

## Cooperative Arrangement between the European Central Bank and the European Securities and Markets Authority regarding the coordination and exchange of supervisory information in relation to CCPs and their participants

### WHEREAS

- (1) Article 4(3) of the Treaty on European Union provides that the Union and the Member States are, in full mutual respect, to assist each other in carrying out the tasks which flow from the Treaties, and Article 13(2) of the same Treaty requires the Union institutions to practice mutual sincere cooperation.
- (2) Council Regulation (EU) No 1024/2013<sup>1</sup> (hereinafter the ‘SSM Regulation’) confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions. This Cooperative Arrangement covers the supervisory tasks conferred on the ECB by Article 4, read in conjunction with Article 6(4), of the SSM Regulation. Cooperation under this Cooperative Arrangement is without prejudice to the tasks and responsibilities of the national competent authorities (NCAs) under European Union and national laws, as well as Memoranda of Understanding they are party to (or will become party to) for the performance of their tasks.
- (3) Regulation (EU) No 648/2012<sup>2</sup> (hereinafter ‘EMIR’) and Regulation (EU) No 1095/2010<sup>3</sup> (hereinafter the ‘ESMA Regulation’) confer specific tasks on ESMA, in particular to monitor and assess market developments, to promptly detect and address risks, to verify that CCPs comply with the obligations and requirements under the applicable legislation in the scope of ESMA competences, and to directly supervise on an on-going basis Tier 2 third-country CCPs.
- (4) Pursuant to Article 3(1) of the SSM Regulation and Article 6(a) of Directive 2013/36/EU of the European Parliament and of the Council<sup>4</sup> (hereinafter the ‘CRD’), the ECB shall cooperate with the other parties of the European System of Financial Supervision (ESFS), in particular when ensuring the flow of appropriate and reliable information, in accordance with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union.
- (5) The ECB is subject to professional secrecy pursuant to Article 37 of the Statute of the European System of Central Banks and the ECB. Pursuant to Article 27(1) and (2) of the SSM Regulation, this obligation also applies to the ECB’s supervisory function in line with general EU law. Therefore, the ECB and its staff are subject to the confidentiality regime and obligations established in the CRD, notably in Title VII, Chapter 1, Section II.

---

<sup>1</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

<sup>2</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories Text with EEA relevance (OJ L 201, 27.7.2012, p. 1–59).

<sup>3</sup> 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 (OJ L 331, 15.12.2010, p. 84–119).

<sup>4</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (6) ESMA is subject to professional secrecy obligations under Article 70 of the ESMA Regulation as well as Article 83 of EMIR.
- (7) Under Article 27(2) of the SSM Regulation the ECB may, for the purpose of carrying out the tasks conferred on it by that Regulation and within the limits and under the conditions set out in the relevant Union law, exchange information with national or Union authorities and bodies where the relevant Union law allows national competent authorities to disclose information to those entities or where the Member States may provide for such disclosure under the relevant Union law.
- (8) Pursuant to Article 56 of the CRD, the requirements regarding professional secrecy and use of confidential information set out in Articles 53 and 54 of the CRD do not preclude the exchange of information between, on the one hand, competent authorities in the discharge of their supervisory functions and, on the other hand, authorities entrusted with the public duty of supervising other financial sector entities and authorities responsible for the supervision of financial markets.
- (9) Desiring to use their best efforts possible to assist one another with the fullest mutual assistance possible to facilitate the performance of the tasks they are entrusted with by the relevant Union law, the ECB and ESMA express their willingness to cooperate with each other on the basis of mutual trust and understanding for the purpose of performing their supervisory tasks in respect of entities that fall within their supervisory responsibilities.

The Authorities have reached the following understanding:

### *Article 1*

#### **Definitions**

For the purpose of this Cooperative Arrangement:

- 'Central counterparty' or 'CCP' means a CCP authorised under Article 14 of EMIR or recognised under Article 25 of EMIR;
- 'Tier 2 third-country CCP' means a CCP established in a third country and determined by ESMA as a systemically or likely to become systematically important for the financial stability of the Union or one or more of its Member States in accordance with Article 25(2a) of EMIR and recognised by ESMA in accordance with Article 25(2b) of EMIR;
- 'Supervised entities' means entities that fall within the supervisory remit of the ECB and that either participate to a CCP (including a third-country CCP) or are themselves licensed as CCPs;
- 'Authority' means any of the parties to this cooperation agreement, together also referred to as 'Authorities'<sup>5</sup>;
- 'Supervisory information' means confidential information owned or held by the Authorities regarding CCPs or Supervised entities connected with the carrying out of the tasks conferred on the ECB and ESMA and that cannot be otherwise directly obtained by the Authorities, including but not limited to:
  - o (i) information relating to the operations and activities of CCPs and Supervised entities, including but not limited to financial and non-financial regulatory reporting and compliance or otherwise with the relevant prudential requirements;
  - o (ii) information about any event that could materially impact the sound management and coverage of risks by CCPs and Supervised entities;
  - o (iii) information relating to identified possible significant deficiencies or material weaknesses of CCPs with regards to their financial resources or their controls and governance pursuant to EMIR;
  - o (iv) information relating to significant deficiencies or material weaknesses of Supervised entities, including their ability to meet prudential requirements in accordance with the SSM Regulation;
  - o (v) information relating the remedial actions to address the above-mentioned identified deficiencies or weaknesses;

---

<sup>5</sup> For the purpose of the information sharing provisions in this cooperative arrangement (a) staff from the national competent authorities (NCAs) as defined in Article 2(2) of the SSM Regulation performing activities related to the application and execution of ECB supervisory tasks within the SSM; or (b) staff from the national central banks (NCBs) and NCAs acting in an official capacity as a member of the ECB Governing Council or the SSM Supervisory Board on matters relating to prudential banking supervision will be treated as staff members of the ECB and will be subject to the confidentiality provisions of this cooperation agreement.

- (vi) information relating to investigation and enforcement measures undertaken by the Authorities within the remits of their respective tasks; and
- (vii) information relating to sanctions imposed on CCPs or Supervised entities.

## *Article 2*

### **Purpose and general principles**

1. The purpose of this Cooperative Arrangement is to formalise cooperation and information-sharing mechanisms between the Authorities in relation to CCPs and Supervised entities.
2. This Cooperative Arrangement is aimed at ensuring the effective exchange of Supervisory information for the performance of the Authorities' respective tasks, to the extent permitted by law.
3. The Authorities recognise that cooperation under this Cooperative Arrangement could be denied on the grounds of laws, regulations and requirements, or public interest, as well as where it would interfere with an ongoing investigation or impede the smooth and effective execution of tasks conferred on the Authorities by Union law and/or their statutes.

## *Article 3*

### **Principles regarding the exchange of Supervisory information**

1. The Authorities will endeavour to provide each other upon request or on their own initiative, on a timely, need-to-know and case-by-case basis, where appropriate and insofar feasible, with any Supervisory information that is relevant for the discharge of their respective tasks and competences.
2. To the extent possible, a request for information should be made in writing and addressed to the relevant contact person(s) that each Party will designate and communicate to the other Party for that purpose. A request generally should specify at least the following:
  - (a) the information sought by the requesting Authority;
  - (b) a concise description of the matter that is the subject of the request;
  - (c) the purpose for which the information is sought and the reasons why the information is likely to be relevant for the proper performance of the requesting Authority's tasks, and in the light of the requesting Authority's legislation, including a specification of the tasks and competences that are connected with the subject matter of the request;
  - (d) any information known to, or in the possession of, the requesting Authority that might assist the requested Authority in fulfilling the request;
  - (e) the desired time period for reply and, where appropriate, the urgency thereof.
3. Where a request for information is denied or the information requested is not available, the requested Authority will provide the reasons for not sharing the information.

4. The exchanges of information will be conducted in writing, regardless of its format (paper, electronic communication or other). In urgent circumstances, requests may be made orally, provided that they are subsequently confirmed in writing as promptly as possible following each request.

#### *Article 4*

##### **Ongoing cooperation**

1. The Authorities will conduct meetings, as appropriate, to discuss issues concerning Supervised entities and CCPs, and to review, shall the need arise, the effectiveness of this Cooperative Arrangement. The Authorities also intend, where practicable, to promote their cooperation by means of visits for informational purposes.
2. To the extent possible, the Authorities will conduct their communication via the designated contact persons communicated on the basis of Article 3(2).
3. The information mentioned in this Article will be provided insofar as practicable and subject to the applicable laws and regulations, and in accordance with the principles set out in this Cooperative Arrangement.

#### *Article 5*

##### **Cooperation in relation to emergency situations**

1. Each Authority will endeavour to inform the other promptly if it becomes aware of an emerging crisis, emerging risks or issues affecting CCPs or Supervised entities that could have material negative implications on the safety and soundness or on the proper functioning of CCPs.
2. To the extent possible, the Authorities will endeavour to seek coordinated responses to any crisis emerging in relation to a CCP or a Supervised entity, in accordance with the applicable legislation and without prejudice to their respective involvement in the relevant crisis management cooperation fora.

#### *Article 6*

##### **Status of this Cooperative Arrangement**

1. This Cooperative Arrangement sets forth a statement of intent and does not modify or supersede any laws, regulations and requirements in force in, or applying to the European Union, or any of the Member States of the European Union. Nor does this Cooperative Arrangement create any directly or indirectly enforceable rights or legally binding obligations for the Authorities or any third party.
2. This Cooperative Arrangement is without prejudice to other cooperation arrangements that each Authority might conclude and can be supplemented with other more specific memoranda of understanding between the same Authorities agreed upon for the purpose of cooperating for the supervision of a specific cross-border establishment.

3. The Authorities will use their best endeavours in the performance of this Cooperative Arrangement. However, neither the Authorities nor any third party can bear or seek any liability regarding the performance of this Cooperative Arrangement.
4. Any disagreement arising from the interpretation or the performance of this Cooperative Arrangement will be amicably settled by means of consultations between the Authorities.
5. Any amendment to this Cooperative Arrangement, including this Article, will be made by the Authorities' mutual consent and formulated in English and have effect only if executed by the Authorities in writing.
6. This Cooperative Arrangement will come into effect once signed by both Authorities and will continue indefinitely, subject to modification by the mutual consent of the Authorities or termination by either Authority with 30 days' prior notice to the other Authority.
7. In the event of termination of this Cooperative Arrangement, the information obtained hereunder will continue to be treated in accordance with the applicable confidentiality regime.

*Article 7*

**Publication**

Once this Cooperative Arrangement has come into effect, the Authorities agree that it may be made publicly available in full or in part, excluding information relating to contact persons.

Date: 23 November 2023

Date: 27 November 2023

<p>European Securities and Markets Authority</p> <p>[Signed]</p> <p>Verena Ross Chair</p>	<p>European Central Bank</p> <p>[Signed]</p> <p>Andrea Enria Chair of the Supervisory Board</p>
	<p>European Central Bank</p> <p>[Signed]</p> <p>Frank Elderson Vice-Chair of the Supervisory Board</p>