competent authorities should consider all the elements included in the third column 'Core Review' of Annex II. The core review should be performed even when competent authorities have not been informed of any change by the CCP during the review period. Where the competent authorities positively assess themselves that, during the review period, there has been no change with respect to a specific requirement and the assumptions and facts underlying their previous analysis, they should confirm that the previous corresponding core review is still to be considered valid.

Where, for a given requirement, a CCP meets any of the factors that may warrant an extended or specific review as listed in the fourth column of Annex II, competent authorities should perform for this given requirement, in addition to the core review, the extended review described in the fifth column of Annex II.

Where competent authorities perform the review and evaluation of a CCP with respect to a specific requirement, any corresponding level 3 acts adopted by ESMA (such as guidelines, opinions, Q&As) should be taken into account.

### **V.III. Guidelines 6 and 7 - Frequency of review and evaluation**

Competent authorities should carry out a supervisory review and evaluation process of CCPs annually, on a rolling year (i.e. year on year) basis.

#### Additional ad-hoc review

1. Any material and non-recurrent change to the CCP of an operational, technical, financial or prudential nature, other than those listed in paragraph 2 of guideline 7, should trigger an additional ad-hoc supervisory review and evaluation process, possibly post implementation of the material change, to specifically reflect the impact of the change of systems, processes, procedures and risk management policies on the CCP.
2. The following material and non-recurrent changes are excluded from this ad-hoc review:
  - the extension of activities and services of the CCP (per Article 15 of EMIR);
  - the proposed acquisition of the CCP (per Article 32 of EMIR);
  - a change in the outsourcing of major activities linked to the risk management of the CCP (per Article 35 of EMIR);
  - the review of the CCP's models and parameters (per Article 49 of EMIR);
  - a new interoperability arrangement with a CCP (per Article 54 of EMIR).
3. This ad-hoc review should focus on the change itself and on all potential impacts this change may have on the compliance of the CCP with all requirements listed in Annex I.
4. Should such an ad-hoc review be performed, the college should be informed by the competent authority of the results of this ad-hoc review. This communication to the college should occur as promptly as possible after the ad-hoc review and should not be delayed to be part of the annual review process.

#### **V.IV. Guidelines 8 to 10 - Information - Sources and Methodology**

The information necessary for supervisory reviews should be sourced through two complementary channels:

- the information gathered from the continuous ongoing supervision and oversight by the competent authorities and
- the information collected by competent authorities specifically for the purpose of conducting the review and evaluation.

The information gathered from the continuous ongoing supervision and oversight of CCPs by competent authorities should at least consist of:

- any information about changes introduced by the CCP in any of its internal regulations, such as procedures, policies, as well as all publicly available information;
- all documents, evidences, assessments, validations and reports provided by the CCP or written by the competent authority on the occasion of applications by the CCP for extension of activities and services (per Article 15 of EMIR) and validation of significant changes to the models and parameters of the CCP (per Article 49 of EMIR), as well as all topics that may have triggered during the year a specific validation by the competent authority and the opinion of the college (such as Articles 30-32, 35, 51 and 54 of EMIR);
- the results of desk reviews and on-site inspections conducted throughout the year by the competent authority.



The information collected by the competent authorities specifically for the purpose of conducting the review and evaluation of the CCP's arrangements, strategies, processes and mechanisms in complement of the information collected from their continuous ongoing supervision and oversight, should at least consist of:

- A reviewed self-assessment from the CCP;
- Updated information from the CCP as provided in ESMA's informal template of risk assessment report, which should include an analysis of the performance of the CCP's risk models over the past year, including its margin models, stress testing framework, liquidity risk controls, collateral haircuts;
- Detailed minutes of ad-hoc meetings and interviews with the CCP's representative organised to prepare the review and relevant college meetings;
- The documents prepared by the CCP for presentation to its risk committee as well as the opinions of the risk committee.

#### **V.V. Guideline 11 - Results of the supervisory review - Methodology**

For the purposes of informing the college, the results of the supervisory review should be presented as a report. For the benefit of the college members and ESMA, this report should not only firstly present a summarizing list of the noteworthy changes that occurred at the CCP throughout the period under review, but should also provide an updated, comprehensive and consolidated version of the assessment clearly distinguishing between what has changed during the period under review and the assessment of the previous year.

## VI. Annex I: List of CCP requirements with their respective EMIR provisions and the corresponding RTS provisions

| Requirements  | EMIR Provisions | RTS 152/2013 & 153/2013          |
|---|-----------------|----------------------------------|
| - Capital requirements  | - Article 16    | - Articles 1 to 5 RTS 152/2013   |
| <b>Organisational requirements</b>  |                 |                                  |
| - General Provisions on Organisational Requirements   | - Article 26    | - Articles 3 to 11 RTS 153/2013  |
| - Senior Management and Board   | - Article 27    | -                                |
| - Risk Committee  | - Article 28    | -                                |
| - Record Keeping  | - Article 29    | - Articles 12 to 16 RTS 153/2013 |
| - Information to Competent Authorities  | - Article 31(1) | -                                |
| - Conflicts of interest   | - Article 33    | -                                |
| - Business Continuity   | - Article 34    | - Articles 17 to 23 RTS 153/2013 |
| - Outsourcing   | - Article 35    | -                                |
| <b>Conduct of Business [Chapter 2 of EMIR]</b>  |                 |                                  |
| - General provisions on Conduct of Business   | - Article 36    | -                                |
| - Participation requirements  | - Article 37    | -                                |
| - Transparency  | - Article 38    | -                                |
| - Segregation and Portability   | - Article 39    | -                                |
| <b>Prudential requirements [Chapter 3 of EMIR]</b>  |                 |                                  |
| - Exposure Management   | - Article 40    | -                                |
| - Margin requirements   | - Article 41    | - Articles 24 to 28 RTS 153/2013 |
| - Default Fund  | - Article 42    | - Articles 29 to 31 RTS 153/2013 |
| - Other financial resources   | - Article 43    | -                                |
| - Liquidity risk controls   | - Article 44    | - Articles 32 to 34 RTS 153/2013 |
| - Default waterfall   | - Article 45    | - Articles 35 to 36 RTS 153/2013 |
| - Collateral requirements   | - Article 46    | - Articles 37 to 42 RTS 153/2013 |
| - Investment Policy   | - Article 47    | - Articles 43 to 46 RTS 153/2013 |
| - Default procedures  | - Article 48    | -                                |
| - Review of models, stress testing and back testing   | - Article 49    | - Articles 47 to 61 RTS 153/2013 |
| - Settlement  | - Article 50    | -                                |
| <b>Calculations and Reporting for the purposes of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms [Chapter 4 of EMIR]</b> |                 |                                  |
| - Calculation of Kccp   | - Article 50a   | -                                |
| - General Rules for the calculation of Kccp   | - Article 50b   | -                                |
| - Reporting of information  | - Article 50c   | -                                |
| - Calculation of specific items to be reported by the CCP   | - Article 50d   | -                                |
| <b>Interoperability Arrangements [Title V of EMIR]</b>  |                 |                                  |
| - Interoperability Arrangements   | - Article 51    | -                                |

|   |                                 |   |            |   |
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| - | Risk Management                 | - | Article 52 | - |
| - | Provision of margins among CCPs | - | Article 53 | - |

## VII. Annex II: Methodology per Article and requirement

| - Requirements                     | - EMIR  | - Core review  | - Factors that may warrant extended/specific review | - Extended review |
|------------------------------------|---|--|---|-------------------|
| <p><b>Capital requirements</b></p> | <p><b>Article 16</b><br/>RTS 152/2013<br/>articles 1 to 5</p> | <p>An assessment of the CCP's methods for calculating its capital requirements, including any change to the inputs /processes /scenarios applied to calculate the capital requirements for:</p> <p>winding down or restructuring, including how the CCP defines the appropriate time span for winding down its activities;</p> <p>operational and legal risks;</p> <p>credit risk, counterparty credit risk, market risk;</p> <p>business risk, including the impact of the business initiatives during the review period, and the evolution of the CCP's turnover;</p> <p>An assessment of the CCP's procedures for calculating and monitoring the amount of capital it holds;</p> <p>An analysis of the CCP's investment of its capital, including details of the time needed to liquidate and access capital;</p> <p>Evidence on the CCP's capital requirements and position over the review period, including:</p> <p>Amount of capital requirements, by type of risk;</p> | <p>n/a</p>  | <p>n/a</p>        |

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|   |   | <p>Amount of capital, including retained earnings and reserves eligible to cover capital requirements;</p> <p>Evidence that the CCP has a permanent and available initial capital of at least 7.5 million EUR over the review period;</p>   |  |  |
| <b>Organisational requirements [Title IV Chapter 1]</b> |   |   |  |  |
| <b>General provisions</b>                               | <b>Article 26</b><br>RTS 153/2013<br>articles 3 to 11 | <p>An assessment of the corporate and organisational structure, governance arrangements, risk management and internal control mechanisms, including the compliance function, internal auditing and information technology structure.</p>  | <p>The CCP belongs to a group and shares some functions, staff or systems with one or several entities of the group;</p> | <p>Assessment of the interaction with other group entities (e.g. staff sharing, secondment, outsourcing), and the corresponding safeguards for independence (e.g. conflict of interest policy, service level agreements, long termination notice, transitional provisions in case of termination etc...)</p> |
| <b>Senior Management and Board</b>                      | <b>Article 27</b>                                     | <p>Evidence on the experience of the CCP's senior management and board members, ensuring they are of sufficiently good repute and experience to ensure the sound and prudent management of the CCP;</p> <p>Assessment of the independence of the board members;</p> <p>Assessment of the composition of the board and any update during the review period, including evidence that at least one third and no less than two of the members are independent, and details on the</p> | n/a  | n/a  |

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|   |  | representation of clients of clearing members;   |  |  |
| <b>Risk Committee</b>                       | <b>Article 28</b>                                      | <p>Assessment of the composition and role of the risk committee, including any change over the review period related to:</p> <p>the experience and competence of the members, and the independence of its chair;</p> <p>the ToR and the procedure to consult the risk committee on any arrangements that may impact the risk management of the CCP;</p> <p>the details on client representation at the risk committee;</p> |  |  |
| <b>Record keeping</b>                       | <b>Article 29</b><br>RTS 153/2013<br>articles 12 to 16 | An assessment of the procedures / policies implemented to maintain transactions, positions and business records, including any change on how the CCP ensures an appropriate durability, accessibility, granularity of information.   | The CCP maintains records outside the Union; | Where a CCP maintains records outside the Union, evidences on how full access to records is ensured to the NCA, ESMA and the ESCB; |
| <b>Information to Competent Authorities</b> | <b>Article 31(1)</b>                                   | Assessment of the procedures of notification of the NCA of any change to its management and any other information necessary to assess compliance with Article 27(1) or the second subparagraph of article 27(2)  | n/a  | n/a  |

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| <p><b>Conflicts of interest</b></p> | <p><b>Article 33</b></p>  | <p>Assessment of the policies for managing conflicts of interests at a company level, including any change to the:</p> <p>Policies / procedures / tools to assess and mitigate all potential and actual risks of conflicts of interest for managers, employees or any person with direct or indirect control or close links;</p> <p>Procedures on disclosing the general nature of sources of conflicts of interests with clearing members or clients of a clearing member;</p> <p>Procedures to prevent any misuse of the information held in the CCP's system;</p> <p>Assessment that the remuneration policy is still consistent with the CCP's business and risk strategies, corporate culture and values, the long-term interests of the CCP and the measures taken to avoid conflicts of interest;</p> <p>Evidence of a sound corporate culture, management of conflicts of interest and whistleblowing processes</p> <p>Assessment of the procedures for assessing the efficiency of such arrangements and reviewing them frequently</p> | <p>The CCP is a parent undertaking or a subsidiary;</p> | <p>Assessment of the procedures and policies to prevent, monitor and disclose any conflict of interest which may arise as a result of the structure and business activities of other undertakings with which the CCP has a parent undertaking or a subsidiary relationship;</p> <p>For the review period, details on any new conflict of interest which may have been identified / mitigated as a result of the group's structure;</p> |
| <p><b>Business Continuity</b></p>   | <p><b>Article 34</b><br/>RTS/153/2013<br/>articles 17 to 23</p> | <p>An assessment of the CCP's business continuity policy and the main elements of the disaster recovery plan, including:</p>  | <p>The CCP is a parent undertaking or a subsidiary;</p> | <p>An assessment of the group's business continuity and disaster recovery plan policies,</p>   |

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|  | <p>Details of the governance and approval process of the business continuity policies and the frequency and processes linked to the independent review.</p> <p>Details of the critical business functions and systems that the policies refer to, the criteria used for their identification and the methods employed to assure their continuity;</p> <p>Reference to the interrelation and dependencies with other external systems and services outsourced, including how the CCP manages possible business risk that both may involve. An analysis of the overall impact of a disruption of the CCP on the market serviced by it.</p> <p>Details on the CCP's procedures for ensuring the timely and orderly settlement or transfer of the assets and positions of clients and clearing members in the event of withdraw of the authorisation.</p> <p>An analysis of the business continuity and disaster recovery testing arrangements and results, including frequency and arrangements for taking into account and implementing any lessons learned following a test.</p> <p>An assessment of the composition / procedures of the crisis function</p> <p>An assessment of the communication plan, including how all relevant stakeholders are informed during a crisis event;</p> |  | <p>where such policies may impact the CCP;</p> |
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| <b>Outsourcing</b>                               | <b>Article 35</b> | <p>A description of all outsourcing arrangements, including details on the functions outsourced, identify of the providers, service level, performance indicators and termination conditions;</p> <p>An analysis of the liability, right and obligations of the parties, including evidence on how the CCP remains fully responsible for discharging all of its obligation under EMIR, and how it ensures that all conditions under art. 35 are met at all times;</p> | The CCP outsources major activities linked to risk management; | A summary of the assessment performed by the NCA, which motivated the approval of such outsourcing; |
| <b>Conduct of business [Title IV Chapter 2]</b>  |                   |   |  |   |
| <b>General provisions on conduct of business</b> | <b>Article 36</b> | Evidence that the CCP has accessible, transparent and fair rules for the prompt handling of complaints;   | n/a  | n/a   |
| <b>Participation requirements</b>                | <b>Article 37</b> | <p>Assessment of the criteria to become a clearing member, including an analysis of their fairness, objectivity, their relation and proportionality to risk including the provisions of client clearing services.</p> <p>Assessment of the process and procedures in place to allow the on-going assessment of, and yearly comprehensive review of compliance with, those criteria and management of cases where those requirements are not fulfilled anymore.</p>    | n/a  | n/a   |

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| <p><b>Transparency requirements</b></p>   | <p><b>Article 38</b></p> | <p>Evidences of the CCP's disclosure (e.g. website) of relevant information, including:</p> <p>public disclosure of prices and fees, discounts and rebates, conditions to benefit from reductions;</p> <p>disclosure to clearing members and clients of the risks associated with services provided;</p> <p>disclosures to clearing members and NCA of the price information used to calculate end-of-day exposures;</p> <p>public disclosure of the volumes of cleared transaction for each asset classes cleared;</p> <p>public disclosure of the legal, operational and technical requirements for participants;</p> <p>Assessment of the processes implemented by the CCP to ensure the constant update and accuracy of the webpages, and any evidence of the updates during the review period;</p> | <p>n/a</p>   | <p>n/a</p>   |
| <p><b>Segregation and Portability</b></p> | <p><b>Article 39</b></p> | <p>An assessment of the CCP's rules, procedures and commercial terms to:</p> <p>separately identify and record all assets and positions for the account of a given clearing member from the assets of the CCP and from the assets and positions for the account of other clearing members;</p> <p>ensure that all assets and positions from the clients of a given CM are held segregated from</p>  | <p>The CCP offers additional segregated account solutions in addition to house accounts, omnibus and individual segregation client accounts;</p> | <p>An assessment of the additional forms of segregated accounts available to clearing members, including evidence that such format provides at least an equivalent of segregation and protection of assets and positions as the CCP's arrangements for omnibus and individual segregation;</p> |

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|  |  | <p>the assets and positions for the house account the CM (omnibus client segregation);</p> <p>ensure that the CCP provides the choice of omnibus and individual client segregation basis;</p> <p>ensure that where a client has chosen individual segregation all assets and positions of the client are held segregated from the assets and positions of the house account and the other clients of the CM;</p> <p>A description and analysis of the arrangement made to publicly disclose the costs and levels of protection for each form of account offered;</p> <p>A description of the possibility for the CCP to re-use the collateral posted as margin or default fund contribution by the clearing members and their clients;</p> <p>An assessment of the CCP's arrangements to ensure, in the event of the default of a CM:</p> <p>Attempting to port the positions and assets held by the defaulted CM' clients;</p> <p>Should such attempt fail, the liquidation of such positions and the return of the collateral to the clients;</p> |  |  |
| <p><b>Prudential requirements [Title IV Chapter 3 of EMIR]</b></p> |  |   |  |  |

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| <p><b>Exposure Management</b></p> | <p><b>Article 40</b></p>                                    | <p>- Analysis of the methodologies and procedures in place to assess the CCP's liquidity and credit exposures towards clearing members on a near to real-time basis, including a description and an analysis of the price sources used by the CCP;</p>  | <p>- Exposures towards interoperable CCP(s)</p>  | <p>- Analysis of the methodologies and procedures in place to assess the CCP's liquidity and credit exposures towards the interoperable CCP(s)</p>  |
| <p><b>Margin requirements</b></p> | <p><b>Article 41</b><br/>RTS 153/2013 articles 24 to 28</p> | <p>An assessment of the model for calculating initial margins, and the methodology applied for the calibration of the core parameters of the model (confidence interval, lookback period, liquidation period), including how it guarantees that the initial margins are not lower than those which would be calculated applying EMIR minimum requirements;</p> <p>An assessment of the procedures for collecting initial margins, including the periodicity of intraday margin calculation, and eventual thresholds for intraday margin call;</p> <p>An assessment of the option chosen to limit procyclicality, including data on how the model behaves in periods of stress;</p> <p>A summary and analysis of the CCP's margin backtesting results for the period under review.</p> | <p>The CCP clears multiple asset classes (with different margin models);</p> <p>Core parameters (confidence interval / liquidation period) for OTC derivatives are lower than the standard (as authorized per art. 24(4) and 26(4) of RTS 153/2013);</p> <p>The CCP applies portfolio margining across different instruments, including cases where the 80% cap is removed;</p> <p>The CCP calculates and exchange margins through an interoperability link;</p> | <p>A detailed assessment of the margin methodology for each asset class/business line;</p> <p>Where a single model covers multiple business lines, assessment of how each asset class characteristics are taken into account;</p> <p>Where the core parameters for OTC derivatives are lower than the standard, evidence that such parameters would be more appropriate given the specific features of the considered OTC derivatives;</p> <p>An assessment of the approach applied on portfolio margining between different instruments, including:</p> <p>An analysis of the materiality of the margin reductions;</p> <p>An assessment of the level and reliability of the correlation (or any other statistical parameter</p> |

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|                                  |   |  |  | <p>of dependence) between the financial instruments</p> <p>An analysis of the methodologies and procedures in place for exchanging margins through the interoperable link</p> |
| <b>Default Fund</b>              | <b>Article 42</b><br>RTS 153/2013 articles 29 to 31 | <p>Assessment of the methodologies for sizing each DF, including how min/max values are set;</p> <p>Assessment of the methodology for allocating DF contributions and procedures for collecting DF contributions, including replenishment;</p> <p>Analysis of the methodology applied to define extreme but plausible scenarios to size DFs, including any change to the list of stress scenarios over the review period;</p> <p>Assessment of the adequacy of the DF to withstand, under extreme but plausible market conditions the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members (Cover 1 or 2+3);</p> | The CCP has multiple business lines / default funds; | For each DF/business line, a detailed assessment of the methodology for sizing the DF, including the dedicated extreme but plausible scenarios;                               |
| <b>Other financial resources</b> | <b>Article 43</b>                                   | Assessment of the adequacy of the prefunded resources to withstand under extreme but plausible market conditions, the default of the two clearing members to which it has the largest exposures (Cover 2);   | n/a  | n/a   |

|                                       |   |  |   |  |
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| <p><b>Liquidity risk controls</b></p> | <p><b>Article 44</b><br/>RTS 153/2013<br/>articles 32 to 34</p> | <p>Assessment of the available liquid resources, broken down by type (cash, committed credit lines, committed repos, highly marketable financial instruments), and including the identity of the liquidity providers, the liability, rights and obligations of the parties, the termination conditions, etc.</p> <p>Analysis of the CCP's liquidity exposures, including over the review period the dates/scenarios/clearing members leading to the largest exposures;</p> <p>Analysis of the risk management framework, including how liquidity needs are covered under a wide range of scenarios, as well as any indication in case of breach and a description of the measures taken;</p> <p>Assessment of the procedure and methodologies to control and monitor concentration risk on liquidity exposures</p> | <p>The CCP clears instruments in multiple currencies;</p> <p>The CCP clears instruments with high liquidity requirements (e.g. repos)</p> | <p>Description and assessment of the arrangements in place to access liquidity in different currencies;</p> <p>For each currency, a description and assessment of the models/ procedures/ processes in place to monitor liquidity exposures;</p> |
| <p><b>Default waterfall</b></p>       | <p><b>Article 45</b><br/>RTS 153/2013<br/>article 35 to 36</p>  | <p>Assessment of the methodology for calculating the CCP's dedicated own resources;</p> <p>Description and analysis of the composition of the CCP's own resources and analysis of how they're invested;</p> <p>Assessment of the procedures for monitoring the level of own resources, and notifying NCAs in the event of a breach;</p>  | <p>Multiple business lines / default waterfalls</p> <p>Allocation of the CCP's own resources across waterfalls</p>                        | <p>Assessment of how the CCP ensures proper allocation of own resources across waterfalls;</p>   |

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| <p><b>Collateral requirements</b></p> | <p><b>Article 46</b><br/>RTS 153/2013<br/>articles 37 to<br/>42</p> | <p>An assessment of the scope of eligible collateral accepted by the CCP, including details of instruments or cash in Union currencies and if any limits applies;</p> <p>The breakdown of collateral held (broken down by currency) in the form of (i) cash in Union currencies and non-Union currency, (ii) sovereign bonds, (iii) EU corporate bonds and (iv) other securities issued in a Union Currency;</p> <p>An assessment of the methodology and criteria applied to ensure that non-cash collateral can be considered as highly liquid collateral in accordance with Annex I of RTS 153/2013;</p> <p>An assessment of the risk mitigation methodologies applied by the CCP regarding collateral, including:</p> <p>Methodologies and procedures applied for valuating collateral on a near to real time basis;</p> <p>The methodology for calibrating haircuts;</p> <p>The methodology for setting concentration limits.</p> | <p>The CCP accepts and holds cash in multiple currencies;</p> <p>The CCP accepts and holds financial instruments in multiple currencies</p>              | <p>For each currency, an assessment of how the CCP manages currency risk stemming from the collateral it holds, distinguishing between cash and financial instruments;</p> |
| <p><b>Investment Policy</b></p>       | <p><b>Article 47</b><br/>RTS 153/2013<br/>articles 43 to<br/>46</p> | <p>Analysis of the CCP's investment policy, and in particular the breakdown of invested collateral between cash and financial instruments over the period under review;</p> <p>A list of financial instruments in which the CCP invested during the period under review, and an assessment of the</p>   | <p>The CCP holds investments in multiple currencies;</p> <p>The CCP has put in place arrangements for maintaining financial instruments/ cash with a</p> | <p>An assessment of how the CCP manages currency risk stemming from its investments in financial instruments;</p> <p>deposits in cash;</p>                                 |

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|                           |                   | <p>methodology applied to determine that such instruments are highly liquid in accordance with Annex II of RTS 153/2013;</p> <p>An analysis of the financial institutions where instruments are deposited, and the methodology used to assess the credit risk and the arrangements which prevent losses due to the default or insolvency of these institutions.</p> <p>An assessment of the methodologies applied to define concentration limits, monitor concentration of the CCP's financial resources and mitigate concentration risk.</p>              | <p>third party (EU credit institution or third-country financial institution);</p>   | <p>Where assets are deposited with a third party, an analysis of how assets belonging to CMs are identifiable separately from assets belonging to the CCP and to the third party.</p>   |
| <b>Default procedures</b> | <b>Article 48</b> | <p>An analysis of the adequacy and enforceability of the CCP's procedures when managing a default, including identifying the default, informing stakeholders, transferring clients' assets and positions, liquidating portfolios.</p> <p>Description and evidence that regular testing and verification are performed to ensure enforceability of the procedures (fire drills), and that the results of such review are taken into account;</p> <p>The review shall cover, where relevant, the results of any test performed during the review period;</p> | <p>Multiple business lines (liquidation of instruments through multiple markets);</p> <p>The CCP clears instruments with complex risk features (e.g. OTC derivatives CDS, IRS)</p> <p>Coordination within a group in terms of default management</p> <p>Specific service closure procedure through an interoperable link</p> | <p>For each business line, a description of the applicable default procedure;</p> <p>Where applicable, evidence that the CCP has implemented and tested procedures to manage the liquidation of a defaulter's portfolio on multiple markets simultaneously;</p> <p>Where applicable, evidence that the CCP can rely on necessary in-house expertise or external advice to manage and liquidate complex products, including in a period of stress;</p> |



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|  |   |  |   | <p>Where applicable, an assessment of the procedures in place at group level to manage the default of a common clearing member;</p> <p>Where applicable, an assessment of the procedures implemented to manage the service closure of the interoperable link;</p> |
| <b>Review of models, stress testing and back testing</b> | <p><b>Article 49</b><br/>RTS 153/2013<br/>articles 47 to 61</p> | <p>An assessment of the CCP's backtesting programme, sensitivity tests, stress testing programme and reverse stress tests programme, including any change to the policies applied to set:</p> <p>the appropriate time horizon of the tests;</p> <p>the frequency of the tests;</p> <p>The historical and hypothetical scenarios applied for the stress testing, sensitivity testing and reverse stress testing;</p> <p>the criteria used to assess the results;</p> <p>the actions to be taken depending on the results and reporting to be provided to the risk committee;</p> <p>the level of disclosure of the results to clearing members and clients;</p> | n/a   | n/a   |
| <b>Settlement</b>  | <b>Article 50</b>   | A description of all arrangements for the settlement of transactions;  | The CCP does not rely on central bank money to settle its transactions; | For settlement arrangements where central bank money is not used, an analysis of the  |

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|  |                                   | <p>An assessment of the level of transparency of the information provided to clearing members with respect to deliveries of financial instruments, including whether the CCP has an obligation to make or receive delivery of financial instruments;</p> <p>Where the CCP has no obligation to make delivery or bear liability for the delivery of cleared contracts, an assessment that the risk of non-delivery is clearly articulated in the CCP's rulebook, including potential compensation of participants;</p> <p>Where the CCP has an obligation to make or receive physical deliveries of financial instruments:</p> <p>An assessment of the DvP mechanisms used;</p> <p>For contracts where DvP is not used, an analysis of how the CCP bears and mitigates the principal risk;</p> |            | <p>alternative solution including details of:</p> <p>the list of commercial banks used;</p> <p>the flows per currency and bank;</p> <p>an analysis of how cash settlement risk is monitored, and the mitigation measures implemented.</p> |
| <p><b>Calculations and Reporting for the purposes of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms [Chapter 4 of EMIR]</b></p> |                                   |   |            |   |
| <p><b>Calculation and reporting for the purposes of Regulation (EU) No 575/2013</b></p>  | <p><b>Articles 50a to 50d</b></p> | <p>An assessment of the procedure and methodologies related to how the CCP calculates KCCP in accordance with the requirements;</p> <p>Evidence that the CCP reports adequately the information to its clearing members which are institutions or to their competent authorities;</p>   | <p>n/a</p> | <p>n/a</p>  |
| <p><b>Interoperability Arrangements [Title V of EMIR]</b></p>  |                                   |   |            |   |

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| <b>Interoperability Arrangements</b>   | <b>Article 51</b> | Where relevant, an assessment of the procedures for non-discriminatory access to the data the CCP needs for the performance of its functions from a trading venue;   | n/a | n/a |
| <b>Risk Management</b>                 | <b>Article 52</b> | <p>An assessment of the policies, procedures and systems related to the CCP interoperability arrangement, including:</p> <p>The management of the credit and liquidity risk;</p> <p>The interdependencies and correlation link to interoperability;</p> <p>Collateral management, including where permitted re-use of collateral;</p> <p>Default management and procedures to terminate the interoperability link in the event of the default or one of the other CCP;</p> <p>Where the risk-management models used by the interoperable CCPs are different, an assessment of the procedures in place to identify those differences, assess the risks and mitigate them;</p> | n/a | n/a |
| <b>Provision of margins among CCPs</b> | <b>Article 53</b> | An assessment of the procedures for distinguishing in accounts the assets and positions held for the account of CCPs with whom the CCP has entered an interoperability arrangement;  | n/a | n/a |

## Annex II: Cost versus benefit analysis

1. Article 16 of the ESMA Regulation requires ESMA, where appropriate, to analyse the potential costs and benefits relating to proposed guidelines. It also states that cost-benefit analyses must be proportionate in relation to the scope, nature and impact of the proposed guidelines.
2. The objective of performing a cost-benefit analysis is to assess the costs and benefits of the various policy or technical options which were analysed during the process of drafting the guidelines.
3. The guidelines included in this CP are of a mandatory nature, i.e. they are envisaged in EMIR in order to ensure uniform, consistent and coherent application of Union Law.
4. There are directly applicable provisions in EMIR that might not be applied in a uniform, consistent and coherent way within the Union in the absence of a clarification from ESMA on the annual review and evaluation of CCPs by competent authorities.
5. The costs implied by these guidelines can be summarised as the cost of changing current practices of competent authorities, where necessary. The cost of implementing the methodology for the annual review and evaluation will vary depending on the nature of existing national methodologies: a one-off cost may be required for those competent authorities whose specific methodology differs significantly from the methodology proposed. Then for subsequent years the cost is expected to be minor.
6. On the basis of the analysis above, ESMA concludes that the benefits of issuing these guidelines reporting outweigh the costs.