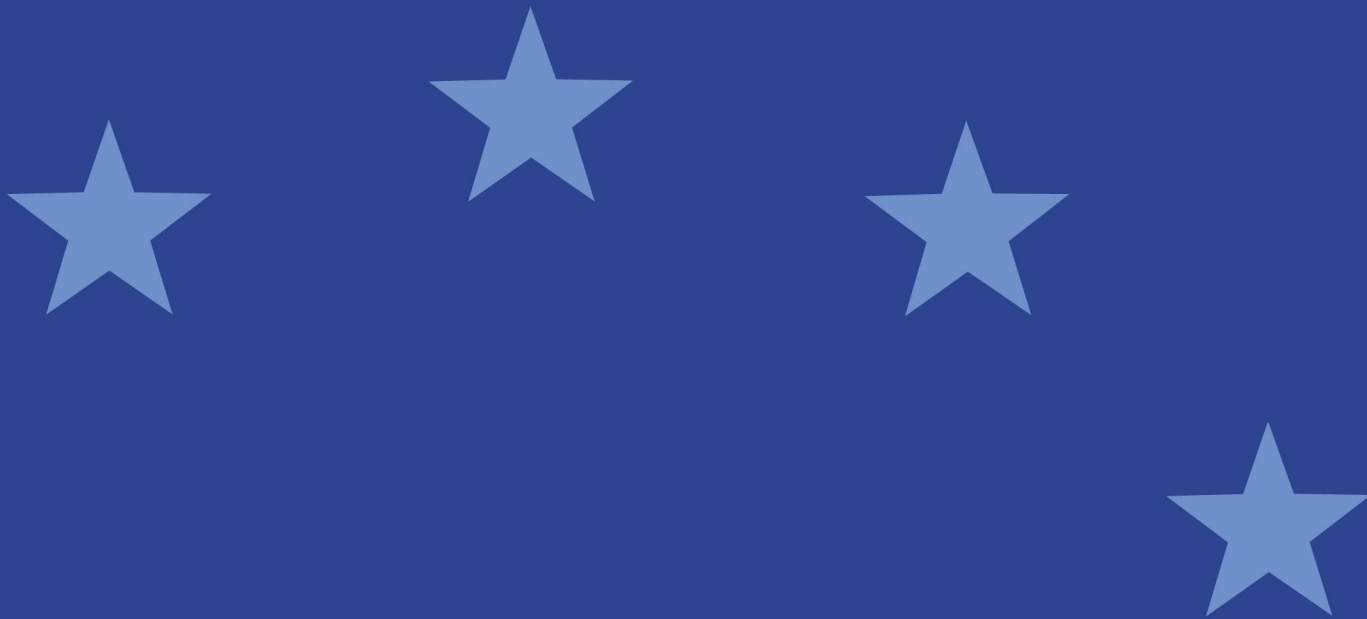




European Securities and  
Markets Authority

# Final Report

**Guidelines on the types and content of the provisions of Cooperation Arrangements (Article 79 of CCPRRR)**





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# 1 Executive Summary

## Reasons for publication

Some European CCPs provide services to clearing members and their clients located in third countries and some third-country CCPs provide services to clearing members and their clients located in the Union. Effective resolution of internationally active CCPs requires cooperation between authorities of Member States and third-country authorities. In this regard, cooperation arrangements ensuring effective planning, decision-making and coordination in respect of internationally active CCPs should be concluded with authorities of third countries.

For that purpose, the second subparagraph of Article 79(4) of CCPRRR mandates ESMA to develop Guidelines specifying the types and content of the provisions included in the abovementioned cooperation arrangements.

On 19 May 2022 ESMA launched a public consultation on the draft Guidelines with the deadline for consultation responses on 1 August 2022. This Final Report (and the accompanying guidelines) assesses and takes into account, where suitable the feedback provided by the three respondents to the consultation. Moreover, ESMA also sought advice on the draft Guidelines from the Securities and Markets Stakeholder Group in accordance with Article 16(2) of ESMA Regulation to provide advice, but none was received.

## Contents

This Final Report presents Guidelines specifying the types and content of the provisions included in the cooperation arrangements between authorities of Member States and relevant third-country authorities.

In particular, Section 2 covers the rationale behind the issuance of the Guidelines, and Section 3 provides an analysis of the scope of the Guidelines. Section 4 further describes the content of the Guidelines and Section 5 contains the Annexes: the cost-benefit analysis (Annex I), the summary of questions (Annex II) and the Guidelines (Annex III).

## Next Steps

The Guidelines will apply after their publication by ESMA on its website in the official languages of the European Union.

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

## 2 Background

1. Article 76 of Regulation (EU) 2021/23 of the European Parliament and of the Council on a framework for the recovery and resolution of central counterparties<sup>1</sup> (CCPRRR) states that the European Commission may issue recommendations for the negotiation of agreements with one or more third countries regarding the means of cooperation between the resolution authorities and the relevant third-country authorities in connection with recovery and resolution planning.
2. Article 79(2) of CCPRRR provides for the obligation to conclude cooperation arrangements between competent authorities or resolution authorities with third-country authorities, where appropriate, in cases where a third-country CCP (TC-CCP) provides services or has subsidiaries in a Member State or when a European CCP (EU-CCP) provides services or has subsidiaries in a third country. Article 79 of CCPRRR applies unless and until an international agreement referred to in Article 76(1) of CCPRRR enters into force with the relevant third country or where such international agreement does not fully cover the subject matter governed by Article 79 of CCPRRR.
3. Articles 79(3) and (4) of CCPRRR list elements that said cooperation arrangements should provide for, and the second subparagraph of Article 79(4) of CCPRRR mandates ESMA to issue guidelines in this respect in accordance with Article 16 of Regulation (EU) No 1095/2010<sup>2</sup> (ESMA Regulation).

## 3 Scope of the mandate

4. Article 79(3) of CCPRRR states that the cooperation arrangements shall establish processes and arrangements between the participating authorities for sharing the necessary information for, and cooperating in, carrying out the tasks and exercising the powers in relation to CCPs identified under Article 79(2) of CCPRRR or groups including such CCPs.
5. Article 79(4) of CCPRRR specifies that the cooperation arrangements envisaged to be entered into under Article 79(2) of CCPRRR shall establish certain processes and arrangements in accordance with Article 79(3) of CCPRRR, and may contain certain provisions on certain listed matters. Hence paragraph 4 of Article 79 of CCPRRR provides a list of provisions that may be included in the cooperation arrangement in order to meet the obligation to establish processes and arrangements as required under Article 79(3) of CCPRRR.
6. As per the second subparagraph of Article 79(4) of CCPRRR, ESMA has a mandate to issue guidelines on the types and content of the provisions set out in Article 79(4) of CCPRRR by 12 August 2022 (the Guidelines), in order to ensure the common, uniform and consistent application of paragraph 3, i.e. the established processes and arrangements.

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<sup>1</sup> Regulation (EU) 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 (Text with EEA relevance) (OJ L 22, 22.1.2021, p. 1).

<sup>2</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).

7. ESMA notes that the obligation to conclude cooperation arrangements under Article 79(2) of CCPRRR covers competent authorities or resolution authorities, *where appropriate*, with the relevant third-country authorities identified as follows:
  - ***where a TC-CCP provides services or has subsidiaries*** in one or more Member States, the relevant third-country authorities that the EU-CCP competent authorities or resolution authorities shall conclude cooperation arrangements with, are the third-country authorities where the TC-CCP is established.
  - ***where an EU-CCP provides services in or has one or more third-country subsidiaries***, the relevant third-country authorities that the EU-CCP competent authorities or resolution authorities shall conclude cooperation arrangements with, are the third-country authorities where those services are provided or where the subsidiaries are established.
8. Article 79(2) of CCPRRR creates the obligation on EU competent or resolution authorities, where appropriate, to enter into cooperation arrangements. This raises the question as to which EU authorities are subject to this obligation, with whom they should enter into such cooperation arrangements and on what grounds those cooperation arrangements should be entered into.
9. Recital 79 of CCPRRR refers to the fact that EU-CCPs provide services to clearing members and clients located in a third country and TC-CCPs provide services to clearing members and their clients located in the Union. This is followed by a reference to the general need for cooperation between Member States authorities and third-country authorities and a reference to the specific mandate to ESMA in relation to CCPRRR.
10. ESMA notes that the mandate for the Guidelines is not to interpret an obligation under CCPRRR, yet questions on scope, and more specifically, to whom the guidelines apply and on what grounds they should be concluded, arose in the process of establishing the Guidelines.
11. It is worth specifying that the competent authorities or resolution authorities referred to here are defined in point (7) and point (3), respectively, of Article 2 of CCPRRR and should be understood as the competent authorities and resolution authorities of EU-CCPs (i.e. not the competent authorities or resolution authorities of trading venues, clearing members or clients). Point (54) of Article 2 of CCPRRR defines a “relevant third-country authority” as “*the third-country authority responsible for carrying out functions comparable to those of resolution authorities or competent authorities*”, thereby excluding competent authorities or resolution authorities of third-country trading venues, clearing members or clients.
12. Since CCPRRR is EU legislation, it does not create legal obligations on third-country authorities to enter into cooperation arrangements with EU authorities where a TC- CCP provides services or has subsidiaries in a Member State and would like to receive information to ensure resolution preparedness for such TC-CCP. However, if an authority supervising EU clearing members is approached by a third-country authority with a request to enter into a cooperation arrangement, such an authority could, on a voluntary basis, use the Guidelines, but those would likely need to be adjusted to accommodate the resolution regime and regulations of such a third country. Similarly, if an authority supervising EU-CCPs is approached by such a request by an authority supervising third-

country clearing members or clients, it could also use to the extent possible the Guidelines.

13. ESMA notes that reference to the EU authorities is not further specified and thus the obligation covers all competent and resolution authorities of all EU-CCPs as defined under Article 2(7) and (3) of CCPRRR. As a result, when mapped against Article 79(2) of CCPRRR, a very large number of cooperation arrangements would need to be entered into.
14. ESMA has identified two main limitations set by CCPRRR regarding cooperation arrangements, one relating to the content of such arrangements and the other to the circumstances in which the obligation to conclude them applies.
15. As regards **the first limitation**, the scope and content of the cooperation arrangements are specified under Article 79(3) of CCPRRR. This Article stipulates that cooperation arrangements shall establish processes and arrangements between the participating authorities **for sharing the necessary information for**, and cooperating in, carrying out the tasks and exercising the powers listed in that Article and relating to resolution planning and execution, assessment of resolvability, application of powers to address or remove impediments to resolvability and early intervention.
16. In applying this limitation to the possible participating EU authorities to cooperation arrangements certain aspects are noted;
  - Resolution authorities and national competent authorities, that are responsible for EU-CCPs resolution planning and execution, shall, where appropriate, conclude cooperation arrangements with a third-country authority where their EU-CCP is an internationally active CCP and provides services, such as clearing services, to clearing members (and clients) or have subsidiaries in such a third country.
  - Resolution authorities and national competent authorities that are not supervising an EU-CCP (for example, the competent authorities supervising clearing members of EU-CCPs or EU trading venues), would not be involved in the resolution planning and execution of an EU-CCP as the obligation under CCPRRR lies with the resolution authority. One could argue that they could be involved through their participation in resolution colleges, but these are chaired by the resolution authority, which takes on the role of coordinator. Hence such EU authorities would probably not fall under the obligation to enter into cooperation arrangements with third-country authorities where the EU-CCP provides services or has subsidiaries in third countries.
17. A **second limitation** identified by ESMA is the reference to “where appropriate”. The reasoning is as follows: the aim of the cooperation arrangement is resolution preparedness and execution. Hence, the authorities shall, under the cooperation arrangements, ensure that *information necessary to fulfil this aim is shared*. In order to ensure the obligation to conclude cooperation arrangements only applies to the authorities that would be involved in early intervention and the resolution tasks listed in Article 79(3) of CCPRRR and empowered to exercise the related powers, Article 79(2) of CCPRRR qualifies the obligation with “where appropriate”. The reference refers back to the need to ensure that the cooperation arrangement covers the envisaged aim, which is to ensure resolution planning and execution.



18. Based on the above, ESMA has addressed the Guidelines to the competent and resolution authorities as those authorities responsible under CCPRRR for the resolution planning and for early intervention. These authorities shall establish cooperation arrangements where appropriate with relevant third-country authorities to ensure they have the information needed to undertake the tasks entrusted to them by CCPRRR. Competent authorities and resolution authorities will therefore be subject to the comply or explain procedure as envisaged under Article 16(3) of the ESMA Regulation.
19. ESMA notes that the Guidelines do not provide guidance on which other EU authorities could conclude cooperation agreements based on the underlying obligation set out under Articles 79(2) and 79(3) of CCPRRR, or with which third-country authorities such other cooperation arrangement could be concluded with on a voluntary basis.
20. Where an EU authority (other than the competent or resolution authority) determines that it should conclude a cooperation agreement to ensure necessary information sharing in resolution planning, they could try to use the Guidelines when concluding such cooperation arrangement, but the Guidelines are not directed to them and hence they are not subject to the “comply or explain” procedure.
21. Also, where an EU authority is approached by a third-country authority to enter into a cooperation arrangement with such a third-country authority supervising a third-country CCP providing services or having subsidiaries within the EU, such EU authority could consider the Guidelines but would likely need to adjust them to fit the regulatory situation at hand.
22. On 19 May 2022, ESMA launched a public consultation on the draft Guidelines with the deadline for consultation responses on 1 August 2022. The public consultation aimed at receiving stakeholders' feedback on a list of questions and on the draft Guidelines.
23. This Final Report, and the accompanying Guidelines, assesses and takes into account where suitable the feedback provided by the three respondents to the consultation. Moreover, ESMA also sought advice on the draft Guidelines from the ESMA's Securities and Markets Stakeholder Group in accordance with Article 16(2) of ESMA Regulation but none was received.

## 4 Content of the Guidelines

### 4.1 General considerations

24. Article 79 of CCPRRR is written in a very similar manner as Article 97 of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions<sup>3</sup> (BRRD), which also deals with cooperation with third-country authorities in the context of recovery and resolution of credit institutions and investment firms. However, there is a difference. Article 79 of CCPRRR requires competent authorities or resolution authorities, where appropriate, to conclude cooperation arrangements with the relevant third-country authorities and empowers ESMA to issue guidelines on the content of Cooperation Arrangements to ensure common, uniform and consistent application of the processes and arrangements. Article 97 of BRRD empowers the EBA to conclude (on a voluntary basis) framework cooperation arrangements with relevant non-EU supervisory and resolution authorities. In addition, BRRD requires competent authorities or resolution authorities, where appropriate, to conclude non-binding cooperation arrangements in line with EBA framework arrangement with the relevant third-country authorities and allows Member States or their competent authorities to conclude bilateral or multilateral arrangements with third countries, in accordance with Article 33 of Regulation (EU) No 1093/2010. The cooperation arrangements concluded between resolution authorities of Member States and third countries may include provisions on the aspects listed in Article 97(5) of BRRD and this list is very similar to the list under Article 79(4) of CCPRRR.
25. Based on this, EBA signed two framework agreements, one with the Bank of England<sup>4</sup> and one with several US Authorities (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the US Securities and Exchange Commission, and the New York State Department of Financial Services)<sup>5</sup>. Those framework agreements have been taken into account in developing the Guidelines to the extent relevant.
26. Apart from both framework agreements signed by the EBA, other international Memorandum of Understanding (MoUs) between authorities have been taken into account in developing the Guidelines, to make sure that the proposed Guidelines reflect the relevant reality of international agreements.
27. The Final Report on the draft RTS on resolution colleges pursuant to Article 4(7) of CCPRRR<sup>6</sup> was also considered when developing the Guidelines.

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<sup>3</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council Text with EEA relevance (OJ L 173, 12.6.2014, p. 190).

<sup>4</sup> Available at [2019 Framework Cooperation Arrangement EBA - BoE \(for publication\).pdf \(europa.eu\)](#).

<sup>5</sup> Available at [Microsoft Word - Framework Agreement - EBA-US agencies - Sept 2017 - -executed.docx \(europa.eu\)](#).

<sup>6</sup> [https://www.esma.europa.eu/sites/default/files/library/esma91-372-2069\\_final\\_report\\_draft\\_rts\\_on\\_resolution\\_colleges.pdf](https://www.esma.europa.eu/sites/default/files/library/esma91-372-2069_final_report_draft_rts_on_resolution_colleges.pdf)

#### **4.1.1 Responses received**

28. There is a general agreement of the respondents on the approach taken by ESMA for the proposed Guidelines and how ESMA has interpreted the mandate and the aim of the Guidelines.
29. One respondent noted that, without the constraint of the level one text, it would have been beneficial to include other types of EU authorities in addition to resolution authorities of a CCP, such as, for instance, national competent authorities supervising clearing members entering cooperation agreements with supervisors of TC-CCPs.
30. Another respondent supported ESMA's proposal for cooperation arrangements between resolution authorities and NCAs supervising clearing members on a voluntary basis, and noted that it is important for the home authority to be able to identify the risks that each of its resolution tools would create to the third parties in other jurisdictions and communicate those risks clearly prior to using these tools.

#### **4.1.2 ESMA feedback statement**

31. No changes are envisaged to the general approach of the Guidelines. ESMA appreciates the remark relating to the inclusion in the Guidelines of other types of EU authorities, however it restates the necessity for the Guidelines to be drafted within the framework set out by the provisions of Article 79 CCPRRR.

## **4.2 Purpose, scope and legal aspects**

32. ESMA notes that in every MoU or cooperation arrangement, provisions dedicated to an introduction, its intent and objective, its legal status and its scope can be found. Hence, ESMA proposes that Part 1 of the Guidelines caters for such fundamental aspects.
33. Part 1 of the Guidelines should also deal with general aspects such as the legal status of the cooperation arrangements, i.e. that these cooperation arrangements are intended not to be legally binding; that they do not create enforceable rights, obligations, or liabilities; or constitute waivers of immunity or privilege. In this regard, cooperation arrangements should also provide for their review and amendment from time to time, presumably by mutual consent. Procedures for how parties may withdraw from cooperation arrangements may also be established.
34. Another aspect relevant to the cooperation arrangements is to consider how inconsistencies are to be mitigated, and to what extent the Guidelines should cater for the interplay between the envisaged cooperation arrangements under CCPRRR and other arrangements in the market, for example CMGs and CCPRRR resolution colleges. ESMA notes that Article 79 of CCPRRR envisages that the competent authorities or resolution authorities shall, in concluding cooperation arrangements, take into account existing cooperation arrangements established pursuant to Article 25(7) of Regulation (EU) No 648/2012.
35. Hence the Guidelines provide for the principle that the cooperation arrangements should not create inconsistencies or conflict with prior similar arrangements or agreements, an agreement will prevail as long as it is legally binding between the parties. The Guidelines also specify that they do not modify or supersede prior similar arrangements, such as

memoranda of understanding, statements of cooperation, cooperation arrangements, technical assistance agreements or non-binding CMG agreements, unless the contrary is agreed.

#### **4.2.1 Responses received**

36. There was a general agreement with respect to Part I of the Guidelines on the purpose, scope, and legal aspects. One respondent noted that they particularly support the fact that the Guidelines are not meant to supersede and will take into account the already established cooperation arrangements under EMIR.

#### **4.2.2 ESMA feedback statement**

37. No changes are envisaged to the structure and content of Part I of the Guidelines.

### **4.3 Content of the cooperation arrangements**

38. The cooperation arrangements should cover the aspects listed under Article 79(3) of CCPRRR including the drawing up of resolutions plans, the assessment of resolvability, the application of powers to address or remove impediments, the application of early intervention measures and the application of resolution tools and exercise of resolution powers in accordance with CCPRRR and similar requirements under the law of the relevant third countries.
39. ESMA proposes to dedicate Part 2 of the Guidelines to the types and content of the provisions that the cooperation arrangements may include in order to ensure a common, uniform and consistent application of the processes and arrangements under Article 79(3) of CCPRRR.
40. ESMA envisages that cooperation arrangements should follow the structure of Article 79 of CCPRRR, hence basing the Guidelines on the aim of the arrangement to establish processes and arrangements for sharing necessary information and cooperating in, carrying out certain tasks and exercising powers under Articles 12, 15, 16 and 18 of CCPRRR and on the application of resolution tools and resolution powers.
41. The Guidelines would, for each of the Articles as referred to in paragraph 40 above (Articles 12,15,16 and 18 of CCPRRR and on the application of resolution tools and resolution powers), provide for suitable provisions derived from Article 79(4) of CCPRRR to be included in the cooperation arrangement thereby ensuring that an EU authority can request the information and cooperation necessary to comply with the requirements under CCPRRR and to have the agreed processes to ensure the sharing of information can be made in a transparent and pre-agreed format.
42. ESMA envisages that due to the extensive legal framework under CCPRRR, the Guidelines should not replicate the requirements on resolution plans, resolvability, impediments or on the application of resolution tools and resolution powers, but to focus on the aspects where information is needed to fulfil the obligations under those requirements and where processes would be helpful to receive such information in an efficient and timely manner.

43. The cooperation arrangements should cover the general information to be exchanged, to support effective cross-border resolution planning and action. In this regard, the cooperation agreement should take into account the principles of effectivity, proportionality and relevance. The frequency and importance of information sharing should take into consideration (i) the business nature and the complexity of the CCP(s) (and subsidiaries of the relevant CCP(s) relevant for the cooperation arrangement), (ii) the materiality of the CCP(s) (and the relevant subsidiary)'s activity in the third country, (iii) the impact on financial stability in the relevant countries, and (iv) the relevance of each concerned relevant authority's involvement in the resolution planning or actions.
44. The authorities concluding the cooperation arrangements should also cooperate and exchange information on the application of powers to address or remove impediments to resolvability in order to deliver a coordinated orderly resolution and endeavour to not materially impede said resolution.
45. In addition, clear communication from competent and resolution authorities is very important during a recovery or resolution process, as indications of a resolution process will create uncertainty in the market. In case of a joint resolution action, it is important for the different authorities to coordinate in order to deliver a consistent and effective public communication. ESMA therefore suggests that the cooperation arrangements cover the need for the authorities to coordinate and communicate together in case of a joint resolution action.
46. Finally, the Guidelines should also cover the timeline for the different exchanges of information. When determining these timelines, the Parties should take into account the different levels of urgency related to these exchanges. In case of times of crisis, quicker and smoother cooperation and exchange of information will be needed. To this end, and to ensure effective cooperation and coordination in the development and execution of the resolution actions, the Guidelines provide for the intensification of the cooperation and exchange of information between the Parties.

#### 4.3.1 Responses received

47. There was a general agreement by the respondents on the contents of Part 2 of the Guidelines.
48. One respondent stated their concern on the structure of the cooperation arrangements being too strict and lacking flexibility, especially in the case of agreements entered into with authorities subject to equally strict, but different, regimes.
49. One respondent noted that, with respect to Guideline 4, it would be necessary to stress the importance for the national resolution authority to remain the sole responsible authority for drawing up and maintaining the resolution plan. Moreover, the respondent noted that it did not necessarily agree with the proposal for the cooperation arrangement to consider whether the corporate structure of the CCP is linked to a third country, as CCPs are indeed standalone entities fully collateralised, and they would welcome additional clarity on what is considered a material service level agreement established in a third country.

#### 4.3.2 ESMA feedback statement

50. ESMA has considered the comment and has not envisaged any change to the Guidelines on the content of the cooperation arrangements. ESMA appreciates the remark relating to the lack of flexibility regarding the content of the cooperation arrangements, however such content is described in Articles 79(3) and 79(4) of CCPRRR which cross-refer to other CCPRRR provisions and the Guidelines must be drafted within the Level 1 legal framework set out by the provisions in CCPRRR. Furthermore, the Guidelines are already focussing only on aspects where information is needed to fulfil the obligation of performing the tasks and exercising the powers set out in Article 79(3) and where processes would be helpful to receive such information in an efficient and timely manner.
51. Regarding Guideline 4, ESMA cannot specify that the national competent authority is responsible for drawing up and maintaining the resolution plan as it is not the case. Indeed as per Level 1 the resolution authority is the sole responsible authority for drawing up and maintaining the resolution plan. Furthermore it is already explicitly mentioned in Guideline 2 that the cooperation arrangement is not legally binding and does not create any rights, obligations or liabilities. The corporate structure is a matter that must be included in the resolution authority's assessment of resolvability as per Section C of the Annex of CCPRRR cross referred to in Article 15 CCPRRR, hence it being mentioned in the Guidelines. ESMA has left some discretion to the signatory authorities as to which service level agreement established in a third country should be subject to exchange of information. By including materiality as a consideration, ESMA recognises the potentially important number of such agreements and their variety.

#### 4.4 Confidentiality aspects

52. ESMA finally proposes to dedicate Part 3 of the Guidelines to confidentiality aspects. Noting that confidential information will be shared through the cooperation arrangements, the Guidelines should specify how the sharing of confidential information should be undertaken. As personal data might also be shared under the cooperation arrangements, the Guidelines should put in place a framework ensuring the protection of such personal data.
53. Regarding the first aspect on sharing confidential data, the parties to the cooperation arrangements should exchange confidential information in accordance with legal requirements, including the requirements set out under Articles 8, 73 and 80 of CCPRRR. To this end, the cooperation arrangements should be consistent with the definition of confidential information and provide a process for sharing such confidential information. For instance, in some cases, prior to disclosing any confidential information to a third party, a party to a cooperation arrangement should request an assurance from the third party concerned that they have a legal basis to access the information and an assurance that they will not further disclose the information without prior consent of the party and that the sharing/disclosure of information should not be considered as a waiver of privilege or of confidentiality. It is worth noting that Article 8(3) of CCPRRR prescribes that a resolution authority can onward share confidential information with its competent ministry with all information relating to decisions or measures that require notification, consultation or consent of that ministry.
54. Regarding the second aspect on personal data, ESMA notes that the transfer of personal data should take place in accordance with the conditions laid down in the relevant data



protection legislation applicable to the parties. Notably, Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>7</sup> and Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation)<sup>8</sup> set out the framework at EU level for the protection of natural persons with regard to the processing of personal data.

55. More specifically, Article 44 of Regulation (EU) 2016/679 prevents the transfer of personal data to a third country or an international organisation if the conditions laid down in Chapter V of that Regulation are not complied with by the third-country authority.
56. Article 45(1) of General Data Protection Regulation states that a transfer of personal data to a third country or an international organisation may take place where the European Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection. Therefore, in the event that the European Commission has not adopted an adequacy decision pursuant to Article 45(3) of that Regulation, the cooperation arrangements should clarify that the transfer of personal data between the Parties will comply with the conditions of Article 46 of General Data Protection Regulation.
57. In this regard, the cooperation arrangements may refer to IOSCO's Administrative arrangement for the transfer of personal data between EEA Authorities and Non-EEA Authorities if the Parties are both signatories (AA)<sup>9</sup>.

## 4.5 Responses received

58. There was a general agreement by the respondents on the content of Part 3 of the Guidelines.
59. One respondent noted that in the case of jurisdictions where the conditions laid down in Chapter V of the General Data Protection Regulation (GDPR) are not complied with by the third-country authority, sharing of data on an anonymised basis should be considered.

## 4.6 ESMA feedback statement

60. ESMA has considered the comment and agrees with this pragmatic suggestion and has therefore included a corresponding statement in Guideline 12 paragraph 2.

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<sup>7</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance.) (OJ L 295, 21.11.2018, p. 39).

<sup>8</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance.) (OJ L 119, 4.5.2016, p. 1).

<sup>9</sup> Available at [Administrative Arrangement \(AA\) \(europa.eu\)](https://ec.europa.eu/easf/easf-administrative-arrangement-aa/).

## 5 Annexes

### 5.1 Annex I – Legislative mandate to develop guidelines

Article 79(2) of CCPRRR

2. Competent authorities or resolution authorities, where appropriate, shall conclude cooperation arrangements with the following relevant third-country authorities, taking into account existing cooperation arrangements established pursuant to Article 25(7) of Regulation (EU) No 648/2012:

(a) where a third-country CCP provides services or has subsidiaries in one or more Member States, the relevant third-country authorities where the CCP is established;

(b) where a CCP provides services in or has one or more third-country subsidiaries, the relevant third-country authorities where those services are provided or where the subsidiaries are established.

Article 79(3) of CCPRRR

3. The cooperation arrangements referred to in paragraph 2 of this Article shall establish processes and arrangements between the participating authorities for sharing the necessary information for, and cooperating in, carrying out the following tasks and exercising the following powers in relation to CCPs referred to in points (a) and (b) of that paragraph or groups including such CCPs:

(a) the drawing up of resolution plans in accordance with Article 12 and similar requirements under the law of the relevant third countries;

(b) the assessment of the resolvability of such institutions and groups, in accordance with Article 15 and similar requirements under the law of the relevant third countries;

(c) the application of powers to address or remove impediments to resolvability pursuant to Article 16 and any similar powers under the law of the relevant third countries;

(d) the application of early intervention measures pursuant to Article 18 and similar powers under the law of the relevant third countries; and

(e) the application of resolution tools and exercise of resolution powers and similar powers conferred upon the relevant third-country authorities.

Article 79(4) of CCPRRR

4. Cooperation arrangements concluded between resolution authorities and competent authorities of Member States and third countries pursuant to paragraph 2 may include provisions on the following matters:

(a) the exchange of information necessary for the preparation and maintenance of resolution plans;





(b) consultation and cooperation in drawing up resolution plans, including principles for the exercise of powers under Article 77 and similar powers under the law of the relevant third countries;

(c) the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;

(d) early warning to or consultation of parties to the cooperation arrangement before taking any significant action under this Regulation or relevant third-country law affecting the CCP or group to which the arrangement relates;

(e) the coordination of public communication in the case of joint resolution actions;

(f) procedures and arrangements for the exchange of information and cooperation under points (a) to (e) of this paragraph, including, where appropriate, through the establishment and operation of crisis management groups.

In order to ensure the common, uniform and consistent application of paragraph 3, ESMA shall issue guidelines on the types and content of the provisions referred to in this paragraph by 12 August 2022.

## 5.2 Annex II – Cost-benefit analysis

### 1. Introduction

Article 79(2) of CCPRRR provides for the obligation to conclude cooperation arrangements between competent authorities or resolution authorities with third-country authorities, where appropriate, in case a third-country CCP provides services or has subsidiaries in a Member State or when a European CCP provides services or has subsidiaries in a third country. Article 79 of CCPRRR applies unless and until an international agreement referred to in Article 76(1) enters into force with the relevant third country or where there are gaps in its applicability.

Articles 79(3) and (4) of CCPRRR list elements that said cooperation arrangements should provide for, and the second subparagraph of Article 79(4) of CCPRRR mandates ESMA to issue guidelines on the types and content of the provisions referred to in Articles 79(4) of CCPRRR.

The objective of performing a cost-benefit analysis is to assess the costs and benefits of the various policy or technical options which were analysed during the process of drafting the guidelines.

### 2. Cost-benefit analysis

Below are detailed the different corresponding policy options on how to promote convergence of supervisory and resolution practices regarding Article 79(4) of CCPRRR.

|  |  |
|--|--|
| <b>Specific objective</b>                    | <p>Competent authorities or resolution authorities shall conclude with third-country authorities, where appropriate, in case a third-country CCP provides services or has subsidiaries in a Member State or when a European CCP provides services or has subsidiaries in a third country, as stated by Article 79(4) of CCPRRR.</p> <p>The Guidelines shall promote convergence of supervisory and resolution practices regarding the types and content of the provisions of the cooperation arrangements referred to in Articles 79(4) of CCPRRR.</p> |
| <b>Policy option 1</b>                       | <p>To provide very specific content and format of the types and content of the provisions of the cooperation arrangements referred to in Articles 79(4) of CCPRRR including through a template.</p>  |
| How would this option achieve the objective? | <p>This option would meet the objective as it would promote convergence of supervisory and resolution practices. It would indeed create a good level of convergence as the types and content of the cooperation arrangements would be similar between resolution authorities, avoiding therefore different approaches in the European Union especially since third-country authorities would be involved, but would still respect the principle of</p>   |

|  |  |
|--|--|
|  | proportionality by providing the resolution authority the means to explain why it would not comply with the Guidelines if needed.  |
| <b>Policy option 2</b>   | To provide a list of high-level principles and objective elements the relevant authority could consider in determining the type and content of the cooperation arrangements with the aim to promote the convergence of supervisory and resolution practices.   |
| How would this option achieve the objective?   | This option would possibly also meet the requirements of ESMA's objective of ensuring the consistent application of resolution practices, however, it would most likely create a lower level of converge since resolution authorities would have greater decision-making flexibility when assessing the elements to be included in the type and content of the cooperation arrangements and the format of it, which could lead to a different approach between resolution authorities. |
| Which policy option is the preferred one?  | Option 1, given that Option 2 could be seen as too vague and may fall short of the aim in ensuring convergence in the assessments around the resolution colleges especially with the involvement of third-country authorities less acquainted to the EU regulation.  |
| Is the policy chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted? | ESMA is responsible for issuing the Guidelines and has consulted the Securities and Markets Stakeholders Group in the development of the Guidelines as foreseen in Article 16 of ESMA Regulation.  |

|                                   |  |
|-----------------------------------|--|
| Impacts of the proposed policies: |  |
| <b>Policy option 1</b>            |  |
| Benefits                          | It will provide clear guidance on the specific the type and content of the cooperation arrangements.   |
| Regulator's costs                 | Reasonably low costs are envisaged since the resolution authority would just need to adopt the template agreement for the resolution colleges, avoiding further research and monitoring related costs. |
| Compliance costs                  | No compliance costs envisaged for the CCP.   |
| <b>Policy option 2</b>            |  |

|                   |  |
|-------------------|--|
| Benefits          | Option 2 would give the resolution authority sufficient flexibility to set the type and content of the cooperation arrangements in its own way.  |
| Regulator's costs | Moderate costs for establishing the cooperation arrangements as well as research and discussion on its content and format.   |
| Compliance costs  | For the CCP no compliance costs.   |
| Conclusion        | <p>The costs will in any case be reasonably moderate or even low, while the benefits of establishing a template will result in a convergent application of EU law.</p> <p>On the basis of the analysis above, ESMA concludes that the benefits of issuing these Guidelines outweigh the costs.</p> |

### **Responses received on the cost and benefit analysis**

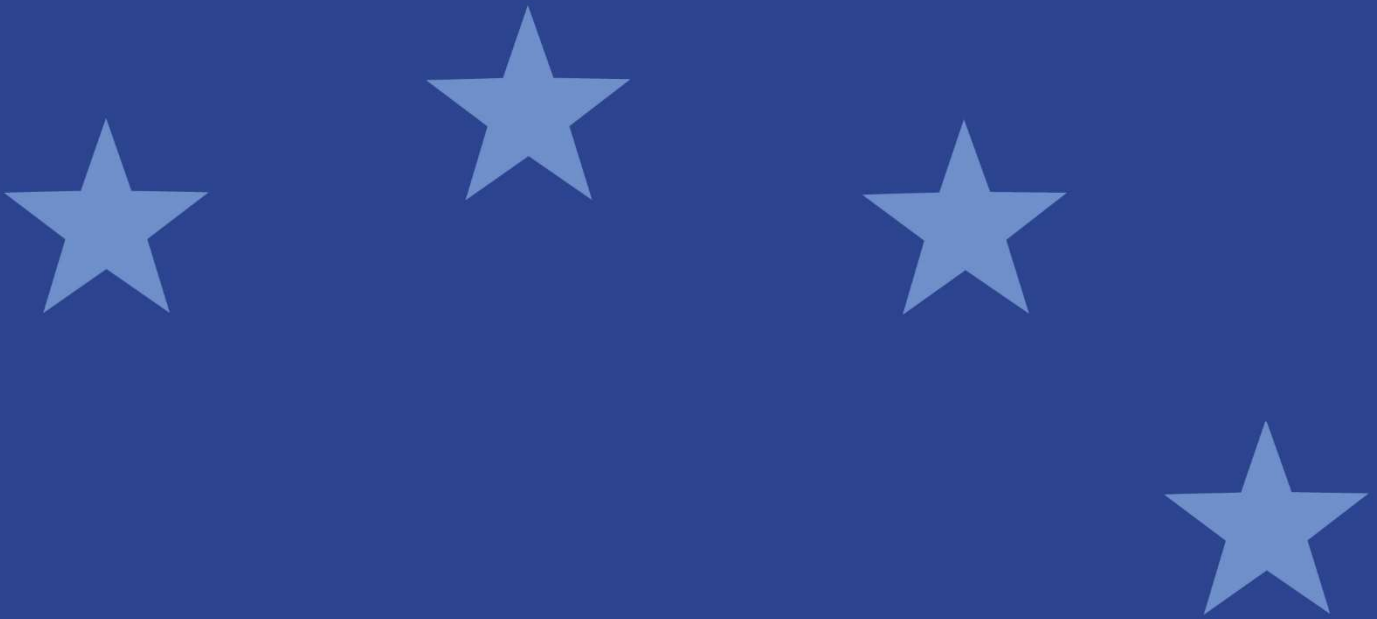
Overall, the respondents agree with the proposed Option 1 and did not advocate for a different approach.



## **Annex III – Guidelines**

# **Guidelines**

**Guidelines on the types and content of the provisions of Cooperation Arrangements (Article 79 of CCPRRR)**



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# 1 Scope

## Who?

1. These Guidelines apply to resolution authorities.

## What?

2. These Guidelines apply in relation to Article 79 CCPRRR on the types and content of the provisions of Cooperation Arrangements

## When?

3. These Guidelines apply from [dd month yyyy].

## 2 Legislative references, abbreviations and definitions

### Legislative references

|                               |   |
|-------------------------------|---|
| CCPRRR                        | Regulation (EU) 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 <sup>10</sup> |
| EMIR                          | Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories <sup>11</sup>  |
| ESMA Regulation               | Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC <sup>12</sup>   |
| Delegated Regulation 152/2013 | Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 on capital requirements for central counterparties <sup>13</sup>   |
| Delegated Regulation 153/2013 | Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 on requirements for central counterparties <sup>14</sup>   |

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<sup>10</sup> OJ L 22, 22.1.2021, p. 1–102

<sup>11</sup> OJ L 201, 27.7.2012, p.1

<sup>12</sup> OJ L 331, 15.12.2010, p. 84

<sup>13</sup> OJ L 52, 23.2.2013, p. 37

<sup>14</sup> OJ L 52, 23.2.2013, p. 41





## **Abbreviations**

|             |   |
|-------------|---|
| <i>CCP</i>  | Central Counterparty                      |
| <i>ESMA</i> | European Securities and Markets Authority |
| <i>EU</i>   | European Union                            |

## **Definitions**

Unless otherwise specified, the terms used in these Guidelines have the same meaning as in CCPRRR, EMIR and the Delegated Regulations 152/2013 and 153/2013.

### **3 Purpose**

1. These Guidelines are based on the legislative mandate included in the second subparagraph of Article 79(4) of CCPRRR. Article 79(4) mandates ESMA to develop Guidelines specifying the types and content of the provisions included in the abovementioned cooperation arrangements. The objectives of these Guidelines are to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision and to ensure the common, uniform and consistent application of Article 79(3) and (4) of CCPRRR.

## **4 Compliance and reporting obligations**

### **4.1 Status of the guidelines**

2. In accordance with Article 16(3) of the ESMA Regulation, competent authorities (being the resolution authorities designated pursuant to Article 3 of CCPRRR) must make every effort to comply with these Guidelines.
3. Competent authorities or resolution authorities to which these Guidelines apply should comply by incorporating them into their national legal and/or supervisory and resolution frameworks as appropriate.

### **4.2 Reporting requirements**

4. Within two months of the date of publication of the Guidelines on ESMA's website in all EU official languages, competent authorities to which these Guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the Guidelines.
5. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the Guidelines on ESMA's website in all EU official languages of their reasons for not complying with the Guidelines.
6. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.

## 5 Guidelines on the types and content of the provisions of Cooperation Arrangements

### Part 1 – Purpose, Scope and General Provisions

#### Guideline 1

The Cooperation Arrangement should establish the intent and objective of the Cooperation Arrangement, as well as definitions where needed.

The Cooperation Arrangement should establish means for cooperation and interaction among its signatories, including the sharing of information on a regular basis, both during business-as-usual periods when preparing for crisis or during resolution situations and in times of crisis when, for example, applying the resolution tools.

#### Guideline 2

The Cooperation Arrangement should not be legally binding and should not create rights, obligations or liabilities enforceable by the authorities signatory to the Cooperation Arrangement or any third party. The Cooperation Arrangement should provide that it is based on reciprocity and that it does not constitute a waiver of immunity or privilege.

The Cooperation Arrangement should specify that it does not supersede any domestic or EU laws, nor that it modifies or supersedes prior similar arrangements, such as memoranda of understanding, statements of cooperation, cooperation agreements, and technical assistance agreements.

The Cooperation Arrangement should not create any conflicts with any other prior similar arrangements or agreements the authorities signatory to the Cooperation Arrangement are a part of.

The Cooperation Arrangement may provide for its review and amendment from time to time by mutual consent. Any authority signatory to the Cooperation Arrangement may unilaterally withdraw from a Cooperation Arrangement by providing reasonable prior written notice to the other Party.

## Part 2 – Types and content of the provisions that the cooperation arrangements may include

### Guideline 3

The Cooperation Arrangement should cover all areas of cooperation and sharing of information in order to support effective cross-border resolution planning and resolution action, having regard to the scope of competence and the powers of the authorities signatory to the Cooperation Arrangement.

The Cooperation Arrangement should enable an EU authority to receive the information needed to carry out the tasks listed under Article 79(3) of CCPRRR and exercising the powers in relation to resolution, resolvability assessment, measures to remove impediments to resolvability and early intervention for the CCPs (or identified groups including such CCPs) under CCPRRR.

Subject to the principle of proportionality, sharing of information should include, but should not be limited to, the aspects listed under Guidelines 4 to 8 below.

### Guideline 4

The authorities signatory to the Cooperation Arrangement should endeavour to exchange information necessary for the preparation, drawing up and maintenance of resolution plans in accordance with Article 12 of CCPRRR and similar requirements under the law of the third country, including but not limited to:

- 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 third country;
- where there are identified connections to a third country in relation to clearing members (and to the extent the information is available, their clients and indirect clients) or linked FMIs;
- where there are interdependencies or shared financial markets,
- where there are trading venues served by the CCP which are situated in the third country; and
- where the resolution plan considers and takes into account the financial system in a certain third country.

In addition, the authorities should endeavour to consult and cooperate in the drawing up of the resolution plan in the timeframe envisaged under GL 10, taking into account the principles under Article 77 of CCPRRR or similar provisions under the law of the third country.

### **Guideline 5**

The authorities signatory to the Cooperation Arrangement should endeavour to exchange information necessary to perform the resolvability assessment under Article 15 of CCPRRR (including the aspects listed under Annex Section C of CCPRRR) and similar requirements under the law of the third country, including but not limited to information in relation to:

- where the CCP has core business lines, legal and corporate structures and critical operations connected or linked to a third country;
- where there are funding dependencies linked to a third country;
- where there are material service level agreements linked, connected or established in a third country;
- where it is relevant to consider processes for transitioning services provided under service level agreements in a third country in the event for example of the separation of critical functions or of core business lines;
- where there are payment and/or settlement systems relevant to the CCP in a third country;
- where there is reliance on information from entities in third country relevant to the CCP;
- where there are intra-group dependencies in a third country;
- where it is envisaged that a third-country authority assists the resolution authority in a resolution situation;
- where it may be envisaged to apply resolution tools in such a way that resolution may have a material impact on, or be partly undertaken in, a third country;
- where the CCP has clearing members or collateral arrangements established in a third country and this could affect resolution;
- where the credibility of applying resolution tools in such a way which meets the resolution objectives, is dependent on possible actions taken by third-country authorities; and
- where the CCP's resolution may impact the financial system, have an effect on financial market's confidence and if there are risks of contagion, linked or relevant to a third country.

### **Guideline 6**

The authorities signatory to the Cooperation Arrangement should endeavour to exchange information in relation to the application of powers to address or remove impediments to resolvability under Article 16 of CCPRRR and similar powers under the law of the third country, including but not limited to information in relation to their impact on the business model of the CCP.

The Cooperation Arrangement should also provide that the authorities signatory to the Cooperation Arrangement will avoid actions that could reasonably be expected to materially impede the resolvability by interfering with the resolution plan, triggering instability elsewhere in the CCP or group, or in the financial system of the other authority's jurisdiction.

### **Guideline 7**

The authorities signatory to the Cooperation Arrangement should endeavour to share information in relation to the application of early intervention measures under Article 18 of CCPRRR, including but not limited to information in relation to where the competent authority has concluded that one of the conditions referred to in Article 18(1) of CCPRRR has been met in accordance with Article 18(6) of CCPRRR or where one or several of the indicators provided under the Guidelines on Early Intervention Measures (issued in accordance with Article 18(8) of CCPRRR) has been met and where the authority considers the situation material or significant and under similar powers under the law of the third country.

The Cooperation Arrangement should also provide that the authorities signatory to the Cooperation Arrangement will avoid actions to the extent possible that could reasonably be expected to materially impede the resolvability by adopting early intervention measures that could trigger instability elsewhere in the CCP or group, or in the financial system of the other authority's jurisdiction.

#### **Guideline 8**

The authorities signatory to the Cooperation Arrangement should endeavour to exchange information in relation to the application of resolution tools and exercise of resolution powers under Title III, Chapter 1, Section 2 of CCPRRR and under similar powers conferred upon the relevant third country authority, including but not limited to information in relation to:

- where the application of any of the resolution tools could have a material effect on the EU market or a third country's market or on an entity established in the EU (or is part of a group established in the EU) or in the third country;
- where the position and loss allocation tools materially impact transactions with an entity established in EU (or which is part of a group established in the EU) or in a third country;
- where the write-down and conversion tool impacts the financial position of an entity established in the EU (or which is part of a group established in the EU) or in a third country in a substantial manner;
- where the sale of business tool impacts, involves or is linked to an entity established in the EU (or is part of a group established in the EU) or a third country; and
- where the bridge CCP tool impacts an entity established in the EU (or which is part of a group established in the EU) or a third country.

### **Guideline 9**

In case of a joint resolution action, the authorities signatory to the Cooperation Arrangement should cooperate to establish joint procedures and templates to be used in a joint resolution action. The authorities should endeavour to establish procedures and processes to achieve a consistent and effective external public communication related to resolution actions.

### **Guideline 10**

The Cooperation Arrangement should ensure that information is exchanged in a timely manner. The Cooperation Arrangement should specify different timelines for the exchange of information, subject to the principle of proportionality, depending on the reason for the information sharing and cooperation envisaged:

(a) The authorities should endeavour to consult and cooperate in the drawing up of the resolution plan under GL 4, where the information should be relevant and presented in a format designed by the authority competent for the resolution of the CCP to ensure its relevance for the resolution plan and should be provided within a given time period respecting the principle of proportionality.

(b) The authorities should endeavour to agree on the processes and arrangements to ensure they are aware and informed of each other's resolution proceedings in a timely and efficient manner in accordance with the principles under Article 77 of CCPRRR.

(c) The authorities should endeavour to consult and cooperate in the assessment of resolvability under GL 5, and in particular the information should be relevant and presented in a format designed by the authority competent for the resolution of the CCP to ensure its relevance for the resolvability assessment and should be provided within a given time period respecting the principle of proportionality.

(d) The authorities should endeavour to consult and cooperate in the application of powers to address or remove impediments to resolvability under GL 6 and in particular the information should be relevant and presented in a format designed by the authority competent for the resolution of the CCP to ensure its relevance and should be provided within a given time period respecting the principle of proportionality.

(e) The authorities should endeavour to consult and cooperate in the identification, assessment and application of early intervention measures under GL 7 and should in particular ensure an effective and swift exchange of information.

(f) The authorities should endeavour to consult and cooperate on the application of resolution tools and exercise of resolution powers under GL 8 and should in particular ensure an effective and swift exchange of information.

The authorities should accept the receipt of a request for information received by the other authority signatory to the Cooperation Arrangement in the agreed format. They should inform,

in the agreed format, the other authority of any delay in providing the requested information and, in case of such a delay, they should also provide a revised deadline with an envisaged revised timeline for providing such information. The authorities should agree on the terms of communication, by establishing lists of contact details, in accordance with data protection regulations, and on the means of communication, by using for example secure e-mails.

In time of crisis, the authorities should intensify cooperation and exchange of information and should cooperate and exchange information at a sufficiently early stage as envisaged in particular under points (e) and (f) above.

### **Part 3– Confidentiality aspects**

#### **Guideline 11**

The Cooperation Arrangement should define the type of information that would qualify as confidential information. It is expected that the Cooperation Arrangement will ensure that any information that would be subject to confidentiality requirements under Union law will be considered as confidential under the Cooperation Arrangement.

The Cooperation Arrangement should establish processes for the disclosure and onward sharing of confidential information in order to ensure its protection, while maintaining a necessary level of information exchange between the authorities and third parties, for the purpose of planning or carrying out a resolution action or for the good functioning of justice.

Disclosure of confidential information to a third party should only occur in accordance with Articles 8, 73 and 80 of CCPRRR.

When an authority is legally compelled to disclose confidential information received, it shall fully co-operate with the other authority in order to keep the information confidential, to the extent permitted by the laws of the authority that requested the information. It shall consult with the other authority that provided the information before transmitting it to the requesting entity and, where that authority does not consent itself with passing on the information, the authority forced to disclose confidential information will:

- (a) assert the appropriate legal exemptions or privileges with respect to the information as may be available;
- (b) advise the requesting entity that a forced disclosure could adversely affect the future transmission of confidential information by foreign supervisory authorities and shall request that the information be kept confidential by the requesting body.

The Cooperation Arrangement should also specify that sharing and disclosure of confidential information is not to be considered as a waiver of privilege or of confidentiality.



## **Guideline 12**

The Cooperation Arrangement should represent and acknowledge that an EU authority processes personal data in accordance with the applicable EU legal framework, notably with Regulation (EU) No 2018/1725 or Regulation (EU) No 2016/679 as the case may be. Cooperation Arrangements should also refer to the applicable legislation to the third-country authority.

The Cooperation Arrangement should ensure that in the absence of an adequacy decision pursuant to Article 45(3) of Regulation (EU) No 2016/679, transfer of personal data will only take place if the third-country authority has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available. In case such condition is not fulfilled the sharing of data should only take place on an anonymised basis.

The Cooperation Arrangements may refer to IOSCO's Administrative arrangement for the transfer of personal data between EEA Authorities and Non-EEA Authorities if both authorities are signatories. As signatories, the authorities should acknowledge that they will act consistently with the Administrative arrangement with respect to the transfer of personal data between them.

## Annex 1 – Template Cooperation Arrangement

### 1 Preambles

1. The global financial markets involve financial institutions and groups that operate across borders, with many institutions operating both within one or more Member States of the European Union ('EU') and in [*name of third country*].
2. A recovery and resolution framework further bolsters the preparedness of CCPs and authorities to mitigate financial distress and provide authorities with further insight into CCPs' preparations for stress scenarios. It also provides authorities with powers to prepare for the potential resolution of a CCP and deal with the declining health of a CCP in a coordinated manner, thus contributing to the smooth functioning of financial markets.
3. Under the domestic legal frameworks of [*name of European authority*] and [*name of third country authority*] (hereinafter collectively referred to as 'the Parties') respective jurisdictions, resolution authorities possess resolution tools and powers that can be employed to address circumstances in which a CCP [or the group including such CCPs] encounters serious financial difficulties.
4. In order to ensure the effectiveness of resolution actions in relation to internationally active CCPs [*or the group including such CCPs*], resolution authorities should share information and cooperate in the cross-border development of resolution plans and in the application of resolution tools and powers both in the business-as-usual situation to prepare for crisis and resolution and in a crisis and resolution situation.
5. Regulation (EU) 2021/23 of the European Parliament and of the Council (hereinafter 'CCPRRR')<sup>15</sup> establishes a framework for the recovery and resolution of central counterparties in the EU. It notes that Union CCPs provide services to clearing members and their clients located in third countries and third-country CCPs provide services to clearing members and their clients located in the Union. Hence, effective resolution of internationally active CCPs requires cooperation between Member States and third-country authorities and Cooperation Arrangements should ensure effective planning, decision-making and coordination in respect of internationally active CCPs.
6. Article 79 of CCPRRR stipulates that the competent authorities or resolution authorities, where appropriate, shall conclude Cooperation Arrangements with the relevant third-country authorities, (a) where a third-country CCP provides services or has subsidiaries in one or more Member States, the relevant third-country authorities where the CCP is established; (b) where a CCP provides services in or has one or more third-country subsidiaries, the relevant third-country authorities where those services are provided or where the subsidiaries are established. Hence, cooperation should also take place with regard to subsidiaries of Union or third-country CCPs and their clearing members and their clients.
7. The Cooperation Arrangement shall establish the processes and arrangements between the Parties for sharing the necessary information for, and cooperating in, carrying out

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<sup>15</sup> Regulation (EU) 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 (Text with EEA relevance) (OJ L 22, 22.1.2021, p. 1).



certain tasks and exercising the powers under their respective legal frameworks in relation to the CCPs or the group including such CCPs.

8. [Add specificities of the third-country Authorities RR regulation and the position for sharing information.]

## 2 Definitions

“CCP” means the [insert the name of the CCP(s) covered by the Cooperation Arrangement].

“Parties” means the [EU Authority] and the [TC Authority] jointly.

“EU Authority” means the [*insert the relevant authority(ies)*]

“TC Authority” means the [*insert the relevant authority(ies)*]

“Cooperation Arrangement” means the agreement herein.

“Equivalence Decision” means a decision pursuant to Article 45(3) of Regulation (EU) 2016/679.

“Resolution College” means a resolution college established pursuant to Article 4(1) of CCPRRR.

“Confidential Information” means any non-public information shared under the Cooperation Arrangement, requests made under the Cooperation Arrangement, the contents of such requests, and any other matters arising under the Cooperation Arrangement.

## 3 Objective of the Cooperation Arrangement

9. The Parties to the Cooperation Arrangement shall cooperate to ensure an orderly and coordinated resolution and to maintain financial stability, and in order to achieve a coordinated resolution strategy consistent with relevant legal frameworks and respective responsibilities.
10. Such cooperation and sharing of information will also aim at identifying the existence of cases where the resolution plan may materially adversely affect the financial stability or the domestic depositors or creditors and where consistent with responsibilities and legal frameworks, the necessary and appropriate steps to mitigate such cases.
11. The Cooperation Arrangement provides the agreed cross-border arrangement for the cooperation in resolution planning and during a resolution and crisis situation between the [*EU Authority*] and the [*TC Authority*]. The Cooperation Arrangement is to support cross-border information sharing and cooperation relating to resolution, including the development of resolution plans, to plan for the application of resolution tools and powers and to apply those resolution tools and powers in a crisis or resolution situation.

12. The Parties to the Cooperation Arrangement should interact, cooperate and exchange information for purposes of facilitating, among other things, the planning and orderly resolution of internationally active institutions or groups. To that end, the Parties will interact, cooperate and share information on a regular basis both during business-as-usual and in times of crisis, under the mutual understanding that a more intense cooperation and exchange of information are needed in time of crisis.

#### **4 Scope of the Cooperation Arrangement**

1. The Cooperation Arrangement notes the internationally agreed principles of the Financial Stability Board guidance and in particular the Key Attributes of Effective Resolution Regimes for Financial Institutions.
2. The Cooperation Arrangement is covering all areas of cooperation and sharing of information in order to support effective cross-border resolution planning and resolution action, having regard to the Parties' scope of competence and powers.
3. Subject to the principle of proportionality, the Parties shall aim to share all relevant and material information, including but not limited to, general information on crisis and resolution considerations such as loss absorption and recapitalisation capacity, funding, continuity of critical functions, and operational continuity.
4. The Parties shall endeavour to share the information necessary for, and to cooperate to the extent relevant to, carrying out the tasks under Article 79 of CCPRRR and exercising the powers in relation resolution for the CCPs (or identified groups including such CCPs) under CCPRRR for the [EU Authority].
5. [The Parties shall endeavour to share the information necessary for, and to cooperate to the extent relevant to, carrying out the tasks under [Insert the correct references for the TC Authority]
6. The Cooperation Arrangement is legally non-binding, it does not create enforceable rights, obligations, or liabilities; nor constitute waivers of immunity or privilege.
7. The Cooperation Arrangement shall be reviewed and amended from time to time by mutual consent. Any amendment shall be reflected in writing. Any Party may unilaterally withdraw from the Cooperation Arrangement by providing reasonable prior written notice to the other Party. Confidential information exchanged under the Cooperation Agreement shall still be considered confidential after the withdrawal of a Party.
8. The Cooperation Arrangement does not supersede any domestic or EU laws. The Cooperation Arrangement does not modify or supersede prior similar arrangements or agreements, such as memoranda of understanding, or statements of cooperation unless agreed between the parties in the Cooperation Arrangement.
9. The Parties should ensure that the Cooperation Arrangement does not conflict with prior similar arrangements or agreements to which they are parties.

## 5 Drawing up of Resolution Plan

1. The Parties agree to endeavour to exchange information necessary for the preparation, drawing up and maintenance of resolution plans in accordance with Article 12 of CCPRRR and with *[insert the reference of the Commission Delegated Regulation under Article 12(7) of CCPRRR]*, adopted on the *[insert details]* and *[insert the reference to the legal framework containing the similar requirements under the law of the relevant third countries]*.
2. In particular the *[TC Authority]* agrees to assist the *[EU Authority]* with information relevant for the preparation, drawing up and maintenance of the resolution plan where the information either relates to the services provided by the CCP/an EU CCP in *[name of the TC]* such a TC or where the CCP/an EU CCP has a subsidiary in *[name of the TC]* and this information is, in the view of the EU Authority, needed for the preparation, the drawing up and maintenance of the resolution plan.
3. In addition, the *[TC Authority]* agrees to provide information to the EU Authority on a TC CCP from *[name of the TC]* providing services in the EU where, in the view of the *[EU Authority]*, it is relevant for the preparation, drawing up and maintenance of the resolution plan, i.e. where the resolution plan envisages the clearing offer to be taken into account.
4. The *[EU Authority]* agrees to provide the following resolution related information: *[to be completed by the EU Authority]*.
5. The *[TC Authority]* agrees to provide the following resolution related information: *[to be completed by the TC Authority]*.
6. The Parties agree to endeavour to consult and cooperate on the exercise of powers under enforcement procedures, further specified under Article 77 of CCPRR on the recognition and enforcement of third-country resolution proceedings and *[insert references to the similar powers under the law of the relevant third countries]*.

## 6 Assessment of resolvability

1. The Parties agree to endeavour to exchange information in relation to the assessment of the resolvability of the CCP, that shall take place at the same time as drawing up and updating the resolution plan and in accordance with; (a) Article 15 of CCPRRR; (b) Section C of the Annex of CCPRRR; and (c) the Guidelines *[insert name]* issued by ESMA in accordance with Article 15(5) of CCPRRR, with the aim to promote the convergence of resolution practices regarding the application of Section C of the Annex to CCPRRR for CCPs regulated by CCPRRR and *[insert the reference to the legal framework containing the similar requirements under the law of the relevant third country]* for CCPs regulated by *[insert TC regulatory legal reference]*.
2. The *[TC Authority]* agrees to assist the *[EU Authority]* with information relevant for the assessment of the resolvability where the information either relates to the services provided by the CCP/an EU CCP in from *[name of the TC]* or where the CCP/an EU CCP has a subsidiary in *[name of the TC]* and this information is, in the view of the *[EU Authority]*, needed for the assessment of resolvability.

3. The [TC Authority] agrees to endeavour to provide information to the EU Authority on a CCP from [name of the TC] providing services in the EU where, in the view of the EU Authority, it is relevant for the resolvability assessment.

## **7 Powers to address or remove impediments**

1. The Parties agree to endeavour to exchange information in relation to the application of powers to address or remove impediments to resolvability pursuant to Article 16 of CCPRRR and [*insert the reference to the legal framework containing the similar requirements under the law of the relevant third country*].
2. The Parties agree to endeavour to avoid actions that could reasonably be expected to materially impede the resolvability by interfering with the resolution plan, triggering instability elsewhere in the CCP or group, or in the financial system of the other Party's jurisdiction.

## **8 The application of early intervention measures**

1. The Parties agree to endeavour to share information in relation to the application of early intervention measures pursuant to Article 18 of CCPRRR and the corresponding Guidelines [*insert name*] issued by ESMA and [*insert the reference to the legal framework containing the similar requirements under the law of the relevant third country*].
2. The Parties agree to endeavour to cooperate in the assessment of early intervention measures by undertaking any of the following actions:
  - (a) Inform the other Party where there are severe, significant and material breaches causing an early intervention measure assessment to be started,
  - (b) Inform the other Party that an assessment has concluded that the Authority will undertake an early intervention measure in relation to the CCP and provide a timing of the different steps,
  - (c) Discuss the situation and the risk it poses to the market and financial stability.
3. The Parties agree to endeavour to avoid actions that could reasonably be expected to materially impede the resolvability by adopting early intervention measures that could trigger instability elsewhere in the CCP or group, or in the financial system of the other Party's jurisdiction.

## **9 The application of resolution tools and exercise of resolution powers**

1. The Parties agree to endeavour to exchange information in relation to the application of resolution tools and exercise of resolution powers under CCPRRR and [*insert the reference to the legal framework containing the similar requirements under the law of the relevant third country*].
2. The Parties shall endeavour to coordinate the public communication in the case of joint resolution actions.

## 10 Procedures and arrangements for the exchange of information and cooperation

1. The Parties shall endeavour to exchange the information under the Cooperation Arrangement in accordance with the below:
  - (a) Information in relation to resolution planning shall be provided within [insert timeline, e.g. 30 calendar days after the receipt has been received],
  - (b) Information in relation to resolvability assessment shall be provided within [insert timeline],
  - (c) Information in relation to the application of powers to address or remove impediments to resolvability shall be provided within [insert timeline],
  - (d) Information in relation to the application of early intervention measures shall be provided within [insert timeline],
  - (e) Information in relation to the application of resolution tools and exercise of resolution powers shall be provided within [insert timeline].
2. The Parties agree to endeavour to (i) accept the receipt of a request for information received by the other Party to the Cooperation Arrangement and to (ii) inform the other Party of any delay in providing the requested information by the deadline and provide an envisaged revised timeline for providing such information.
3. The Parties shall endeavour to intensify cooperation and exchange of information under the Cooperation Arrangement in time of crisis. In such cases, the Parties agree to cooperate and exchange information at a sufficiently early stage.
4. The Parties may agree to fulfil the requirements under the Cooperation Arrangement, where appropriate, through the establishment and operation of crisis management groups and resolution colleges.

## 11 Disclosure and onward sharing of confidential information

1. The Parties shall consider as Confidential Information non-public information shared under the Cooperation Arrangement, requests made under the Cooperation Arrangement, the contents of such requests, and any other matters arising under the Cooperation Arrangement. The terms of the Cooperation Arrangement are [not] confidential.
2. The Parties will hold confidential all Confidential Information and confirm that:
3. all persons dealing with or having access to any Confidential Information are subject to an obligation of professional or official secrecy or confidentiality.
4. these professional or official secrecy or confidentiality requirements apply to any person currently or previously employed by or acting on behalf of the Parties and



5. Any passing on of Confidential Information in breach of professional or official secrecy or confidentiality is unlawful in their respective jurisdiction, to the extent that the Confidential Information falls within the scope of the respective legal obligation of professional or official secrecy or confidentiality of the respective Parties.
6. The Parties recognise that information pertaining to resolution planning and execution is commercially sensitive and confidential. Access to such information, as well as to any other Confidential Information, should be restricted to those officials, employees and agents of the Parties who require the information to enhance preparedness for, and facilitate, supervision, financial stability, recovery and resolution (including resolution planning) or crisis management. Such data and information should be handled carefully and appropriately in the same manner applicable to similar information in each respective jurisdiction.
7. Where required for the performance of the Parties' respective legal duties in connection with supervision or regulation, financial stability, recovery, resolution (including resolution planning) or crisis management, Confidential Information may be shared with agents acting on behalf of the Parties and bound by professional and/or official secrecy and/or confidentiality obligations substantially equivalent to those set out in the Cooperation Arrangement (e.g. audit firms).
8. Disclosure of confidential information to a third party should be done in accordance with Articles 8, 73 and 80 of CCPRRR and *[insert the reference to the legal framework containing the similar requirements under the law of the relevant third country]*. In some cases it should only take place with the prior written consent of the other Party and the assurance from the third party that they have a right to access the information under their legal framework and that they will not further disclose the information without prior consent of the Parties.
9. When a Party is required under law to disclose confidential information received, it shall fully co-operate with the other Party in order to keep the information confidential, to the extent permitted by the laws of the Party that requested the information. It shall consult with the other Party that provided the information before transmitting it to the requesting entity and where that Party does not consent itself with passing on the information, the Party forced to disclose confidential information will:
  - (a) assert the appropriate legal exemptions or privileges with respect to the information as may be available;
  - (b) advise the requesting entity that a forced disclosure could adversely affect the future transmission of confidential information by foreign supervisory authorities and request that the information be kept confidential by the requesting body.
10. The sharing and disclosure of information should not be considered as a waiver of privilege or of confidentiality.

## 12 Data protection – personal data

1. The Parties acknowledge on the one hand, that the EU Authority processes personal data, including that contained in the information received from the TC Authority, in accordance with the applicable EU legal framework, notably with Regulation (EU) 2018/17252 or Regulation (EU) No 2016/6793 as the case may be, as well as *[Adequacy*



*Decision*], and on the other hand, that the TC Authority processes personal data, including that contained in information received from the EU Authority, in accordance with [reference to the legal framework applicable to the TC Authority].

2. [In the absence of an Equivalence Decision, please insert the following: ‘The Parties will ensure that the transfer of personal data between them will comply with the conditions on transfers of personal data to third countries or international organisations as stipulated by the respective legislation.’]
3. [If both Parties are signatories of the AA, please insert the following: ‘The Parties are committed to having in place appropriate safeguards for the processing of personal data in the exercise of their respective regulatory mandates and responsibilities and confirm that they will act consistently with IOSCO’s Administrative arrangement for the transfer of personal data between EEA Authorities and Non-EEA Authorities.’]