

## Wytyczne

w sprawie pisemnych uzgodnień i procedur dotyczących funkcjonowania kolegiów ds. restrukturyzacji i uporządkowanej likwidacji

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## 1 Zakres

### Kto?

1. Niniejsze wytyczne mają zastosowanie do organów ds. restrukturyzacji i uporządkowanej likwidacji właściwych dla CCP, zgodnie z definicją w art. 2 pkt 3 rozporządzenia (UE) 2021/23.

### Co?

2. Niniejsze wytyczne mają zastosowanie w odniesieniu do art. 4 ust. 7 rozporządzenia (UE) 2021/23, w którym mowa o treści pisemnych uzgodnień i procedur dotyczących funkcjonowania kolegiów ds. restrukturyzacji i uporządkowanej likwidacji, o których mowa w art. 4 ust. 1 rozporządzenia (UE) 2021/23 w odniesieniu do zadań, o których mowa w art. 12, 15 i 16 rozporządzenia (UE) 2021/23, oraz w związku z rozporządzeniem delegowanym Komisji (UE) 2023/1192.

### Kiedy?

3. Niniejsze wytyczne stosuje się po upływie dwóch miesięcy od dnia ich publikacji na stronie internetowej ESMA w odpowiednich językach urzędowych Unii Europejskiej.

## 2 Odniesienia do przepisów prawa, skróty i definicje

### 2.1 Odniesienia do przepisów prawa

CCPRRR	Rozporządzenie Parlamentu Europejskiego i Rady (UE) 2021/23 z dnia 16 grudnia 2020 r. w sprawie ram na potrzeby prowadzenia działań naprawczych oraz restrukturyzacji i uporządkowanej likwidacji w odniesieniu do kontrahentów centralnych oraz zmieniające rozporządzenia (UE) nr 1095/2010, (UE) nr 648/2012, (UE) nr 600/2014, (UE) nr 806/2014 i (UE) 2015/2365 oraz dyrektywy 2002/47/WE, 2004/25/WE, 2007/36/WE, 2014/59/UE i (UE) 2017/1132 <sup>1</sup> .
EMIR	Rozporządzenie Parlamentu Europejskiego i Rady (UE) nr 648/2012 z dnia 4 lipca 2012 r. w sprawie instrumentów pochodnych będących przedmiotem obrotu poza rynkiem regulowanym, kontrahentów centralnych i repozytoriów transakcji <sup>2</sup> .
rozporządzenie delegowane dotyczące kolegów ds. restrukturyzacji i uporządkowanej likwidacji	Rozporządzenie delegowane Komisji (UE) nr 2023/1192 uzupełniające rozporządzenie Parlamentu Europejskiego i Rady (UE) 2021/23 w odniesieniu do standardów technicznych określających treść pisemnych uzgodnień i procedur dotyczących funkcjonowania kolegów ds. restrukturyzacji i uporządkowanej likwidacji <sup>3</sup> .
rozporządzenie w sprawie ustanowienia ESMA	Rozporządzenie Parlamentu Europejskiego i Rady (UE) nr 1095/2010 z dnia 24 listopada 2010 r. w sprawie ustanowienia Europejskiego Urzędu Nadzoru (Europejskiego Urzędu Nadzoru Giełd i Papierów Wartościowych), zmiany decyzji nr 716/2009/WE i uchylenia decyzji Komisji 2009/77/WE <sup>4</sup> .

### 2.2 Skróty

CCP	kontrahent centralny
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<sup>1</sup> Dz.U. L 22 z 22.1.2021, s. 1.

<sup>2</sup> Dz.U. L 201 z 27.7.2012, s. 1.

<sup>3</sup> Dz.U. L 158 z 21.6.2023, s. 31

<sup>4</sup> Dz.U. L 331 z 15.12.2010, s. 84.

<i>EBC</i>	Europejski Bank Centralny
<i>EOG</i>	Europejski Obszar Gospodarczy
<i>ESMA</i>	Europejski Urząd Nadzoru Giełd i Papierów Wartościowych
<i>ESNF</i>	Europejski System Nadzoru Finansowego
<i>KE</i>	Komisja Europejska
<i>UE</i>	Unia Europejska

## 2.3 Definicje

4. O ile nie określono inaczej, terminy stosowane w niniejszych wytycznych mają takie samo znaczenie, jak w CCPRRR, EMIR i rozporządzeniu delegowanym Komisji (UE) nr 152/2013 z dnia 19 grudnia 2012 r. w sprawie wymogów kapitałowych obowiązujących partnerów centralnych<sup>5</sup>, rozporządzeniu delegowanym Komisji (UE) nr 153/2013 z dnia 19 grudnia 2012 r. w sprawie wymogów obowiązujących kontrahentów centralnych<sup>6</sup> oraz rozporządzeniu delegowanym dotyczącym kolegiów ds. restrukturyzacji i uporządkowanej likwidacji.

## 3 Cel

5. Podstawę niniejszych wytycznych stanowi art. 16 ust. 1 rozporządzenia w sprawie ustanowienia ESMA. Celem niniejszych wytycznych jest ustanowienie spójnych, wydajnych i skutecznych praktyk nadzorczych w ramach ESNF oraz zapewnienie wspólnego, jednolitego i spójnego stosowania art. 4 CCPRRR i rozporządzenia delegowanego dotyczącego kolegiów ds. restrukturyzacji i uporządkowanej likwidacji. Mają one przede wszystkim wyjaśnić kluczowe elementy, o których mowa w art. 4 CCPRRR i rozporządzenia delegowanego dotyczącego kolegiów ds. restrukturyzacji i uporządkowanej likwidacji.

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<sup>5</sup> Dz.U. L 52 z 23.2.2013, s. 37.

<sup>6</sup> Dz.U. L 52 z 23.2.2013, s. 41.

## **4 Zgodność i obowiązki sprawozdawcze**

### **4.1 Status wytycznych**

6. Zgodnie z art. 16 ust. 3 rozporządzenia w sprawie ustanowienia ESMA organy ds. restrukturyzacji i uporządkowanej likwidacji muszą dołożyć wszelkich starań, aby zastosować się do niniejszych wytycznych.
7. Organy ds. restrukturyzacji i uporządkowanej likwidacji, do których mają zastosowanie niniejsze wytyczne, powinny zapewnić zgodność z nimi poprzez odpowiednie włączenie ich do swoich krajowych ram prawnych lub nadzorczych.

### **4.2 Obowiązki sprawozdawcze**

8. W terminie dwóch miesięcy od daty publikacji niniejszych wytycznych na stronie ESMA w odpowiednich językach urzędowych UE organy ds. restrukturyzacji i uporządkowanej likwidacji, do których niniejsze wytyczne mają zastosowanie, muszą zawiadomić ESMA, czy (i) stosują wytyczne, (ii) nie stosują wytycznych, ale zamierzają zastosować się do nich lub (iii) nie stosują wytycznych i nie zamierzają się do nich zastosować.
9. W przypadku niestosowania wytycznych organy ds. restrukturyzacji i uporządkowanej likwidacji muszą również przekazać ESMA, w terminie dwóch miesięcy od daty publikacji wytycznych na stronie ESMA w odpowiednich językach urzędowych UE, informację o powodach niestosowania wytycznych.
10. Szablon zawiadomienia jest dostępny na stronie internetowej ESMA. Po wypełnieniu formularza należy przekazać go do ESMA.

## **5 Wytyczne dotyczące pisemnych uzgodnień między członkami kolegiów ds. restrukturyzacji i uporządkowanej likwidacji**

### **5.1 Wytyczna 1. Standardowe pisemne uzgodnienia**

Ustanawiając kolegium ds. restrukturyzacji i uporządkowanej likwidacji na mocy art. 4 CCPRRR, uzupełnionego rozporządzeniem delegowanym dotyczącym kolegiów ds. restrukturyzacji i uporządkowanej likwidacji, organ ds. restrukturyzacji i uporządkowanej likwidacji powinien zaproponować pisemne uzgodnienia zgodnie ze standardowym pisemnym uzgodnieniem zawartym w załączniku 1.

### **5.2 Wytyczna 2. Przyjęcie pisemnych uzgodnień**

W przypadku przedstawienia pisemnych uzgodnień w sprawie ustanowienia i funkcjonowania kolegium ds. restrukturyzacji i uporządkowanej likwidacji, które nie odbiegają od standardowego pisemnego uzgodnienia zawartego w załączniku 1, organ powinien wyrazić zgodę na takie pisemne uzgodnienia w terminie 10 dni roboczych od ich otrzymania i powinien powstrzymać się od zwracania się o dokonanie zmian w pisemnych uzgodnieniach, które wprowadzają odstępstwo od standardowego pisemnego uzgodnienia.

Jeżeli organ kwalifikujący się do członkostwa nie zwróci podpisanego egzemplarza pisemnego uzgodnienia organowi ds. restrukturyzacji i uporządkowanej likwidacji w wyznaczonym terminie, organ ten musi przedstawić organowi ds. restrukturyzacji i uporządkowanej likwidacji w pełni uzasadnione wyjaśnienie, dlaczego nie podpisał pisemnego uzgodnienia w przewidzianym terminie.

## 6 Załącznik – szablon standardowego pisemnego uzgodnienia

### Template Written arrangement for the establishment and functioning of the resolution college

#### 1. Introduction

1. In accordance with Article 4 of Regulation (EU) 2021/23 of the European Parliament and of the Council ('CCPRRR') and Commission Delegated Regulation 2023/1192, the written arrangements and procedures of the resolution college for *[insert name of the CCP for which the resolution college is established]* is intended to establish the practical arrangements for the establishment and functioning of the College and to facilitate the effective operation of the College.
2. The authority chairing the College is the resolution authority designated in accordance with Article 3(1) of Regulation (EU) 2021/23 that, pursuant to Article 4(1) of CCPRRR, establishes, manages and chairs a resolution college to carry out the tasks referred to in Articles 12, 15 and 16 of CCPRRR in relation to the CCP for which this Written Arrangements applies.
3. College Members are the authorities that qualify for membership of the resolution college in accordance with Article 4(2) of CCPRRR. Voting College Members are the authorities listed in points (a), (b), (c), (f), (g), (h), (i), (j) and (m) of Article 4(2) of that Regulation. Non-voting College Members are the authorities listed in points (d), (e), (k), (l), (n) and (o) of Article 4(2) of CCPRRR. The list of College Members and the corresponding contact details are set out in Annex A.
4. College Observers are the authorities that meet the criteria set out in Article 4(4) and 14(3) of CCPRRR and are invited to participate by the Chairing Authority, in accordance with Article 4(4) of CCPRRR and Article 2 of the Resolution College Delegated Regulation. The list of College Observers and the corresponding contact details are in the Annex B.
5. This Written Arrangement does not create any additional legally binding obligations on the College Members and College Observers which are not specified in CCPRRR or the Resolution College Delegated Regulation.
6. The function of resolution colleges is to facilitate the exercise of the tasks specified in CCPRRR and the tasks assigned to College Members and, to the extent applicable, College Observers, as well as the composition, establishment and management of resolution colleges. Practical arrangements laid down in the Resolution College Delegated Regulation form part of this Written Arrangement.



7. This Written Arrangement is intended to be consistent with CCPRRR and the Resolution College Delegated Regulation. If, however, there is any conflict between a provision of CCPRRR (or the Resolution College Delegated Regulation) and this Written Arrangement, the provisions of CCPRRR (the Resolution College Delegated Regulation) will take precedence. This Written Arrangement does not supersede or prevent a College Member from organising or participating in any other bilateral or multilateral arrangements for resolution purposes with regard to a CCP.

## 2. Defined Terms and identification of members and observers

**Chairing Authority**, means *[insert name of the Chairing Authority]*.

**CCP** means *[insert name of the CCP or of the group for which the College is established]*.

**College** means the resolution college of *[insert name of the CCP for which the resolution college is established]*

**College Member** means any of the authorities listed in Annex A.

**College Observer** means any of the authorities listed in Annex B.

**Confidential Information** means any non-public information shared within the College, requests made through the College, the contents of such requests, and any other matters arising within the College.

**CCPRRR** means Regulation (EU) 2021/23 of the European Parliament and of the Council

**Resolution College Delegated Regulation** means Commission Delegated Regulation 2023/1192,

**Written Arrangement** means the written arrangements and procedures between the members of the resolution college.

## 3. Establishment of the College

1. The College should be established following the procedure set out in Section I of the Resolution College Delegated Regulation.
2. The College should be deemed to be established once a signed copy of this Written Arrangement has been received from all College Members and College Observers. Within 5 working days of the College being established, the Chairing Authority will confirm to the College Members and College Observers the fact that the College has been established

and share the contact details of all representatives of College Members and College Observers.

3. The Chairing Authority should review and update the list of College Members and College Observers at least annually and in any case whenever there is any change in that list.
4. The Chairing Authority should communicate the list of College Members and College Observers within [5] working days after the College has been established and any changes thereto within [20] working days of the change to the College Members and College Observers.

*[Where third-country authorities have been invited to participate in the College as College Observers, please include references to the assessment of the confidentiality provisions of these third countries made by the Chairing Authority.]*

#### **4. Working language of the College**

1. The working language of the College, including the language in which the Chairing Authority should communicate with College Members and College Observers, when, for example, it produces a resolution plan (under Article 12(1) of CCPRRR), an assessment of resolvability (under Article 15(1) of CCPRRR) or its report on how to address or remove impediments to resolvability (under Article 16(1) of CCPRRR) and the language in which the College should operate and reach any joint decision (under Articles 14 and 17 of CCPRR) is English.
2. Where any information relevant for the adoption of a joint decision, including any additional information related thereto, is available in a language that is not English, the Chairing Authority should provide the College Members and College Observers with an English translation of all relevant documentation necessary for the College to decide on the joint decision within a reasonable timeframe.

#### **5. College meetings and adoption of joint decisions**

1. The Chairing Authority will chair all College meetings.
2. The Chairing Authority may decide to invite all or part of the College Observers to attend a College meeting.
3. The College will meet at least annually. [If the Chairing Authority, with the consent of the College Members, and taking into account the CCP's size, nature, scale and complexity, the systemic implications of the CCP's activities across jurisdictions and currencies, the potential impacts of the activities of the CCP, external circumstances and potential requests by the College Members, determines that a higher frequency of meetings is necessary, please instead insert: 'The College will meet [insert frequency] a year'.]

4. The Chairing Authority should organise ad-hoc meetings or other forms of activities among College Members and College Observers, to the extent necessary, in particular where a dialogue among the College Members and College Observers is required.
5. Any College Member may request the Chairing Authority to hold a College meeting. The requesting College Member should specify, in its request, the matters that it considers that require a discussion. The Chairing Authority will respond to such requests within 10 working days and, where the request is granted, schedule a College meeting that will be held within 20 working days from the date of granting the request. Where the Chairing Authority does not consider a College meeting to be necessary, it should provide, in its response to the requesting College Member, a statement of its reasons for reaching such a conclusion, including an explanation of how it proposes to address the concerns raised by the requesting College Member.
6. The Chairing Authority should distribute a draft agenda for each College meeting, other than for emergency situations as described in paragraph 12 of this Written Arrangement, at least 10 working days before each meeting. Where a College Member wishes to contribute to the agenda of a meeting, in particular by adding points to the agenda of a meeting, it should submit its request to Chairing Authority at least 7 working days prior to the meeting of the College. Wherever practical, the draft agenda of the College meeting will be finalised at the latest 5 working days [*if the Chairing Authority and the College Members agree to another timeframe, please insert 'at least [x] working days'*] before the date of such meeting.
7. The adoption of the minutes of the previous College meeting should be tabled for discussion in every agenda, unless adopted prior to such meeting by written procedure pursuant to paragraph 5.21.
8. The following agenda points should be tabled for discussion by the College at least annually:
  - a) the resolution plan of the CCP for the preceding resolution cycle; and
  - b) An update on the progress made towards resolvability of the CCP.
9. College Members and College Observers should distribute the written material that is to be considered at a College meeting not less than 5 working days [*if Chairing Authority and College Members agree to another timeframe, please insert 'not less than [x] working days'*] before the relevant meeting.
10. Outcomes and decisions of College meetings or other activities should be documented in writing and the Chairing Authority should ensure that they are communicated to College Members and College Observers, as appropriate, within 15 working days [*if Chairing Authority and College Members agree to another timeframe, please insert 'within [x] working days'*] after the meeting.

11. College Members and College Observers should ensure that appropriate representatives of their respective institutions, having regard to the objectives of the meeting and other activities of the College, participate in the College meetings and other activities. To the maximum extent possible, any representative of a College Member should be empowered to bind their authorities to decisions taken in these meetings or other activities.
12. The representative attending a College meeting on behalf of a voting College Member should have sufficient delegated authority to vote at the College meeting on behalf of the College Member they represent.
13. The quorum for College meetings is two-thirds of the voting College Members, except where CCPRRR provides for a different quorum. Unlike other College Members, where the ECB is a member of the College pursuant to points (c) and (j) of Article 4(2) of CCPRRR, it has two votes in the College.
14. Where a decision is tabled for a vote by the College, including any vote of the College on a joint decision, and the quorum requirement is not met (either where the Chairing Authority ascertains that this will be the case in advance of the meeting or at the time of the meeting) the Chairing Authority should organise a new meeting as soon as practically possible, or at least within a timeframe that makes it possible to meet the various deadlines provided for in CCPRRR and the Resolution College Delegated Regulation. The Chairing Authority should give as much notice of such a subsequent meeting as practically possible and distribute the corresponding information as early as practically possible.
15. Any vote undertaken at a College meeting will take place by an open show of hands or by an explicit expression of the votes provided by the voting College Members where the meeting is held by teleconference or videoconference call. Once a vote is cast, it cannot be withdrawn or amended. The outcome of any vote (including records providing the details of the individual votes) should be clearly recorded in the minutes of the meeting.
16. Where considered appropriate by the Chairing Authority, or where requested by a voting College Member, a vote may be taken by written procedure, on a proposed decision by the Chairing Authority circulated to the College Members, and, to the extent relevant, College Observers. The proposal should contain at least the following information:
  - a. the time and date by which votes must be cast which should be a date and time at least 10 working days after the Chairing Authority shared the proposal for voting with the College Members;
  - b. where the period for casting the votes is less than 10 working days from the date when the Chairing Authority shared the proposal with the College Members, the reason(s) for the shortened voting window/period;

- c. the justifications for using a written procedure as opposed to a vote undertaken at a College meeting; and
  - d. any other material information considered necessary for making the decision that has not previously been provided to the College in relation to the subject of the decision the vote is made on.
17. In case of an emergency situation as defined in paragraph 12.1, the period for casting the votes may be shortened to a smaller number of working days, to be determined depending on the specific circumstances, unless the majority of voting College Members express their disagreement.
18. Votes on proposed decisions being taken by written procedure should be in written format and failure to vote should be considered a vote supporting the Chairing Authority's proposal.
19. The result of a written procedure should be notified without delay to the College.
20. College Members may request the Chairing Authority that any aspect of an issue that has been the subject of a written procedure be discussed at the next meeting of the College. Such a request should not affect the validity of the decision taken by written procedure.
21. The minutes of the College meetings should be distributed to College Members and College Observers by the Chairing Authority no more than 15 working days following the meeting. Such minutes should be subject to comments by College Members for a period of at least 5 working days, but no more than 15 working days, and will be tabled for adoption at the subsequent meeting of the College. Alternatively, such minutes can be adopted by written procedure.
22. The transmission of information among College Members and, to the extent relevant, College Observers should be done by secure e-mail or another secure means of communication, in compliance with the requirements set out in Article 8(6) of the Resolution College Delegated Regulation. All College Members should be provided at the same time with the same information to ensure that information is shared on equal terms.

## **6. Exchange of information**

1. College Members and College Observers should send to the Chairing Authority, via secure email or any other secure means of communication, updates on:
  - a. any change to the corporate structure and business activities of the CCP, including the type of services it provides, the products, asset classes and types of transactions it clears, the CCPs, trading venues, PSs and CSDs/SSSs to which it is linked and the geographical mix of direct and significant indirect participants known to the CCP that might have an impact on tasks performed by the College, including resolution planning and resolvability assessments, as described in paragraphs 7 to 9 of the Written Arrangement;
  - b. any topic that might be useful for the College to be able to fulfil its tasks, including resolution planning and resolvability assessments, as described in paragraphs 7 to 9 of the Written Arrangement.
2. The Chairing Authority should circulate to the College Members and College Observers, if possible, as soon as it receives it, the information received from other College Members or College Observers under paragraph 6.1 above.
3. The Chairing Authority may decide to restrict the exchange of some information to College Members in accordance with CCPRRR.

## **7. Drawing up of resolution plans**

1. College Members and, to the extent relevant, College Observers should exchange all relevant information necessary for the drawing up and maintaining of resolution plans in accordance with Article 12 of CCPRRR, including information in relation to:
  - a. where the resolution plan takes into consideration situations of broader financial instability or system wide events, and where the identified possible situation and scenarios involve the country of a College Member or College Observer;
  - b. where there are identified connections to the country of a College Member or College Observer in relation to clearing members (and to the extent the information is available, their clients and indirect clients) or linked FMIs, as well as to trading venues;
  - c. where there are interdependencies or shared financial markets;
  - d. where the resolution plan considers and takes into account the financial system in the country of a College Member or College Observer;

- e. where it may be envisaged that a College Member or College Observer assists the Chairing Authority in a resolution situation.

## **8. Assessment of resolvability**

1. College Members and, to the extent relevant, College Observers should exchange all the relevant information necessary to perform the resolvability assessment under Article 15 of CCPRRR (including the aspects listed under Annex Section C of CCPRRR), including, information in relation to:
  - a. where the CCP may have core business lines, legal and corporate structures and critical operations connected or linked to the country of a College Member or College Observer;
  - b. where there are funding dependencies linked to the country of a College Member or College Observer;
  - c. where there are intra-group dependencies in the country of a College Member or College Observer relevant to the CCP, such as material service level agreements linked, connected or established in the country of a College Member or College Observer;
  - d. where it is relevant to consider processes for transitioning services provided under service level agreements in the country of a College Member or College Observer, in the event for example of the separation of critical functions or of core business lines;
  - e. where there are payment and/or settlement systems relevant to the CCP in the country of a College Member or College Observer;
  - f. where there is reliance on information from entities in the country of a College Member or College Observer relevant to the CCP;
  - g. where it may be envisaged that a College Member or College Observer assists the Chairing Authority in a resolution situation;
  - h. where it may be envisaged to apply resolution tools in such a way that resolution may have a material impact or be partly undertaken in the country of a College Member or College Observer;
  - i. where the CCP has clearing members or collateral arrangements established in the country of a College Member or College Observer and this could affect resolution;



- j. where the credibility of applying resolution tools in such a way which meets the resolution objectives, is dependent on possible actions taken by a College Member or College Observer; and
- k. where the resolution of CCP may impact the financial system, have an effect on financial market's confidence and if there are risks of contagion, linked or relevant to the country of a College Member or College Observer.

## **9. Addressing or removing impediments to resolvability**

College Members should exchange all relevant information in relation to the application of powers to address or remove impediments to resolvability under Article 16 of CCPRRR, including information in relation to their impact on the business model of the CCP.

## **10. Organisation and coordination of activities**

1. In order to enhance its operational efficiency, the College may wish to entrust one or more College Members with tasks pertaining to the role of the College with regard to the CCP.
2. Any entrustment of tasks, for instance via the establishment of committees, should be voluntarily entered into by the College Members concerned and should be structured in such a way as not to affect the operation of this Written Arrangement or the ability of other College Members to participate fully and effectively in the College.
3. When establishing a committee, the Chairing Authority should circulate to the College Members a proposal including a description of the tasks entrusted and responsibilities delegated, as well as a list of the College Members that might be interested to be involved in these arrangements. Other College Members may request to the Chairing Authority to be part of a committee. Authorities interested in participating in the committee should express their agreement to be part in the committee within [X] working days.
4. The Chairing Authority should be part of every committee and should be in charge of providing other College Members and, where appropriate, College Observers with the results of the work of the committees.
5. Annex D contains the list of committees established, as well as the list of their members and a description of their tasks. Annex D should be updated without delay following any subsequent amendment.
6. The Chairing Authority will be responsible for managing requests for information in relation to the College from authorities, other than College Members, or from other parties where the request is either made directly to the Chairing Authority or to a College Member or a College Observer and subsequently forwarded to the Chairing Authority by such College Member or College Observer. The Chairing Authority may request College Members and



College Observers to assist with such requests and the College Member or College Observer having forwarded a request should assist the Chairing Authority to the best of its knowledge and capacity.

## **11. Information requests to the CCP**

1. Should a College Member (the 'Requesting Member') require specific information or data with regards to the CCP, it should inform the Chairing Authority. The Requesting Member should copy the request to all College Members and College Observers to ensure that the Chairing Authority does not receive more than one request for such information or data. Such request should include an explanation of why such information is required for the purposes of enabling that College Member to carry out its duties in accordance with Article 4 of CCPRRR.
2. Where the Chairing Authority considers that the request is not for the purposes of enabling the Requesting Member to carry out its duties in accordance with Article 4(1) of CCPRRR, the Chairing Authority should provide the Requesting Member with its negative answer to the request also containing the reason for its decision. The Chairing Authority should copy the response to all College Members.

## **12. Emergency situation**

1. Where there is (or is a serious threat of) a major or systemic disruption to the functioning or viability of the CCP (including recovery and resolution events) or to the functioning or viability of a group entity which may directly or indirectly pose a threat to the CCP's functioning or viability, this should be considered an emergency situation, in accordance with Article 11 of the Resolution College Delegated Regulation.
2. In the event of an emergency situation, as described in paragraph 12.1 above, the Chairing Authority (or where relevant another College Member or College Observer) will share with the College Members and, to the extent relevant, College Observers the following information, where possible and without undue delay:
  - a. details of the emergency situation;
  - b. actions taken or likely to be taken by the Chairing Authority or, where relevant, by another authority;
  - c. actions taken or likely to be taken by the CCP, including under its default rules, recovery or emergency procedures;
  - d. where applicable, details of any default protections exercised and/or recovery powers deployed by the CCP; and,

- e. where applicable, details of failure-to-settle procedures used (by currency if relevant);
  - f. details on the prospective implications of any disruptions to the CCP's performance such as the full and timely provision of its services to its clearing members and interoperable infrastructures; and
  - g. any other available information that would be of particular relevance to other College Members and College Observers;
  - h. any early intervention measures taken.
3. For the avoidance of doubt, nothing in this Written Arrangement should constrain the ability of the Chairing Authority or any other College Member or College Observer, to the extent relevant, to take timely action during an emergency situation.
  4. The Chairing Authority, or the relevant College Member or College Observer, to the extent relevant, may choose to distribute the information specified in paragraph 12.2 by email or by means of a conference call or in-person meeting, as is considered appropriate at the time.
  5. College Members and College Observers, to the extent relevant, should cooperate closely, wherever necessary and according to national law, with other relevant authorities with regard to an emergency situation in respect of the CCP.
  6. In order to facilitate effective cooperation in an emergency situation, a protocol regarding the operation of the College in an emergency situation is provided in Annex C. This protocol indicates the type of information that College Members and College Observers are expected to share in an emergency situation, how such information should be communicated and the timeframes in which communication would likely take place, in various different crisis scenarios. Such protocol should be at least annually tested in coordination with the emergency situation testing of the CCP itself.
  7. The Chairing Authority will coordinate the emergency management activities of the College. The Chairing Authority will take account of the views of other College Members with regard to the management of such emergency situations.

### **13. Interaction with CCP supervisory college**

Where the information exchanged among the College Members and College Observers, to the extent relevant, is relevant for the work of a CCP supervisory college referred to in Article 2(24) of CCPRRR, the Chairing Authority shall communicate it, in due time, to the CCP supervisory

college's chairing authority. Such exchange of relevant information should be undertaken by secure e-mail or any other form of secure means of communication.

## **14. Communication policy**

1. The Chairing Authority will be the authority responsible for communication with the CCP and with the CCP supervisory college's chairing authority, where the latter is different from the Chairing Authority.
2. For the purpose of coordinating the external communication, as far as practicable, the Chairing Authority should inform the College at least of the following:
  - a. the coordination of external communication and public statements made during an on-going-concern / business as usual situation, during a situation where the CCP is considered as failing or likely to fail, as well as in a resolution situation; and
  - b. the level of information planned to be disclosed.
3. During a resolution situation, College Members and College Observers should inform the Chairing Authority, prior to its publication, of any public statement they plan to make.
4. The College should adopt the public statement to be issued by the Chairing Authority in case a joint decision containing the reasons for such public statement to be adopted.
5. For the purpose of co-ordinating the external communication, the College should agree at least on all of the following:
  - a. the allocation of responsibilities for coordinating the external communication, both during an ongoing situation and in a situation where the CCP is considered as failing or likely to fail;
  - b. the allocation of responsibilities for coordinating the external communication in situations where a clearing member is considered as failing or likely to fail;
  - c. the co-ordination of public statements related to resolution actions taken, including the publication of orders or instruments by which the resolution actions were taken or of notices summarising the effects of resolution actions.

## **15. Management of disputes**

1. College Members should endeavour to resolve any disputes in the operation of the College or during the adoption of decisions of the College through informal discussion among themselves. Such discussion may be bilateral or multilateral. College Members should always inform the Chairing Authority of any dispute they take part in when such dispute has arisen, during the operation of the College or during the adoption of decisions of the College.
2. Should informal discussions not resolve the dispute, the College Members involved in the dispute should appropriately escalate the issue internally within their organisations.
3. Should discussions between the College Members not resolve the dispute within 20 working days of the highest escalation amongst the College Members pursuant to the previous paragraph, and should the relevant conditions be met, the dispute should be referred to ESMA in accordance with Article 19(3) of Regulation (EU) 1095/2010 of the European Parliament and of the Council.

## **16. Confidentiality**

1. Pursuant to professional secrecy and treatment of confidential information requirements provided for in Articles 8, 73 and 80 of CCPRRR, and any other similar legal obligations such as those resulting from other EU legislation or from national laws, College Members confirm that any confidential information received by virtue of their participation in the College will only be used and shared onward to the extent relevant to the performance of their respective duties and in circumstances permitted under applicable law.
2. Pursuant to professional secrecy and treatment of confidential information requirements equivalent to the requirements provided for in Article 73 of CCPRRR and similar to Articles 8 and 80 of CCP RRR under the law of the relevant third countries, College Observers confirm that any confidential information received by virtue of their participation in the College will only be used and shared onward to the extent relevant to the performance of their respective duties and in circumstances permitted under applicable law.
3. Where onward sharing of confidential information is required under law, then the relevant College Members and College Observers should disclose information received by virtue of participation in the College only to the extent allowed by Articles 8, 73 and 80 CCPRRR or, by relevant equivalent provisions under the law of the relevant third countries, as applicable.
4. For the avoidance of doubt, nothing in this Written Arrangement should prevent resolution authorities from sharing all information relating to decisions or measures that require notification, consultation or consent of their competent ministry with that ministry in

accordance with Article 8(3) CCPRRR or with similar relevant provisions under the law of the relevant third countries, as applicable.

5. Before a third-country authority is allowed to attend particular College meetings (or part of College meetings) that third-country authority will be required to demonstrate to the Chairing Authority that it is subject to professional secrecy obligations equivalent to those laid down in Article 73 of CCPRRR and provide confirmation of that in writing.

## **17. Amendment and Termination of this Written Arrangement**

1. Any College Member may propose an amendment to this Written Arrangement.
2. Any amendment should be proposed in writing and should be distributed by email or by other secure means of communication to all College Members and College Observers. The proposing College Member shall include a description of the rationale for the proposed change and the proposed new text of the Written Arrangement in its notification to the other College Members and College Observers.
3. All College Members should agree to the proposed amendment pursuant to Article 6(1) to (5) of the Resolution College Delegated Regulation for it to be valid and form part of the Written Arrangement.
4. Written arrangements and procedures for the functioning of the College should be reviewed and updated, in particular after any substantive changes to the composition of the College.
5. This Written Arrangement should remain in effect without an end date unless and until either:
  - a. a CCP ceases to be authorised under Regulation (EU) 648/2012; or,
  - b. there is no longer a statutory basis for the operation of the College,

at which time the College will be terminated with immediate effect, following prior notice to College Members and College Observers.

6. The provisions of paragraph 16 above shall remain applicable after the termination of this Written Arrangement or the termination of the College and shall continue to apply to withdrawing College Members and College Observers after the termination of their participation to the College.

## Annex A – List and contact details of College Members

## Annex B – List and contact details of College Observers

## Annex C – Emergency protocol

### **Template for the protocol regarding the operation of the resolution college in an emergency situation**

#### ➤ **Introduction**

1. For the purposes of this protocol, the definitions laid down in the Written Arrangement apply.
2. In accordance with Article 11 of Commission delegated regulation (EU) No xxxx/xx supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council with regard to technical standards specifying the content of the written arrangements and procedures for the functioning of the resolution colleges, the Chairing Authority shall establish and regularly, at least annually, test operational procedures for the functioning of the resolution college in emergency situations, in particular systemic ones, which may directly or indirectly pose threats to the viability of the CCP.
3. Operational procedures referred to in paragraph 2 shall cover at least the following elements:
  - (a) secure means of communication to be used;
  - (b) set of information to be exchanged;
  - (c) relevant persons to be contacted;
  - (d) communication procedures to be followed by the relevant College Members and College Observers.
4. In order to facilitate effective cooperation among the College Members and College Observers in an emergency situation, this protocol establishes specific procedures for the exchange of information and views within the College in those situations.

#### ➤ **Objective and scope**

5. The objective of this protocol is to establish ex-ante communication procedures for the exchange of information in emergency situations in order to enhance the readiness of the College Members and College Observers to interact and cooperate with each other at short notice and under time pressure as well as to fulfil their mandates in their respective role(s).



6. The procedures defined under this protocol shall be activated at the initiative of the Chairing Authority and/or at the request of a College Member any time an emergency situation (as further specified in section III) emerges.
7. The Chairing Authority coordinates the emergency management activities of the College, taking into account the views of other College Members with regard to the management of such emergency situations.
8. The Chairing Authority shall promptly communicate and coordinate with the chairing authority of the supervisory college on the actions they are intending to take during an emergency situation, including with respect to the activation of this protocol or of the emergency protocol for the supervisory college depending on the specific circumstances.

➤ **Emergency situations**

9. An emergency situation would emerge when there is (or there is a serious threat of) a major or systemic disruption to the functioning of the CCP or to the functioning of an entity of its group which may directly or indirectly pose a threat to the CCP's functioning viability, including recovery and resolution events.
10. Such an emergency situation could be caused by of one of the following events (financial or operational):
  - a) the default of one or more clearing members;
  - b) a major operational disruption of the CCP's clearing system that cannot be restored within the time foreseen in the business continuity plan/disaster recovery plan and which may significantly affect the markets served by the CCP;
  - c) an erroneous implementation of the CCPs' investment policy, which may result in significant losses for the CCP;
  - d) the default or significant technical problems of an interoperable CCP;
  - e) developments in the financial markets which might have a significant adverse effect on market liquidity, the transmission of monetary policy, the smooth operation of payment systems or financial stability;
  - f) the default or technical problems of related market infrastructures (e.g. linked CSDs), which may significantly affect the operations of the CCP;
11. When an emergency situation arises from a default of a clearing member, two different sub-scenarios could be envisaged:

- a) the default is declared by the CCP under its rules because the clearing member is no longer able to comply with its participation requirements, e.g. it fails to deliver on a margin call;
- b) the default is declared by external sources other than the CCP, including the defaulting member.

➤ **Mechanism for the exchange of information**

12. In order to act as an early warning system, information sharing should commence without undue delay once an emergency situation is detected. Accordingly, as soon as the Chairing Authority or a College Member or College Observer has reasons to believe that there is an emergency situation, it should promptly notify the other College Members and College Observers in accordance with the procedures described below.
13. The corresponding information sharing mechanism should envisage the following steps:
  - a) As soon as a College Member or College Observer is aware of a current or potential emergency situation<sup>7</sup> (hereinafter the 'notifying authority'), it should immediately notify by e-mail the whole College using the emergency distribution list resulting from the list of contact details in Appendix 1, as regularly updated by the Chairing Authority;
  - b) The Chairing Authority should determine as soon as practicable, , in consultation with the notifying authority, whether the situation requires further attention or possible co-ordinated actions;
  - c) Where the situation requires further attention or co-ordinated action, the Chairing Authority should set-up without undue delay a conference call among the College Members and College Observers, to the extent relevant, at the latest by the end of the next calendar day following the notification of an emergency situation;
  - d) Where the situation requires particular urgency, the notifying authority may directly set-up a conference call among the College Members and College Observers, to

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<sup>7</sup> If the current or potential emergency situation results from measures taken or planned by a national competent authority, i.e. the commencement of insolvency proceedings relating to a clearing member, or revoking of a license of a clearing member. That national competent authority should notify the College as soon as it reaches such a decision, and sufficiently prior to publication of such a decision to enable the Chairing Authority to reach the decision under point c. of this paragraph,

the extent relevant. In any case, it shall endeavour to inform the Chairing Authority as soon as possible.

o **Type of information to be exchanged**

14. This section lists the information that should be exchanged with the College in emergency situations without undue delay.
15. The following non-exhaustive set of information should be made available to the College Members and College Observers, to the extent relevant and available:
  - a) the reason, source and type of emergency situation;
  - b) the CCP's services and activities affected by the emergency situation and an indication of the impact that this situation will have on the overall performance;
  - c) a consolidated list of clearing members;
  - d) identification of market infrastructures and market participants affected (full name of legal entities, BIC and LEI codes if available);
  - e) the available alternatives to solve the problem within a reasonable time and at a reasonable cost;
  - f) the measures taken or planned to be taken by the CCP, the Chairing Authority or any other relevant authority in order to solve/address the emergency situation, including the identification of who is in charge of the different measures, any relevant priority order between them, and the expected timing of their implementation;
  - g) a comparison of the total value and the volume of transactions and of the turnover and open interests in the current emergency situation versus normal times (average of the previous 12 months);
  - h) identification of the College Members and College Observers directly or indirectly affected by the emergency situations;
  - i) the identification of any time critical transactions affected;
  - j) the open positions that may need to be liquidated, including: 1) the amount, 2) the type of financial instruments, 3) the estimated timing for liquidation, 4) possible consequences of liquidation for the relevant market; and 5) any possible difficulty envisaged in liquidating certain positions;
  - k) the amount, quality and value of the collateral at the CCP's disposal to cover the relevant positions to be liquidated and any possible difficulty in enforcing the collateral;

- l) a simulation of the waterfall resources to be activated and used to cover the loss, any corresponding liquidity issue and the steps and schedule to “re-plenish” them;
- m) the identification of CCPs to whom the positions of the affected clearing members could be transferred;
- n) the identification of the necessary steps to be taken to ensure a transfer of positions and collateral from one CCP to another;
- o) the possible consequences of unwinding the open positions;
- p) the list of the possible other clearing members willing to take clients’ positions (if any) of a defaulting clearing member;
- q) whether an official Settlement Finality Directive notification has been sent (in case of default);
- r) whether the disruption affects any interoperable CCP or whether the interoperable CCPs could act as a back-up system during the disruption.

16. Whilst not all the information listed above might be available when the emergency is detected, the notification of the emergency situation to the resolution college shall include all relevant information available at the time, without prejudice to the timeliness of the notification. Further relevant information shall be shared, by the Chairing Authority, by the relevant College Member or College Observer, or by any other relevant authority, as soon as available thereafter and, where possible, in advance of any conference call of the College.

Based on the information collected, the Chairing Authority shall submit to the College as soon as possible an impact analysis of the emergency situation, preferably in advance of a scheduled conference call. The impact analysis shall assess the financial and liquidity resilience of the CCP, review the compliance of the CCP with EMIR provisions on financial resources and capital requirements, assess whether any breach of EMIR has occurred, and consider whether recovery or resolution measures are needed.

- o **Communication procedures**

17. In accordance with Article 5(22) of the Written Arrangement, the transmission of information among College Members and College Observers, as well as with the Chairing Authority, will be done by secure means of communication.

18. Communication by e-mail: College Members, including the Chairing Authority, and College Observers shall follow the usual method adopted by the College to exchange e-mails. The

Chairing Authority shall maintain a distribution list to be used in emergency situations based on the list of emergency contacts in Appendix 1.

19. Conference call: The conference call shall be announced where possible with a notice of at least 1 hour by e-mail and SMS using the College Members and College Observers' contact details in Appendix 1. The message announcing the call shall include the dial-in number and access code, together with the instructions to join the conference call.
20. In every situation the Chairing Authority should assess if other authorities that are not College Members or College Observers should be involved in the exchange of information.

➤ **Confidentiality**

21. The use and transfer of information exchanged under this protocol is subject to the confidentiality rules established in the Written Arrangement in accordance with the relevant articles in CCPRRR.
22. All parties involved in the exchange of information in an emergency situation shall be mindful of the sensitivity of this information, in particular with respect to the default of a clearing member and comply with any rule on further transmission communicated by the information provider, in accordance with the relevant provisions in the Written Arrangement and relevant articles in CCPRRR and related Delegated Regulation xxx/xxx.

➤ **Testing of the protocol**

23. The College shall, by conducting simulation exercises, verify that the communication procedures outlined in this protocol are effective and that College Members and College Observers know the procedures applicable in an emergency situation.
24. The Chairing Authority shall organise and conduct on an annual basis a simulation of the emergency procedure, with and without pre-warning, during and outside regular working hours. These shall include the test of:
  - a. the communication by e-mail and/or SMS to check the reachability of emergency contacts and their responsiveness: the Chairing Authority shall provide a report showing the time taken by each emergency contact to confirm reception of the trial e-mail/ SMS.
  - b. the secured means of communication chosen by each College Member and College Observer: the Chairing Authority shall provide a report indicating whether each of them was able to access and use the chosen means of communication in a timely manner.

- c. the conference call, to check if the emergency contacts can be reached and their availability to join the teleconference at short notice: the Chairing Authority shall provide a report showing how many emergency contacts did and did not join the conference call on time.
- d. the simulation of the actions to be taken and information to be exchanged in an emergency situation.

## **APPENDIX 1**

### **Emergency Contact List of the [CCP name] resolution college**

The Chairing Authority shall maintain a list with the names and direct contacts (direct telephone number, mobile number and e-mail) of all the representatives of the College Members and College Observers. College Members and College Observers may also indicate additional members to be included in the communication procedures in emergency situations.

The list of contact details shall be updated regularly. The Chairing Authority shall maintain a distribution list to be used in emergency situations based on the list of the below emergency contacts.

*[Add table template]*

Distribution list for communication by e-mail in emergency situation:

To: ...

Cc: ...

## Annex D – Committees