

# Terms of Reference

## Joint Monitoring Mechanism

1. ESMA's mission is to enhance investor protection, promote orderly financial markets and safeguard financial stability, by (i) assessing risks to investors, markets, and financial stability, (ii) completing a single rulebook for EU financial markets, (iii) promoting supervisory convergence and (iv) supervising specific financial entities.
2. In order to fulfil its mission, the ESMA Strategy 2023-2028<sup>1</sup> sets out three strategic priorities: (i) fostering effective markets and financial stability, (ii) strengthening supervision of EU financial markets, and (iii) enhancing protection of retail investors and two thematic drivers: (i) enhancing sustainable finance, and (ii) facilitating technological innovation and effective use of data.
3. ESMA shall act within the powers conferred by its establishing Regulation (ESMA Regulation or ESMAR<sup>2</sup>) and among others within the scope of Regulation (EU) No 648/2012 (EMIR). EMIR 3 entrusts ESMA with several tasks with respect to the authorisation and the recognition of Central Counterparties (CCPs). More specifically, Article 23b of EMIR tasks ESMA with establishing a cross-sectoral monitoring mechanism bringing together the relevant EU bodies involved in the supervision of EU CCPs, clearing members and clients for the exercise of the tasks listed in Article 23b(2) of EMIR (the Joint Monitoring Mechanism, hereinafter referred to as "JMM").
4. In order to fulfil ESMA's mission and in line with EMIR, the Board of Supervisors has established the JMM pursuant to Article 23b of EMIR. These Terms of Reference specify its tasks, responsibilities, functioning and governance.

### Tasks and responsibilities

5. The tasks and responsibilities of the JMM are defined primarily in Article 23b of EMIR. In particular, the JMM contributes to ESMA's mission and to the priorities of the ESMA Strategy regarding fostering effective markets and financial stability and strengthening supervision of EU financial markets in the following ways:
  - a. Monitor the implementation at aggregate EU level of the requirements on active accounts and the provision of clearing services, including all of the following:
    - (i) the overall exposures and reduction of exposures to substantially systemically important clearing services;

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/esma\\_strategy\\_2023-2028.pdf](https://www.esma.europa.eu/sites/default/files/library/esma_strategy_2023-2028.pdf)

<sup>2</sup> ESMA Regulation No 1095/2010 of the European Parliament and of the Council

<sup>3</sup> As amended by Regulation 2019/2099 (EMIR 2.2) of the European Parliament and of the Council of 23 October 2019 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2019:322:FULL&from=EN>).

- (ii) developments related to clearing in EU-CCP and access to clearing by clients to such CCPs, including fees charged by such CCPs and their clearing members for establishing active accounts;
    - (iii) other significant developments in clearing practices having an impact on the level of clearing at EU-CCPs;
  - b. Monitor the cross-border implications of client clearing relationships, including portability and clearing members' and clients' interdependencies and interactions with other financial market infrastructures;
  - c. Contribute to the development of EU-wide assessments of the resilience of CCPs focussing on liquidity, credit and operational risks concerning CCPs, clearing members and clients;
  - d. Identify concentration risks, in particular in client clearing, due to the integration of EU financial markets, including where several CCPs, clearing members or clients use the same service providers;
  - e. Monitor the effectiveness of the measures aimed at improving the attractiveness of EU CCPs, encouraging clearing at EU CCPs, and enhancing the monitoring of cross-border risks.
6. In addition, the JMM will facilitate the exchange of relevant information and will coordinate the input by its members to ESMA's reports or assessments in accordance with EMIR, including for:
- a. ESMA's annual report to the European Parliament, the Council, and the Commission on the results of JMM's activities pursuant to paragraph 5 of these Terms of Reference (ToR) in accordance with Article 23b(6) of EMIR. The report may include recommendations for potential EU-level actions to address identified horizontal risks;
  - b. ESMA's assessment, in accordance with Article 7a(10) of EMIR on the effectiveness of the requirements on active accounts in mitigating the financial stability risks for the EU represented by the exposures of EU counterparties to those Tier 2 CCPs offering services of substantial systemic importance pursuant to Article 25(2c) of EMIR; and
  - c. ESMA's assessment, in accordance with Article 85(12) of EMIR, of the application of Articles 15a, 17, 17a, 17b, 49 and 49a of EMIR, with a focus on the competitiveness of EU CCPs, the time to market of new clearing services and products, the risk profile of EU CCPs and overall financial stability risks in the EU in relation to clearing.
7. The JMM shall notify ESMA if it identifies a likely materialisation of financial stability risks in the EU in the context of the active account requirement, as a result of specific circumstances triggering an event with systemic implications in accordance with Article 7a(10) of EMIR.

## **Coordination and cooperation**

8. The bodies participating in the JMM, the relevant colleges referred to in Article 18 of EMIR, and the relevant national competent authorities shall cooperate and share the information necessary to carry out the tasks referred to in paragraphs 5 in accordance with Article 23b paragraph 2 of EMIR.
9. Where that information is not available to the members or observers of the JMM, including information referred to in Article 7a(9) of EMIR, ESMA shall work closely with the relevant competent authorities of authorised CCPs, their clearing members and their clients to receive the necessary information enabling the bodies participating in the JMM to perform their tasks in accordance with Article 23b paragraph 2 of EMIR.
10. The Chair will coordinate information sharing within the JMM, also by taking into account the possible confidential nature of any information shared by the relevant competent authority.
11. The Chair will coordinate the submission of any documents to the ESMA Board of Supervisors as deemed necessary and appropriate.
12. The JMM shall liaise and coordinate with other relevant ESMA groups where its activities relate or are complementary to those of other groups.
13. The work of the JMM is not expected to duplicate or overlap with the functions of the other ESMA Standing Committees, or the groups reporting to the Joint Committee, that will remain responsible for addressing matters in the respective areas of EU legislation that fall within their respective remits. The JMM shall closely collaborate with in particular the CCP Supervisory Committee (CCPSC) and the CCP Policy Committee (CCPPC).

## **Composition**

14. The JMM shall be composed of the Chair, the members, and the observers.
15. ESMA staff shall maintain a list of the names of the representatives of member and observer institutions.

### **Chair**

16. The Chair of the JMM shall be the Chair of the CCPSC.
17. The Chair shall appoint an ESMA representative as his replacement in case of absence.
18. The Chair will be supported by a Rapporteur from ESMA concerning the organisation of activities and the meetings of the JMM.
19. The Chair may, upon request of the other members of the JMM or on the Chair's own initiative, invite other authorities, including authorities represented in the ESMA Board of Supervisors, experts, or academics to participate in the meetings when relevant to the topics of such meeting in accordance with Article 23b(1) of EMIR.

### **Members**

20. In accordance with Article 23b(1) of EMIR, the JMM shall be composed of:

- a. ESMA
  - b. EBA and EIOPA;
  - c. ESRB
  - d. ECB in the capacity of central bank of issue of the euro
  - e. ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Regulation (EU) No 1024/2013; and
  - f. the central banks of issue of currencies, other than the euro, in which the derivative contracts referred to in Article 7a(6) of EMIR are denominated.
21. A member of the JMM may, when a topic for discussion in the JMM so requires, be accompanied by an expert from its authority for a specific part or agenda point of the JMM meeting. The JMM member shall announce this intent to the Rapporteur in advance of the meeting and participation will be subject to agreement of the Chair of the JMM.

### **Observers**

22. In accordance with Article 23b(1) of EMIR, in addition to the entities referred to in paragraph 20, the following authorities may participate in the JMM as observers:
- a. the central banks of issue of the currencies of denomination of the derivative contracts referred to in Article 7a(6) of EMIR, other than those listed in paragraph 20 under f above.
  - b. the national competent authorities supervising the requirements on active accounts under Article 7a of EMIR, limited to one per member state; and
  - c. the Commission.

### **Nomination of representatives**

23. ESMA will be represented by the two independent members of the CCP Supervisory Committee.
24. Other JMM Members shall appoint up to two representatives.
25. Each JMM Observer shall appoint one representative and may appoint an alternate.
26. In case the representative of a member is prevented from attending a meeting, he may nominate a substitute to attend this meeting by announcing this intent to the Rapporteur in advance of the meeting.
27. The representatives, their alternates, or their substitutes, should have the necessary level of seniority and ability to speak on behalf and leverage the support by that authority.

28. The representatives, their alternates, or their substitutes, should have the necessary skills, knowledge, and experience to support the fulfilment of the JMM's mandate.

### **Structure and governance**

29. The responsibilities of the Chair, Rapporteur, and participants of the JMM are as set out in the Procedures for ESMA groups (ESMA22-104-5119), which set out the rules concerning ESMA Group's structure, governance and working methods, and apply to the JMM unless otherwise specified in EMIR and these ToR.

#### Meetings and attendance

30. The JMM will meet on a regular basis as required in order to deliver its tasks. Meetings of substructures will be organised as necessary to enable the JMM to fulfil its tasks.
31. If necessitated due to the confidential nature of the information shared (for example due to the fact that the information is entity-specific or of supervisory nature), the Chair of the JMM may limit attendance to (the relevant part of) a JMM meeting on a need-to-know basis.
32. Observers may receive documents and other information circulated to JMM members subject to confidentiality considerations and paragraph 10 and 31 above.
33. Members and observers of the JMM are expected to actively contribute in the meetings and through sharing of information, data and analytics in order to support the JMM's tasks.

### **Confidentiality**

34. All members and observers of the JMM shall be subject to the obligation of professional secrecy as per Article 83 of EMIR.

### **Review**

35. The Terms of Reference will be reviewed at least every two years by the Board of Supervisors, following a proposal by the JMM.