

# **Outsourcing and intragroup governance arrangements**

2024 CCP Peer Review Report

## Table of Contents

1	Executive Summary .....	4
2	Introduction .....	7
2.1	Background .....	7
2.2	Scope of the peer review .....	8
2.3	Process of the Peer Review .....	8
3	Overall functioning of CCP colleges .....	10
4	General overview of NCAs' activities .....	12
5	Review of NCAs' supervisory practices .....	14
5.1	Outsourced operational services and activities .....	14
5.2	Supervisory Expectation 1 .....	16
5.2.1	Process for notification .....	16
5.2.2	Review of an Outsourcing Written Agreement .....	18
5.2.3	Determination of a major activity linked to risk management .....	19
5.2.4	Assessment .....	20
5.3	Supervisory Expectation 2 .....	22
5.3.1	CCP's ongoing compliance with the requirements on outsourcing .....	22
5.3.2	Assessment .....	24
5.4	Supervisory Expectation 3 .....	25
5.4.1	The CCP's governance arrangements in respect of outsourcing .....	25
5.4.2	Independence of the CCP in case of intragroup outsourcing .....	25
5.4.3	Oversight of the outsourced activities by the CCPs .....	26
5.4.4	Adequate conflicts of interest policy .....	28
5.4.5	Assessment .....	29
5.5	Assessment and Recommendations Table .....	30
5.5.1	Recommendations by the PRC .....	30
5.5.2	Convergence Matter .....	31
	Annex 1 – Mandate .....	32
	Annex 2 – Questionnaire .....	32

## List of Terms and Acronyms

ACPR	Autorité de contrôle prudentiel et de résolution
AFM	Autoriteit Financiële Markten
AMF	L'Autorité des marchés financiers
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht
BdF	Banque de France
BdI	Banca d'Italia
CCP	Central Counterparty. A legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer
CCPRRR	Regulation (EU) No 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132
CCPSC	Central Counterparty Supervisory Committee
CISO	Chief Information Security Officer
CNMV	Comisión Nacional del Mercado de Valores
Colleges	Colleges established in line with Article 18 of EMIR
Consob	Commissione Nazionale per le Società e la Borsa
CPMI-IOSCO PFMI	Principles for Financial Market Infrastructures (PFMI) issued by the Committee on Payments and Market (CPMI) Infrastructures and the international Organization of Securities Commissions (IOSCO)
DNB	De Nederlandsche Bank
EMIR	European Market Infrastructure Regulation, Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
ESMA	The European Securities and Markets Authority

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
EU	European Union
FMA	Austrian Financial Market Authority
FTE	Full Time Equivalent. One FTE is equivalent to one employee working full time
NCA	National Competent Authority
PRC	Peer Review Committee
PRWP	Peer Review Work Plan
OeNB	Oesterreichische Nationalbank
SLA	Service Level Agreement

# 1 Executive Summary

## Reasons for publication

In accordance with the European Market Infrastructure Regulation (EMIR), the European Securities and Markets Authority (ESMA) shall, at least annually, conduct a peer review analysis of the supervisory activities of all competent authorities in relation to the authorisation and the supervision of CCPs in the European Union (EU).

## Contents

This peer review assesses the overall functioning of CCP colleges and provides an in-depth analysis of supervisory activities of National Competent Authorities (NCAs) of CCPs with respect to requirements set out in EMIR related to outsourcing and intragroup governance arrangements. It was carried out based on the Peer Review Methodology (the Methodology), which includes the specificities for mandatory peer reviews under EMIR. The review was conducted by the Peer Review Committee (PRC) established by the CCP Supervisory Committee (CCPSC). Accordingly, the peer review focuses on the NCAs' supervision of the CCPs' compliance with the requirements on outsourcing and intragroup governance arrangements.

This report provides an overview of the approaches followed by NCAs and presents ESMA's assessment of the degree of convergence reached by NCAs. The peer review findings are based on information gained by ESMA staff through participation in CCP colleges, the responses by the NCAs to a questionnaire, including, where relevant, tailored follow-up questions, and the findings from on-site visits at selected NCAs. The peer review provides an assessment of NCAs against the three supervisory expectations set out in the Peer Review Mandate (Mandate) of this peer review, relating to: 1) the NCAs' established process for the CCP to notify any new outsourcing arrangement, 2) the NCA's review of the ongoing compliance of CCP outsourcing arrangements with the relevant requirements under EMIR, and 3) the NCAs' reviews of the compliance of CCP governance arrangements with the relevant requirements under EMIR.

The peer review covered the supervisory activities of all relevant NCAs of CCPs authorised under EMIR, conducted from 1 January 2022 to 31 December 2023 (the review period). These include 12 NCAs, namely the competent authorities of AT, DE, EL, ES, FR, HR, HU, IT, NL, PL, PT, and SE. In accordance with the Mandate, the peer review included on-site visits of the relevant NCAs responsible for the supervision of CCPs belonging to a wider group with outsourcing within the group or externally; and in particular, NCAs, which adopted decisions on outsourcings that are major activities linked to risk management under Article 35 of EMIR. Against this background, on-site visits took place at the NCAs supervising the following four CCPs: BME Clearing, LCH SA, Cboe Clear Europe and CCP.A.

### Overall findings

Concerning the **functioning of CCP colleges**, the PRC considered that, overall, most chairing NCAs continue to manage CCP colleges in compliance with EMIR, noting that in few cases, some NCAs ensured compliance with certain deadlines under EMIR only after the end of the review period. In a few cases, NCAs did not follow the regulatory review processes for changes to CCPs' models and parameters, including a consultation with the College. With reference to the CCP annual reviews to be conducted by NCAs under Article 21 of EMIR, ESMA staff noted that, despite the adoption of a set of Guidelines on the performance of the annual supervisory review, there are still noticeable divergences among NCAs in terms of how the results of the supervisory reviews are presented in the Annual Review reports shared with the Colleges. As with the adoption of EMIR 3 the annual review report will be subject to the opinion by the College and by ESMA, the PRC encourages NCAs to ensure that the Annual Review Reports include complete and sufficiently detailed information to allow the College and ESMA to form an opinion on a CCP ongoing compliance with EMIR.

Regarding the supervision of the CCPs' compliance with the requirements on outsourcing and intragroup governance arrangements, under supervisory expectation 1, the PRC considered the **NCAs' process for notification and ex-ante authorisation of all new outsourcing arrangements related to major activities linked to risk management**. Most NCAs were considered as fully or largely meeting this expectation. Three NCAs (ES, FR, HR) are assessed as partially meeting expectation as these NCAs did not require the CCPs to have complete written outsourcing agreements in place, in particular Service Level Agreements (SLAs) were missing in respect of certain intragroup outsourced services. Furthermore, in some instances, the internal audit function was not deemed as a major activity linked to risk management.

Concerning supervisory expectation 2, the PRC considered the **NCAs' review of the ongoing compliance of outsourcing arrangements with the requirements**. All NCAs were considered as fully or largely meeting this expectation as the NCAs reviewed the ongoing compliance of outsourcing arrangements with the requirements under Article 35(1) of EMIR.

With regards to supervisory expectation 3, the PRC considered the **NCAs' review of the compliance of CCP governance arrangements with the relevant requirements**, under Article 26-28 and 33 of EMIR and related RTS, including relevant outsourcing policy and procedures, the process for the oversight of outsourced services (including reporting lines), the governance arrangements applied in case of intragroup outsourcing to ensure independence of the CCP, and the conflict-of-interest policy. All NCAs were considered as fully or largely meeting this expectation.

The table below summarises the PRC's assessment of the NCAs against the expectations specifically defined for this peer review.

**TABLE 1 - ASSESSMENT OF NCAS**

	DE	EL	ES	FR	HR	IT	HU	NL	AT	PL	PT	SE
Supervisory Expectation 1												
Supervisory Expectation 2												
Supervisory Expectation 3												

<b>Fully meeting expectations</b>	<b>Largely meeting expectations</b>	<b>Partially meeting expectations</b>	<b>Not meeting expectations</b>
-----------------------------------	-------------------------------------	---------------------------------------	---------------------------------

### **Recommendations**

In order to fully meet expectation 1 on the **NCA's' process for notification and ex-ante authorisation of all new outsourcing arrangements related to major activities linked to risk management**, it is recommended to ES, FR, HR to ensure that, where missing, the CCP defines the necessary service levels, which are important for the oversight of the outsourced services and, in particular, to FR to implement a procedure that ensures that the CCP receives ex ante an authorisation for an outsourcing that is major activity linked to risk management.

Moreover, to enhance compliance with expectation 1, ES, HU, PL, and SE need to ensure that the CCP qualify the internal audit function as a major activity linked to risk management in accordance with CCP Question 10 of ESMA's EMIR Q&A. This is important going forward to ensure that the CCP monitors this function as such, and that any planned changes on the outsourcing of this function are brought to the NCA by the CCP for authorisation in line with Article 35(1) of EMIR. Similarly, it is recommended to AT to ensure going forward that the CCP qualify the outsourcing of certain activities related to the operation of the clearing systems as major activity linked to risk management in line with Article 35(1) of EMIR.

Finally, to enhance compliance with expectation 3 with respect to **the NCA's' review of the compliance of CCP governance arrangements with the relevant requirements**, the PRC recommends to ES, HR, IT, and SE to ensure that the CCP nominate a person within the entity with an independent and direct reporting line to the board, to be responsible for performing the monitoring and oversight of the outsourced internal audit function as well as the reporting of internal audit matters to the Board, in accordance with Article 35(1)a) and g) of EMIR and Articles 7(6) and 11(1) of Commission Delegated Regulation (EU) 153/2013.

### **Convergence matter**

**Major activities linked to risk management:** the PRC noted that NCA's had a diverging approach in qualifying certain activities and functions as major activities linked to risk management. EMIR does not provide any definition or guidance on the factors that CCPs should consider when defining certain activities as major activities linked to risk management. The above-mentioned EMIR Q&A only deal with the internal audit function, which is deemed to be a major activity.

### **Next Steps**

NCA's are expected to address the recommendations within 1 year from the publication.

ESMA will follow up on the findings listed in this report in order to identify, where relevant, the most appropriate tools to further enhance supervisory convergence with respect to the convergence matter included in this report.

## 2 Introduction

1. This report presents the main findings of the CCP peer review carried out on National Competent Authorities' (NCAs') supervision of CCPs with regard to the CCPs' outsourcing and intragroup governance arrangements.
2. The report is organised as follows: (i) this section provides background information on the peer review work; ii) Section 3 provides a general overview on the overall functioning of the colleges; (iii) Section 4 presents a general overview of the NCAs activities in relation to supervision of CCPs; (iv) Section 5 presents the peer review findings and assessment including recommendations; and (v) the Annexes enclose the Mandate that formed the basis of the peer review, and the questionnaire sent to NCAs supervising CCPs.

### 2.1 Background

3. Article 24a(7) of Regulation (EU) No 648/2012 (EMIR) requires ESMA 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 Regulation (EU) No 1095/2010 (ESMA Regulation).
4. The ESMA Board of Supervisors approved the methodology for mandatory peer reviews in relation to CCPs' authorisation and supervision under EMIR (the methodology), whereby the reviews are conducted by the CCP Supervisory Committee (CCPSC) through delegation to a Peer Review Committee (PRC), composed of the Chair and the two Independent Members of the CCPSC. Each peer review assesses the overall functioning of CCP colleges and provides an in-depth analysis of a specific topic, to be determined within the scope of CCP requirements set by EMIR.
5. At its 20 April 2023 meeting, the CCPSC agreed on the topics for peer reviews in relation to CCPs to be included in the 2024-2025 Peer Review Work Plan (PRWP), whereby the topic of the 2024 peer review is "outsourcing and intragroup governance arrangements". This was approved by the Board of Supervisors in July 2023.
6. In December 2023, the Board of Supervisors approved the mandate for the 2024 CCP peer review (Annex 1), as developed by the PRC and validated by the CCPSC. The mandate included the three supervisory expectations relating to: 1) the NCAs' established process or the CCP to notify any new outsourcing arrangement, 2) the NCAs' review of the ongoing compliance of outsourcing arrangements with the requirements, and 3) the NCAs' review of the compliance of CCP governance arrangements with the relevant requirements.



## 2.2 Scope of the peer review

7. This annual peer review focuses on the CCPs' policies and procedures in relation to outsourcing and intragroup governance arrangements. Over recent years, financial market infrastructures have been increasingly outsourcing operational functions, services or activities in order to reduce costs and improve their flexibility and efficiency. CCPs' reliance on third parties, in particular through outsourcing arrangements, is regulated in EMIR under Article 35, inspired by the Annex F of the CPMI-IOSCO's Principles for Financial Markets Infrastructure (PFMI).
8. Effective governance arrangements are fundamental to ensure that the outsourcing entity maintain responsibility and control on the outsourced functions and activities. Sound governance structures are vital for an entity to maintain an autonomous fulfilment of its responsibilities. For this, the board members, senior managers and key function holders of an authorised entity need to be provided with effective decision-making power to act in the best interest of the entity and its clients.
9. In accordance with its mandate, this peer review aimed to assess the effectiveness of supervisory practices put in place by competent authorities to assess CCP compliance with the requirements in Article 35 of EMIR, with a focus on the outsourcing of critical operational functions, services or activities of CCPs, how the CCPs are internally organised and ensure to retain the necessary expertise and resources to evaluate the quality of the services provided, and to exercise effective oversight of the service provider as well as how the NCA ensures the CCP compliance on an ongoing basis with the requirements on outsourcing. Furthermore, to assess CCP compliance with the provisions in Articles 26-27 and 33 EMIR and Articles 3-11 of Commission Delegated Regulation (EU) 153/2013, with a focus on intragroup governance arrangements and internal control functions as well as conflicts of interest management.
10. The peer review also assessed how NCAs are ensuring that their CCPs are in compliance with the ESMA Guidelines on CCP conflict of interest management and, where applicable, the Guidelines on Outsourcing to cloud service providers, as well as the relevant EMIR Q&As on these subjects (CCP Questions 10, 13 and 14). The review also assessed whether competent authorities are complying with the relevant provisions of the PFMI.

## 2.3 Process of the Peer Review

11. The peer review covered the relevant NCAs of CCPs authorised under EMIR as of 1 January 2024. On this date, 14 CCPs were authorised under EMIR in the EU. The peer review thus was intended to cover the NCAs of the 12 Member States where the above

mentioned 14 CCPs are established, namely: DE, EL, ES, FR, IT, HU, HR, NL, AT, PL, PT and SE.

12. The peer review considered the NCAs' supervisory activities conducted from 1 January 2022 to 31 December 2023 (the review period), with respect to the assessment of a CCP's compliance with the requirements in Articles 26-27, 33 and 35 of EMIR and Articles 3-11 of Commission Delegated Regulation (EU) 153/2013, in connection with: a) the ongoing monitoring of the CCP activities and oversight of existing outsourced activities, b) where relevant, the extension of authorisation under article 15 of EMIR for new services and activities and/or the authorisation of outsourcing arrangements of critical functions for risk management under Article 35 of EMIR, and c) the yearly review (performed during this period) of the CCP compliance with the scope requirements pursuant to Article 21 of EMIR.
13. While the overall functioning of CCP colleges has been assessed on the basis of ESMA staff's experience in the participation in CCP colleges, in line with the methodology, the PRC also developed a self-assessment questionnaire (the questionnaire – see Annex 2). This aimed to provide the PRC with detailed information on each NCA's supervisory activities, practices and approaches related to the assessment of CCPs' procedures on outsourcing and intragroup governance arrangements.
14. On 21 December 2023, the covered NCAs were invited to answer the questionnaire by 1 March 2024. Where a Member State had assigned several NCAs under Article 22 of EMIR, the authorities from this Member State coordinated a single response to the questionnaire representing the coordinated view of all relevant competent authorities in that Member State.
15. Answers to the questionnaire were generally thorough and provided evidence of the supervisory actions. In a few cases ESMA sent some follow-up questions to NCAs, which were promptly addressed.
16. In May - June 2024, the PRC conducted four on-site visits to the NCAs supervising BME Clearing, LCH SA, Cboe Clear Europe and CCP.A (i.e. respectively CNMV, ACPR, BdF and AMF, FMA and DNB). The on-site visits took place in person and included a meeting with each CCP and other meetings with certain service providers, without the participation of the NCAs, except for the DNB, which asked to participate as an observer in the meetings with the respective CCP and the service provider, and on one occasion the NCA intervened in the discussion.
17. The findings of the peer review are presented in this report, which does not intend to provide an exhaustive representation of all responses submitted by the NCAs, but to provide an overview of the approaches followed by the majority of NCAs. The report is intended to highlight any emerging divergence to identify potential opportunities for further supervisory convergence, good practices and, where applicable, identify possible cases of non-compliance.

### 3 Overall functioning of CCP colleges

18. The peer review considered the functioning of the colleges during the review period, noting that overall, most chairing NCAs continue to manage CCP colleges in compliance with EMIR.
19. The composition of the colleges was reviewed by most of the NCAs in accordance with Article 2(1) of Commission Delegated Regulation (EU) 876/2013, with one NCA (DE) completing the review of one of its colleges only in May 2024. All chairing NCAs and ESMA have published on their websites the list of the members of the college, in compliance with Article 18(2) of EMIR.
20. Most colleges held at least one meeting in the course of 2022 and 2023, where the NCAs reported on their annual review under Article 21 of EMIR, as well as the outcome of their supervisory activities and their next supervisory workplan. Most of the college meetings were organised via videoconferences during 2022, while in 2023 were progressively organised in a hybrid or in-person set-up. It is noted that in the case of PL, a college meeting was held in 2023, while in respect of HR, the college meeting was held in January 2024. Furthermore, two NCAs (HR<sup>1</sup>, NL) in 2022 did not organise a meeting between the members of the college and the senior management of the CCP, as expected in accordance with Article 4(5) of Commission Delegated Regulation (EU) 876/2013. Finally, two NCAs (HR and PL) did not test in the review period the colleges' communication procedures for emergency situations through reachability and connectivity tests, which is a requirement under the written agreement. HR only carried out a test in 2024.
21. Regarding the annual review to be conducted by NCAs under Article 21 of EMIR, all NCAs carried out annual reviews in the review period, except for HR which reported to have carried the annual reviews both for 2022 and 2023 but only submitted them to the College in the course 2024. ESMA staff noted that, despite the adoption of a set of Guidelines on the performance of the annual supervisory review, there are still noticeable divergences among NCAs in terms of how the results of the supervisory reviews are presented in the Annual Review reports shared with the Colleges. As with the adoption of EMIR 3 the annual review report will be subject to the opinion by the College and by ESMA, the PRC encourages NCAs to ensure that the Annual Review Reports include complete and sufficiently detailed information to allow the College and ESMA to form an opinion on a CCP ongoing compliance with EMIR and evaluate the risks that the CCP is exposed to.
22. Concerning the CCPs' initiatives for new services and activities or changes to risk models and parameters, most chairing NCAs apply the framework developed by ESMA

---

<sup>1</sup> The CCP became operational in January 2022.

for the identification of new services and activities requiring an extension of the authorisation pursuant to Article 15 of EMIR or significant changes for the purpose of Article 49 of EMIR (see ESMA Opinion<sup>2</sup> published on 15 November 2016) and ensured a timely process for adopting the related college opinion. In most cases, the Colleges were consulted in relation to the decision to qualify an initiative as subject to an authorisation or a validation under Article 15 or 49 of EMIR.

23. In a few cases, changes to CCPs' models and parameters were executed without following the agreed processes, including a consultation with the College. ESMA also considers that in some instances, the information shared with the CCPs' Colleges was not sufficient, in particular in cases of operational incidents.
24. Moreover, two NCAs shared with the college the CCP application for authorisation of outsourcing arrangements for a major activity linked to risk management under Article 35 of EMIR and submitted their risk assessment for the opinion of the college.
25. Overall, the level of engagement by college members can be considered satisfactory once an Article 15, 35 or 49 procedure was triggered, although most college members continue to rely on the review by the chairing NCA and the scrutiny by ESMA. In most cases, college opinions took into account conditions and/or recommendations resulting from ESMA Opinion under Article 23a of EMIR or ESMA validations under Article 49 of EMIR. In respect of three CCPs (AT, DE) the chairing authorities reported delay to the college in implementing the conditions and recommendations resulting from previously adopted college or ESMA Opinions.
26. In accordance with Article 9(9) of Regulation (EU) No 2021/23 (CCPRRR), CCPs need to review at least annually their recovery plans, which should be submitted to the NCAs. The NCAs should submit the recovery plan to the college under Article 10(2) of CCPRRR. By the end of the reporting period, all, but two CCP (EL, PL) submitted their recovery plans for the second time already, where joint decisions were taken by the college, and they also presented to the CCPSC.
27. Some college members are actively providing feedback in respect of the assessment of the CCPs' recovery plans and different initiatives of the CCPs.
28. In January 2023, the CCP SC agreed to set each year CCP strategic supervisory priorities (CCP SSPs), that NCAs would consider including in their supervisory programme in order to further promote convergence across NCAs supervising CCPs. The two topics that were chosen for CCP SSPs 2023, were in the areas of outsourcing and governance. Some NCAs (ES, NL, FR, PT, DE, SE) conducted extra work in respect of the SSPs which was also reported in their annual review.

---

<sup>2</sup> See [2016-1574 - opinion on significant changes for ccps.pdf \(europa.eu\)](#)

## 4 General overview of NCAs' activities

29. EMIR requires NCAs to assess and review the compliance of CCPs with the EMIR requirements, including those in Articles 26-27, 33 and 35 of EMIR and Articles 3-11 of Commission Delegated Regulation (EU) 153/2013 under 1) the annual review under Article 21 of EMIR, and 2) other ad hoc reviews including, where relevant, the extension of authorisation under Article 15 of EMIR, and/or the authorisation of outsourcing arrangements of critical functions for risk management under Article 35 of EMIR, and 3) on-going monitoring of the CCP activities and oversight of existing outsourced activities. The NCAs were asked to provide responses to a number of questions on their supervisory approach and practices with respect to the above supervisory activities, as well as on their organisational set-up.
30. Overall, NCAs reported that they conducted supervisory activities covering several aspects of CCPs' procedures on outsourcing and intragroup governance arrangements. More details are covered in the next chapter on the supervisory practices.

### **Annual review under EMIR Article 21**

31. All NCAs reported that they included the review of the CCPs' outsourcing and intragroup governance arrangements in the scope of the annual reviews under Article 21 of EMIR conducted within the review period. SE also explained that as part of the annual review they also requested information from the CCP on changes in the ICT outsourcing and in the ICT outsourcing governance, and ICT service reviews.

### **Other ad hoc reviews**

32. Seven NCAs (DE, FR, HU, AT, NL, PT, SE) explained that they carried out on-site inspections at their CCPs relating as well to the topics in scope of this peer review. In particular, three NCAs (AT, FR, DE) conducted regular reviews and on-site visits of service providers. Moreover, NL carried out on-site visit at the datacentres and also performed a quick scan of the outsourcing agreement regarding the desktop services.
33. As mentioned in the previous section, three NCAs (NL, AT, PT<sup>3</sup>) shared with the college the CCP application for authorisation of outsourcing arrangements for a major activity linked to risk management under Article 35 of EMIR and submitted its risk assessment for the opinion of the college. Furthermore, two NCAs (IT, PL) explained that they also reviewed or planned to review outsourcing arrangements as part of the assessment that they carried out for extension of the CCP's authorisation.

---

<sup>3</sup> The authorisation process was not completed because the CCP withdrew its application.

### **Ongoing Supervision and Monitoring**

34. There were a few NCAs who provided further information on their activities for ongoing supervision. For example:

- Five NCAs (AT, HR, HU, NL, PL) reported that they are reviewing the relevant committee meeting minutes. Three NCAs (DE, HU, PL) also participated on the Risk Committee and Supervisory Board meetings as observers. Three NCAs (DE, HR, HU) explained that they approved new board members in respect of their supervised CCPs. DE has an annual supervisory meeting with the CCP's Executive Board, and both HR and DE also reviewed the external auditors' reports and the reports from the Risk Committee and Supervisory Board. Furthermore, they both conducted a desk-based review to analyse of the independence and management of conflicts of interest regarding outsourcing.
- One NCA (ES) reported that they reviewed whether the re-organisation in the context of the integration of the BME group within SIX Group could potentially generate conflicts of interest. ES also carried out an assessment on the governance arrangements of the SIX Group, together with the group supervision authority - FINMA, and a joint supervisory action concerning the functioning of the outsourcing arrangements and their governance within SIX Group.

### **NCAs organisational set-up and resources**

35. In total, 16 NCAs in 12 Member States have a direct supervisory responsibility to assess the EU CCP's compliance with Articles 26-27, 33 and 35 of EMIR and Articles 3-11 of Commission Delegated Regulation (EU) 153/2013. In the following countries more than one authority are involved in the supervision of the CCP:

- In France, three NCAs have shared responsibilities for the supervision of CCPs (ACPR, BdF and AMF), which jointly assess compliance with Articles 26-27, 33 and 35 of EMIR and Articles 3-11 of Commission Delegated Regulation (EU) 153/2013.
- In Italy, two NCAs have shared responsibilities for the supervision of CCP (BdI and Consob).
- In the Netherlands, DNB has been formally appointed as the responsible authority on the relevant EMIR articles in scope of this peer review, while the AFM is the responsible authority for Articles 36 to 39 of EMIR.
- In Germany, although BaFin is the sole NCA for the supervision of CCPs, due to national legislation (German Banking Act) BaFin works in close cooperation with the Deutsche Bundesbank.
- In Austria, although the FMA is the sole NCA for the supervision of the CCP due to national law (CCP Enforcement Act), a supervision cooperation is established with



the Oesterreichische Nationalbank (OeNB) in matters of information technology systems, business continuity management, margin models and stress testing.

36. The number of Full-Time Equivalent (FTE) staff members assigned to the supervision of a CCP is on average three FTEs per supervised CCP at each NCA, ranging overall between two and seven FTEs. In particular, the number of FTEs assigned to the assessment of compliance with Articles 26-27, 33 and 35 of EMIR and Articles 3-11 of Commission Delegated Regulation (EU) 153/2013 is ranging between 0,1 to four FTEs. Two NCAs (HU, PL) noted that they do not have assigned colleagues for these topics. These figures are proportionate to the size and the complexity of supervised CCPs.

## 5 Review of NCAs' supervisory practices

37. This section presents current practices on how the NCAs ensure compliance of the CCPs' implementation of the requirements in Articles 26-27, 33 and 35 of EMIR and Articles 3-11 of Commission Delegated Regulation (EU) 153/2013, in connection with: 1) the NCAs' established process or the CCP to notify any new outsourcing arrangement, 2) the NCAs' reviews of the ongoing compliance of outsourcing arrangements with the requirements, and 3) the NCAs' review of the compliance of CCP governance arrangements with the relevant requirements.

### 5.1 Outsourced operational services and activities

38. All NCAs were asked to provide the critical operational functions, services or activities that are outsourced by their supervised CCPs. It also had to be flagged if the service outsourced intragroup or to external third party and whether the service is a major activity linked to risk management.
39. The table below<sup>4</sup> summarise some of the functions where CCPs are relying partially or fully on outsourcing that could be further assessed if these could be treated as a major activity linked to risk management and this could be further assessed by the CCPSC. From the responses it is clear that the bigger and more complex the CCP is, the more it relies on outsourcing. Also, when the CCP is part of a wider group, it relies on intragroup outsourcing. The involvement of external third-party service providers is relevant in relation to ICT services and for sub-outsourcings. Only one NCA (EL) reported there are no critical functions outsourced but they are sharing staff, key function holders (CEO, CAE, COO, CCO, CTO and CFO) between group entities. Furthermore, one NCA (PT) explained that the functions related to clearing operations,

---

<sup>4</sup> The list is not exhaustive and it will be reviewed further.

risk management, membership management, internal credit rating system, internal audit are performed by the CCP's staff.

Outsourced services		CCPs	
		Intragroup	Third-Party
Internal audit		ES, FR, IT, HU, NL, PL, SE	HR, AT
Finance / Treasury		DE, ES, HU, PL, PT, SE	
ICT services	Fully outsourced	HR, HU, PL, SE	
	Partially outsourced	DE, ES, FR, IT, PT,	FR <sup>5</sup> , NL,
Compliance (mainly AML, due diligence, sanctions)		DE, ES	
Operation of the clearing system			AT
Credit assessment of the clearing members		DE	AT

40. In respect of AT, the NCA only included the outsourcing of the internal audit function and the credit assessment of clearing members in the questionnaire, as these are flagged as a major activity linked to risk management. Moreover, CCP.A also outsources certain activities related to the operation of the Clearing System for securities transactions and the Clearing System for electricity spot market transactions, which the NCA did not consider as major activities linked to risk management, in agreement with the CCP college.
41. The internal audit is the most frequently outsourced function. In accordance with CCP Question 10 of the ESMA Q&A on EMIR Implementation<sup>6</sup>, this is to be qualified as a major activity linked to risk management and it can be outsourced if certain conditions are met, a subject to prior authorisation by the NCA. Despite this, two NCAs (PL, SE) did not qualify it as such, noting that the internal audit function is outsourced since the CCPs' initial authorisation. However, PL agrees that the internal audit function is a major activity linked to risk management, as, the internal audit is integral to monitoring and evaluating the effectiveness of risk management processes and it supports the broader risk management framework by ensuring that risk management and internal control systems are functioning effectively and efficiently.
42. The French authorities provided information that an intragroup outsourcing arrangement between LCH SA and an intragroup services provider, LSEG Business Services Ltd (BSL) on internal audit was signed in January 2021, but the CCP did not request prior authorisation from the NCAs.
43. Moreover, four CCPs started to outsource certain services to cloud service providers, which is relevant with regard to the Regulation (EU) 2022/2554 on digital operational

<sup>5</sup> For FR, ICT services are outsourced internally and externally

<sup>6</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52\\_qa\\_on\\_emir\\_implementation.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf)



resilience for the financial sector (DORA)<sup>7</sup>, which entered into force on 16 January 2023 and will apply as of 17 January 2025.

## 5.2 Supervisory Expectation 1

### 5.2.1 Process for notification

44. In accordance with Article 35(1) of EMIR, it is important that CCPs are notifying their NCAs about the planned outsourcings as the activity could qualify as a major activity linked to risk management, which can only be outsourced if it is authorised by the NCA and ESMA and the College provided opinions.
45. From the responses it emerged that there is a way for all NCAs to receive ex ante information from the CCPs about the planned outsourcings, based on either:
- Legal requirements: It was confirmed by three NCAs (HR, DE, NL, PT) that there is a national legislation that requires the CCP to notify the NCAs in advance. In respect of DE the regulation also specifies the exact content of the notification requirement. Furthermore, in four jurisdictions (HR, HU, IT, EL), there is a decree or rule that was issued by the NCAs that require the CCPs to notify them in advance about any planned outsourcings. In respect of HR, the decree also specifies the exact content of the notification requirement. PT confirmed that the CCP must notify them in case of an outsourcing that is a major activity linked to risk management.
  - Supervisory notification processes in line with the EMIR requirements: As per the response from four NCAs (AT, FR, and SE) there is an internal process that requires the CCP to notify them ex ante. So, if the outsourcing does not refer to a major activity linked to risk management, the CCP does not have to notify the NCA ex-ante.
  - Supervisory monitoring process: Two NCAs (HU, PL) explained that they are getting information on the planned outsourcings as they are attending the Board and Risk Committee meetings as observers. While another NCA (ES) explained that they are relying on the regular engagement that they have with the CCP and ongoing supervision that they conduct on the CCP, to gather the information.
46. Concerning the notice period that NCAs are defining for their supervised CCPs to notify them, only three NCAs (IT, PT, SE) confirmed that they defined notice period for their CCPs. The Italian Authorities are expecting the CCP to notify them 15 working days before it is approved by the CCP's Board of Directors. SE defined 45 calendar days for

---

<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2554>

the CCP to submit a notification in advance. In case of PT, the CCP should communicate to the NCA any relevant changes with a brief explanatory analysis, 15 business days before the date foreseen for the respective entry into force. Two NCAs confirmed that there is no notice period defined, but one of them (DE) expecting the CCPs to inform them as soon as they are seriously considering the idea of outsourcing and well in advance if the outsourcing concerns a major activity linked to risk management, whilst the other (AT) expecting a notification when the CCP starts the project. HR also stated that for activities that are not major activities related to risk management, CCP has to notify HR in advance or without delay after the decision on the outsourcing is adopted and for this notification the content is not prescribed. The other NCAs confirmed that there is no defined notice period for them.

47. Concerning the documents that are to be annexed to the notification for the NCAs' assessment of the outsourcing arrangement and of whether this could concern a major activity linked to risk management, all NCAs require the CCPs to provide them with the written outsourcing arrangement. As agreed in the context of past opinions prepared by the CCPSC on NCAs' draft decisions on the authorisation of outsourcing arrangements under Article 35 of EMIR, in order for CCPs to be able to exercise proper monitoring and oversight in accordance with Article 35(1)(g) of EMIR, the written outsourcing agreement should include service levels, e.g. in the form of Service Level Agreements (SLAs).

48. Furthermore, the following set of information were mentioned by most NCAs:

<b>Information set</b>	<b>NCAs</b>
Summary document of the initiative, including project timeline	AT, FR, ES, HU, PT
Detailed description, that includes an analysis of the liability, right and obligations of the CCP and the service provider	AT, ES, NL, HR, DE, PT, SE
Information and description of the service provider	AT, NL, HR, DE, SE
Pre-outsourcing due diligence	FR, HR, PT, HU, IT, EL, PL, SE
CCP's self-assessment of the compliance with legal requirements and/or risk analysis	ES, NL, HR, HU, NL, PT, DE, PL
CCP's self-assessment if the activity is a major activity linked to risk management	AT, FR, HR, IT, DE, SE
Exit plan	DE, FR, HR, NL, PT, HU, IT, SE
Business continuity plan	FR, HR, HU, IT, SE

Board decision	AT, NL, HR, HU, IT, EL, PT, SE
Risk Committee minutes and decision	AT, HR, HU, IT, EL, NL, PT, SE
Declaration on the involvement of a subcontractor	HU, DE, SE
Analysis of conflicts of interests	HR, PT, SE

49. There were other interesting points mentioned by some NCAs. Four NCAs (ES, HR, NL, PT) are also requesting information on why the outsourcing is carried out. Three NCAs (ES, FR, HR) also keen to understand the impact of the outsourcing on the activities carried out by the CCP, and another two NCAs (ES, HR) are requesting information on how the outsourcing will be monitored. Furthermore, HR also requires the CCP to provide them with a list of persons within the CCP who will be in charge of monitoring the effectiveness of the outsourced activities and their compliance with EMIR requirements.
50. Seven NCAs (DE, ES, FR, IT, NL, PT, PL) also mentioned that after the first set of information are assessed they can require more information, and they can carry out a deep-dive or even carry out on-site supervision prior to the launch of the service.

## 5.2.2 Review of an Outsourcing Written Agreement

51. In accordance with Article 35(2) of EMIR, the NCA shall ensure that the CCP allocates and sets out its rights and obligations, and those of the service provider, clearly in a written agreement. It is also important to ensure that the written agreement covers all the necessary elements, including the service level requirements, e.g. SLA, that are very important for not just defining the rights and obligations, but also for the monitoring of the services in accordance with point g) of Article 35(1) of EMIR.
- Some NCAs (DE, ES, FR, HR, HU, IT, NL, PL) confirmed in their responses that they are reviewing the outsourcing agreement or a sample thereof (SE), that should include SLAs as well, and three of them (DE, FR, HR) are also assessing if there is a termination notice, exit plan and audit rights are also granted for the CCPs' competent authorities. DE also explained that on-site inspections were carried out to assess the contractual basis for the outsourcings. One NCA (HR) reported that it has also reviewed the time commitments of the parent company's employees under the outsourcing agreement during the licensing procedure of CCP.
  - From the responses it became evident in respect of two NCAs (ES, HR) that there are SLAs missing for certain intragroup outsourcings in the written agreement. In

case of HR, while the ICT outsourcing contract contains SLAs and KPIs, SLAs are not specified by the outsourcing contract for accounting and administrative services per se but are envisaged by internally binding acts of the parent company, which in fact represent SLAs that have been agreed with the CCP and according to which the performance of these services is monitored. As far as ES is concerned, ES reviewed whether under the contractual and governance framework of such arrangements the CCP was in a position to comply with the provisions of Article 35 of EMIR by other comparable means. In case of one NCA (AT), a recommendation was issued to require the CCP to define proper SLAs for the outsourcing contract with the internal audit service provider, which is now implemented. Furthermore, as part of the on-site visit the same arose for the French authorities, as LCH SA confirmed that they only have SLAs for the critical services.

- In the review period, PT issued recommendation to the CCP as one of the intragroup agreements needed further improvements in terms of metrics to evaluate the performance of the service provision.

### 5.2.3 Determination of a major activity linked to risk management

52. There are no detailed criteria in the requirements under EMIR to define what is a major activity linked to risk management.

53. Most NCAs have not developed any specific criteria or methodology but rely on self-assessment by the CCP and expert judgement on a case-by-case basis, depending on whether the function that is planned to be outsourced directly relates to the management of the risk categories, comprised of financial risks, credit risk, liquidity risk, market risk and operational risk.

54. Only the following NCAs provided more details on how they are carrying out their analysis:

- DE referred to the criteria listed in Article 26 of EMIR and Article 4 of Commission Delegated Regulation (EU) 153/2013 and it relates to risk management responsibilities. Furthermore, DE explains that whilst the CCPs do not define the term “activity linked to risk management”, they describe certain components as well as core functions and areas that are relevant for risk management.
- ES is assessing whether the activity is related to risk management (prudential, operational, compliance or cyber security) and then they are considering whether the activity is a major activity.
- FR deem “linked to risk management” all activities and applications that allow the CCP to manage financial and nonfinancial risks and whether there are operated

by first, second or third line. All activities that are critical to the CCP are identified as “major activities linked to risk management”. Moreover, all functions outsourced linked to internal audit and compliance are considered linked to risk management by FR. The “major” nature of activity may depend on the materiality of an outsourcing project for the CCP.

- HR provided a non-exhaustive list what they are considering in this respect and the most relevant points are the following: i) which business unit initiating the outsourcing and what activities are in scope, ii) the impact of disruption or termination of the outsourced activities on the CCP’s business operations, continuous compliance, financial performance and operational soundness, iii) whether the outsourced activity should be included in the CCP’s BCP, DRP and iv) the opinion of the CCP’s risk committee.

55. Based on the responses it is evident that there are certain activities, such as functions that the CCPs are outsourcing fully within the group (eg, ICT, Treasury), that CCPs and NCAs are not qualifying as a major activity linked to risk management. EMIR does not provide any definition or guidance on what are the factors that CCPs should consider defining certain activities as major activities linked to risk management. This is aspect that could be clarified through further supervisory convergence work.

#### 5.2.4 Assessment

##### Assessment Methodology

In accordance with Supervisory Expectation 1 on the process for the CCP to notify the NCA about any new outsourcing arrangement, a NCA would fully meet with the PRC’s expectation if the NCA require the CCP to provide line of sight of those outsourcings that are impacting the CCP’s activities and the CCP notify them ex ante about an outsourcing that is a major activity linked to risk management. It is also expected that the NCAs would have a well-defined process for this with their supervised CCPs. Furthermore, the NCAs are expected to ensure that the CCP correctly qualifying internal audit as major activity linked to risk management. Also, the NCAs should ensure that the outsourcing is governed by a proper written agreement, which includes all the necessary parts, in particular the SLAs. There may be instances where an NCA can demonstrate that the SLAs have been defined within other relevant contractual arrangement.

NCAs only largely meet the expectation if there is no defined notification or sound supervisory process ensuring ex-ante authorisation of major activities linked to risk management, including as minimum internal audit functions, but the NCAs put in place other practices ensuring those ex-ante authorisations.

A NCA would be considered partially meeting the expectation, if there is no defined notification or supervisory process ensuring ex-ante authorisation of major activities linked to risk management, or the written agreement is not complete (e.g. service level requirements are missing), or the outsourced internal audit function is not qualified as a major activity linked to risk management.

A NCA would be considered not meeting the expectation if there is no defined notification process, the written agreement is not complete, and the outsourced internal audit function is not qualified as a major activity linked to risk management.

56. Five NCAs (DE, EL, IT, NL, PT) are fully meeting expectation as there is a process in place where the NCAs are requiring the CCPs to notify them ex ante about a new outsourcing, and where applicable deemed the outsourced internal audit function a major activity linked to risk management.
57. Three NCAs (HU, PL, SE) are considered largely meeting expectation, as while they have a process in place requiring the CCPs to notify them ex ante about a new outsourcing, they did not deem the outsourced internal audit function a major activity linked to risk management, in accordance with CCP Question 10 of the ESMA Q&A. PL and SE stated that the reason for this is because the outsourcing of the internal audit function was assessed and approved at the time of the CCPs' initial authorisation. The classification of the internal audit function as a major activity linked to risk management in these cases would mean that going forward NCAs should ensure that CCPs are monitor this function as such and if there would be any changes planned to be exercised in respect of the outsourcing of this function, then they should follow the procedure under Article 35 of EMIR. In particular, as noted above, PL agrees that the internal audit function is a major activity linked to risk management and the CCP should align with this qualification.
58. In addition, AT was also considered as largely meeting expectation, as the CCP also outsourced certain activities related to the operation of the clearing system for securities transactions and the clearing system for electricity spot market transactions. As these are essential to the operation of the CCP, taking also into account the upcoming requirements of the DORA Regulation, these should be treated going forward as a major activity linked to risk management in accordance with Article 35(1) of EMIR.
59. The remaining three NCAs (ES, FR and HR) are assessed as partially meeting expectation. These NCAs did not require the CCPs to have complete written agreements in place, whereby the necessary service levels are missing or have not been sufficiently defined, e.g. there are no SLAs, in respect of certain intragroup outsourced services. In respect of ES, it is worth noting that the NCA qualified the outsourced internal audit activity as major activity linked to risk management, however

the CCP reported it otherwise. In case of FR, the CCP outsourced the internal audit function, but authorisation was not requested ex ante.

60. There were no NCAs that were considered not meeting with this expectation.

## 5.3 Supervisory Expectation 2

### 5.3.1 CCP's ongoing compliance with the requirements on outsourcing

61. Most NCAs (AT, EL, ES, FR, NL, HR, HU, IT, DE, SE, PL) review the CCPs' compliance with the requirements on outsourcing as part of the annual review in accordance with Article 21 of EMIR. Two NCAs (FR, SE) also conducts on-site visits for the annual review.

62. To assess the CCP's ongoing compliance with the requirements on outsourcing, most NCAs mentioned the following set of information:

Information set	NCAs
Meeting and/or reviewing reports from the internal audit function	AT, ES, HU, HR, PT, DE, NL, EL, PL, SE
A summary of all outsourcing arrangements	ES, FR, HR, HU, DE, PL
Attending and/or reviewing the minutes of all (Supervisory) Board meetings	ES, HR, HU, NL, AT, DE, IT, PL, SE
Relevant internal policies for the CCP on outsourcing and vendor management	AT, FR, HR, HU, NL, PT, DE, EL, SE
Annual vendor review	HU, HR, NL, PT
Internal control reports	FR, IT, PL
Reports from the risk and compliance functions	ES, HU
Key Risk Indicators that relate to outsourcing	ES, NL
Attending the meetings or reviewing the reporting to the Audit and Risk Committee together with the relevant materials	DE, FR, AT, PL, HR, HU, PT, SE



63. Further to the above some NCAs also mentioned some other information that they are using for the review of the CCP's ongoing compliance with the requirements on outsourcing, which are the following:
- DE also explained that they used a sample of individual outsourcing arrangements to check the conformity with Article 35.
  - SE request on a yearly basis information concerning changes in ICT outsourcing and changes to governance for ICT outsourcing. They are also reviewing the quarterly risk reports from the CRO and the quarterly ICT service reviews. In addition, during on-site inspections in 2023, SE requested for review the risk assessment of outsourced activities presented for the Board by the CRO.
64. As per the responses, one NCA (EL) issued recommendation in respect of the CCP's ongoing compliance with the requirements on outsourcing as its outsourcing policy had to be updated. Two NCAs (DE, FR) mentioned that in the review period they were analysing the remediation on findings that were issued in 2021 as part of an on-site inspection for ICT outsourcing.
65. Regarding the CCPs' ongoing due diligence of the third-party service providers, eleven NCAs (AT, ES, FR, HR, HU, IT, NL, PT, DE, EL, SE) reported they are checking the CCPs outsourcing policy, which requires a comprehensive analysis. In particular, among these: i) four NCAs (HU, HR, NL, PT) referred to the review of the yearly due diligence monitoring of the vendors. ii) five NCAs (HR, HU, DE, AT, IT) responded that they are reviewing the reports from the internal audit function, CRO, CCO, CTO. iii) two NCAs (DE, SE) are also assessing how the CCP is monitoring and acting on contractually agreed key performance indicators. iv) one NCA (ES) provided very detailed information on how the CCP operates the due diligence, which included the different categories of the service providers, based on their criticality and what are the requirements that the CCP needs to assess for each category. This also provided information on which colleagues are involved and what is their role.
66. The remaining one NCA (PL) mentioned that they did not consider the due diligence as all outsourcings are intragroup and the service providers are also supervised by the relevant NCAs.
67. In respect of the PFMI several NCAs (DE, ES, FR, HR, NL, PT) explained that they took into account Annex F from the CPMI IOSCO PFMI as part of their supervisory activities. One NCA (HU) mentioned that in the annual review they are not reviewing the compliance with the PFMI as it is not part of the supervisory framework, however, they are reviewing this as part of the oversight framework. One NCA (PL) responded that Annex F is not applicable to KDPW CSD which the ICT service provider for the CCP.



68. It is very important for the NCAs to be able to exercise their supervisory powers over the service providers, and for this they need to ensure that their rights are covered in the relevant documents. Eight NCAs (AT, ES, FR, HR, IT, NL, PL, SE) explained that they are reviewing this in the relevant written arrangements between the CCP and third parties, and three NCAs (HU, EL, SE) mentioned that they are reviewing the CCP's internal policies for this matter. DE explained that their unrestricted rights to review, control, and the ability to supervise with regard to service providers are ensured in the national law. As mentioned above there are NCAs who are already carrying out supervisory activities with third party service providers. There are certain NCAs (DE, AT, NL, FR) who have meetings and conduct on-site visits at service providers.
69. Two NCAs (HR, PT) issued recommendations to their supervised CCPs to ensure that their supervisory rights are also ensured. One NCA (NL) issued recommendations on outsourcing and followed up on these findings. Furthermore, PT issued recommendations in respect of the controls implemented by the CCP to identify and manage critical service providers (intragroup and external suppliers).

### 5.3.2 Assessment

#### Assessment methodology

In accordance with Supervisory Expectation 2 on the NCA's review the ongoing compliance of outsourcing arrangements with the requirements, an NCA is considered fully meeting expectation when the NCA reviews the ongoing compliance of outsourcing arrangements with the requirements under Article 35(1) of EMIR. Where relevant, the NCAs has applied the guidelines on outsourcing to cloud service providers.

NCA only largely meeting expectation when the NCA reviews the ongoing compliance of outsourcing arrangements with the requirements, also reviewing how the CCP assesses the due diligence of the service provider on an ongoing basis, but the NCA did not perform the annual review in accordance with the Guidelines on Annual review or did not apply the Guidelines on outsourcing to cloud service providers.

An NCA is considered partially meeting expectation when the NCA did not assess if the CCP ensure proper oversight for the outsourced services.

An NCA would not meet the if the NCA did not review the ongoing compliance of outsourcing arrangements with the requirements under Article 35(1) of EMIR and the NCA did not carry out a review if the CCP ensure proper oversight for the outsourced services.

70. All NCAs were considered as fully meeting this expectation as the NCAs reviewed the ongoing compliance of outsourcing arrangements with the requirements under Article 35(1) of EMIR.

71. There were no NCAs that were considered partially or not meeting with this expectation.

## 5.4 Supervisory Expectation 3

### 5.4.1 The CCP's governance arrangements in respect of outsourcing

72. As the CCP's Board retains the ultimate responsibility on outsourcing, it is very important that the Board members and the senior managers have good repute, and they have the necessary skills and expertise for the decision making and oversight and monitoring of the outsourced activities.

73. Seven NCAs (DE, FR, NL, HU, AT, PT, SE) explained that they are carrying out a fit and proper assessment of the key function holders and/or (Supervisory) Board members. Further three NCAs (IT, AT, PL) responded, they are confident that the CCPs' key function holders and Board members involved in the monitoring and oversight of the outsourced activities possess the necessary skills and competences. One NCA (NL) also clarified that as part of the notification for the new outsourcing they are expecting an explanation of the internal decision-making process.

74. Five NCAs (ES, HR, HU, AT, PL) explained that they are reviewing all the changes in the governance and the experience and skills of all the members of the Senior Management and the Board of Directors and the good repute and suitability of the members was assessed as part of the annual review under Article 21 of EMIR, and three (HR, HU, SE) out of these NCAs are carrying on-site visits where they can interview the relevant members. Six NCAs (AT, ES, IT, HU, NL, SE) mentioned that they are also reviewing all the minutes of the (Supervisory) Board and/or Audit Committee and Risk Committee. Six NCAs (EL, HR, AT, HU, PT, SE) are also reviewing the CCP's policies and procedures and the respective changes of those. Four NCAs (FR, HR, IT, PL) reviewing the internal control annual report that the CCP is carrying out and covering all the relevant operational and organisational changes for the CCP. Hanfa also asked the CCP to submit the breakdown of the time commitment of the parent company's employees under the outsourcing agreement.

### 5.4.2 Independence of the CCP in case of intragroup outsourcing

75. As most of the EU CCPs are part of a group, and outsourcing to other group entities are very relevant, it is important that the CCPs are able to ensure that they can make decisions on an outsourcing, independently, without the influence of the parent entity.

76. One of the points that three NCAs (DE, ES, EL) called out is that the CCPs ensure independence, with the CCP's senior executives have seats in the relevant group committees, where they can advocate for the CCPs' need. Two NCAs (DE, SE) explained that they reviewed the CCPs' policies and procedures. Six NCAs (EL, FR, HR, IT, NL, PL, SE) explained that this is something that they are reviewing at least as part of the annual review under Article 21 of EMIR, where they (FR, HR, NL, PL) are checking the intragroup outsourcing agreements. Three NCAs (FR, DE, SE) also checking the composition of the Board and assess the independence of the Board members. Four NCAs (DE, FR, NL, PT) also attending the Risk Committee meetings as observers, where they identify some risks on governance and outsourcings. HU explained that there are no group committees and shared/dual managerial roles organised at group level in case of KELER CCP.
77. Three NCAs (EL, HR, PT) issued a recommendation to the CCP, to ensure higher level of operational independence.

#### 5.4.3 Oversight of the outsourced activities by the CCPs

78. It is clear from all the responses that for all CCPs the decision on outsourcing performance and the escalation happened to the level of the Board or its relevant committee and the opinion of the Risk Committee are also taken into account in accordance with Article 28 of EMIR.
79. In case of smaller CCPs, the NCAs (AT, HU, NL, HR) ensured that there is one or two persons appointed as responsible for outsourcing, which are mainly the CCO, CRO, and/or CTO or at least one of the CCP's internal control functions or the member of the CCP's Management Board. Most of these NCAs also explained that they can interview these persons during on-site visits or require written declarations from the service providers on their engagement with these persons and understanding of their role relating to outsourcing arrangements. Two NCAs (NL, PT) also explained that they carried out such an on-site visit.
80. Several NCAs (NL, HR, HU, IT, DE, PL, PT, SE) are assessing how the CCP provides oversight as part of their annual review exercise in accordance with Article 21 of EMIR.
81. Some NCAs provided detail on how the CCP is organised to ensure the oversight on the outsourced services:
- DE explained that the CCP has appointed a responsible person for the respective outsourcing. The responsible person monitors that the outsourcing arrangements are fulfilled, provide oversight and is responsible for any issues arising from that outsourcing arrangement, including escalation to the management board. Whilst no individual Board member is exclusively assigned as accountable for outsourcing, all relevant control functions are comprised by the outsourcing

governance committee, which is an advisory body to the Board of the CCP and they have monthly meetings to assess the outsourcings. From the responses, DE issued findings for both CCPs in respect of the monitoring of outsourcings. DE also assessing the effectiveness of the key performance indicators for the outsourced activities.

- The French NCAs clarified that the CCP has several committees to review third-party risk. In respect of ICT outsourcing there are KPIs, permanent controls, service review meetings and steering committees in place. There is a Third-Party Risk Manager appointed and four staff members focussing on the oversight of the ICT outsourcings.
- As per the response from ES there is a responsible manager is appointed for external suppliers. In case of intragroup outsourcing, the CCP's managers are participating in the various group bodies, where the performance of these outsourced activities is assessed at group level, so the CCP retains the ability to influence and determine the direction of the outsourced activities.
- In accordance with SE's expectation, the CCP appointed a dedicated person responsible to ensure that the activities are performed in accordance with the company's policies and guidelines. That person report and escalate to the Board where outsourcing activities deviates from agreed service levels. The CCP also have additional dedicated stakeholders with expertise and knowledge of the services outsourced. Those persons are responsible to oversee and assess specific outsourced services and activities in detail within their level of expertise and report back to the appointed dedicated person.
- Also, the PRC understand from the Italian authorities, that in respect of the CCP, the CEO is in charge of the supervision and monitoring of the outsourcing agreement. The importance for the CCP to preserve responsibility over outsourced services and activities was also stressed in the context of the assessment performed under Article 31 of EMIR in connection with its acquisition by the Euronext group in 2021. Furthermore, this is continuously monitored by the Italian authorities.

82. As internal audit is one of the functions that is qualified as a major activity linked to risk management, as we explained in the previous chapters, the PRC was also keen to understand, how this is governed by the CCPs. We understand that in seven jurisdictions (AT, ES, EL, HR, IT, PL, SE), the Head of Internal Audit is also outsourced and not an employee of the CCP. In such cases, the CCP should nominate a person within the entity who is responsible for performing the monitoring and oversight of the outsourced internal audit function as well as the reporting of internal audit matters to the Board, in order to comply with Article 35(1)a and g) of EMIR. Moreover, as the Internal Audit function should be separate and independent from other functions and

activities of the CCP, in accordance with Article 11(1) of Commission Delegated Regulation (EU) 153/2013, this person should, in accordance with Article 7(6) of Commission Delegated Regulation (EU) 153/2013, have a direct reporting line to the board separate from other operations of the CCP. In this respect, PL explained that there is a so-called Internal Control Inspector employed by the CCP who provides monitoring and oversight for the internal audit function. In respect of AT, the CCO is formally and organisationally in charge for monitoring of the outsourcing agreement's duration, timely renewal and timely submission for approval by the relevant management bodies and supervisory authorities. Furthermore, the CCP.A Supervisory Board assumes the oversight of the internal audit function.

#### 5.4.4 Adequate conflicts of interest policy

83. All NCAs confirmed that they review the CCP's conflicts of interest management through the annual review under Article 21 of EMIR. All NCAs confirmed that the CCPs' conflicts of interest policy are in line with the ESMA Guidelines on conflicts of interest for CCPs. Two NCAs (DE, EL) confirmed that they are requesting the CCPs' conflicts of interest register, and two NCAs (DE, PT) are reviewing the report from the internal audit function on conflicts of interest. One NCA (IT) mentioned that if the CCP wants to change the conflicts of interest policy, it needs to notify the NCA prior to approval.
84. ES requested the CCP to carry out detailed analysis on conflicts of interest due to the integration of the CCP within the SIX Group.
85. Some NCAs shared some recommendations on conflicts of interest that they issued in the review period:
  - NL has objected to two proposals for organizational changes at a CCP because of the conflicts of interests that would have arisen if the proposed changes would be implemented.
  - HR explained that the CCP's Regulation specifically prescribes the conflicts of interest in a situation where a shared member of the Management Board would be in favour of the conclusion of outsourcing contract with SKDD as a CCP's parent company, and vice versa, which situation is avoided in a way that CCP's Supervisory Board is ultimately in charge of approving of all outsourcing agreements, including those with the parent company.
  - As per the response from DE, there was an identified conflict of interest that was mitigated with most effective tool available (removal of a person with conflicts of interest from its position), DE deemed the measure to be sufficient.
  - PT issued some recommendations that were addressed by the CCP to ensure compliance with the EMIR requirements and the ESMA Guidelines.

#### 5.4.5 Assessment

##### Assessment methodology

In accordance with Supervisory Expectation 3 on the NCA' review the compliance of CCP governance arrangements with the relevant requirements, an NCA is considered fully meeting expectation when the NCA reviewed the compliance of CCP governance arrangements with the relevant requirements under Article 26-28 and 33 of EMIR and related RTS, including relevant outsourcing policy and procedures, the process for the oversight of outsourced services (including reporting lines), the governance arrangements applied in case of intragroup outsourcing to ensure independence of the CCP, and the conflict-of-interest policy. The NCAs has applied the guidelines on conflict of interests.

An NCA is largely meeting expectation when the NCA reviews the CCP's compliance with the requirements on governance arrangements, including the relevant policies and procedures (e.g. conflicts of interest policy). The NCA also checks how the CCP ensuring independence when there is intragroup outsourcing, but the NCA did not cover it in the annual review under Article 21 of EMIR in line with the respective Guidelines.

An NCA is considered partially meeting expectation the NCAs has not assessed that governance arrangements preserve the independence of the CCP in respect of the intragroup outsourcing, or the NCA did not ensure that the CCP mitigate any unaddressed conflicts of interests.

An NCA would not meet with the expectation if the NCA did not carry out a review for the governance arrangements, there are serious concerns with respect of the CCP's independence and conflicts of interest, which the NCA did not oblige the CCP to mitigate.

86. Eight NCAs (DE, EL, FR, HU, NL, AT, PL, PT) were considered fully meeting this expectation, as the NCAs reviewed the compliance of CCP governance arrangements with the relevant requirements under Article 26-28 and 33 of EMIR and related RTS, including relevant outsourcing policy and procedures, the process for the oversight of outsourced services (including reporting lines), the governance arrangements applied in case of intragroup outsourcing to ensure independence of the CCP, and the conflict-of-interest policy.

87. Four NCAs (ES, HR, IT, SE) were assessed as largely meeting expectation, because these NCAs did not require the CCPs to appoint a person within the CCP, with an independent and direct reporting line to the Board, for the monitoring and oversight of the outsourced internal audit activity.

88. There were no NCAs that were considered partially or not meeting with this expectation.

## 5.5 Assessment and Recommendations Table

89. The following table presents the peer review’s assessment grade for each NCA under review against the three supervisory expectations. In each case, NCAs are assessed as fully compliant, largely compliant, partially compliant or non-compliant.

**TABLE 2 - ASSESSMENT OF NCAs**

	DE	EL	ES	FR	HR	IT	HU	NL	AT	PL	PT	SE
Supervisory Expectation 1												
Supervisory Expectation 2												
Supervisory Expectation 3												

<b>Fully meeting expectations</b>	<b>Largely meeting expectations</b>	<b>Partially meeting expectations</b>	<b>Not meeting expectations</b>
-----------------------------------	-------------------------------------	---------------------------------------	---------------------------------

### 5.5.1 Recommendations by the PRC

90. As foreseen in Article 30 of ESMA Regulation, the table below includes the recommendations made by the PRC to address weaknesses identified in the peer review. Recommendations that could be subject to a follow-up two years from the publication of this report are marked as open.



**TABLE 3 - RECOMMENDATIONS**

<b>Topic</b>	<b>NCA / Recommendation</b>	<b>Follow up</b>
Supervisory expectation 1	<b>ES, HU, PL, SE</b> - To ensure that going forward the CCP qualify the internal audit function as a major activity linked to risk management in accordance with CCP Question 10 of ESMA's EMIR Q&A.	Open
Supervisory expectation 1	<b>AT</b> – To ensure that going forward the CCP qualify the outsourcing of the activities related to the operation of the clearing systems for securities transactions and for electricity spot market transactions as major activity linked to risk management in accordance with Article 35(1) of EMIR.	Open
Supervisory expectation 1	<b>FR</b> – To implement a procedure that ensures that the CCP receives ex ante an authorisation for an outsourcing that is major activity linked to risk management.	Open
Supervisory expectation 1	<b>ES, FR, HR</b> - To ensure that, where missing, the CCP defines the necessary service levels, which are important for the oversight of the outsourced services.	Open
Supervisory expectation 3	<b>ES, HR, IT, SE</b> - To ensure that the CCP nominate a person within the entity, with an independent and direct reporting line to the Board, to be responsible for performing the monitoring and oversight of the outsourced internal audit function as well as the reporting of internal audit matters to the Board, in accordance with Article 35(1)a and g) of EMIR and Articles 7(6) and 11(1) of Commission Delegated Regulation (EU) 153/2013.	Open

### 5.5.2 Convergence Matter

91. ESMA should consider how to promote supervisory convergence with respect to the qualification of activities and functions as major activities linked to risk management, as EMIR does not provide any definition or guidance on what are the factors that CCPs should consider defining certain activities as major activities linked to risk management.



## Annex 1 – Mandate



ESMA91-150557226  
8-3333\_2024 CCP Pe

## Annex 2 – Questionnaire



ESMA91-150557226  
8-3590\_2024 CCP Pe