

# **2022 CCP Peer Review on Due diligence of clearing members**

Peer Review Report



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## List of Terms and Acronyms

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

ESMA	The European Securities and Markets Authority
ESMA Regulation	Regulation (EU) No. 1095 /2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
EU	European Union
FC	Financial Counterparty, as defined in Article 2(8) of EMIR
FMA	Austrian Financial Market Authority
FTE	Full Time Equivalent. One FTE is equivalent to one employee working full time
GCM	General Clearing Member.
HCMC	Hellenic Capital Market Commission
ICM	Individual Clearing Member
ICS	internal credit score
IRS	interest rate swap
MNB	Magyar Nemzeti Bank
NCA	National Competent Authority
NCM	Non-Clearing Member
NFC	Non-Financial Counterparty, as defined in Article 2(9) of EMIR
PRC	Peer Review Committee
PRWP	Peer Review Work Plan
OeNB	Oesterreichische Nationalbank

# 1 Executive Summary

## Reasons for publication

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

## Contents

This peer review assesses the overall functioning of CCP colleges and provides an in-depth analysis of supervisory activities of National Competent Authorities (NCAs) of CCPs with respect to requirements set out in EMIR related to due diligence of clearing members. It is based on a specific methodology developed for mandatory peer reviews under EMIR. The review was conducted by the Peer Review Committee (PRC) established by the CCP Supervisory Committee (CCPSC). Accordingly, the peer review focuses on the NCAs' supervision of the CCPs' compliance with the participation requirements, across four key areas: (i) clearing member due diligence; (ii) due diligence on non-financial counterparties (NFC) acting as clearing members; (iii) due diligence on general clearing members; and (iv) clearing member suspension and additional obligations.

This report provides an overview of the approaches followed by NCAs and presents ESMA's assessment of the degree of convergence reached by NCAs. The peer review findings are based on information gained by ESMA staff through participation in CCP colleges, the responses by the NCAs to a questionnaire, including, where relevant, tailored follow-up questions, and the findings from on-site visits at selected NCAs. The peer review provides an assessment of NCAs against the six supervisory expectations set out in the Peer Review Mandate (Mandate) of this peer review, relating to: 1) the NCAs' organisational set-up, 2) the timely receipt of proposed changes to membership rules, 3) assessment of the CCP's compliance with participation requirements under EMIR, 4) assessment of due diligence of clearing members 5) review of membership criteria & due diligence policies 6) ongoing compliance with participation requirements.

The peer review covered the supervisory activities of all relevant NCAs of CCPs authorised under EMIR, conducted from 1 January 2021 to 30 June 2022 (the review period). These include 12 NCAs, namely the competent authorities of AT, DE, EL, ES, FR, HR, HU, IT, NL, PL, PT, and SE. In accordance with the Mandate, the peer review included on-site visits of the relevant NCAs responsible for the supervision of CCPs dealing with NFCs (ECC, Euronext Clearing, Keler CCP and Nasdaq Clearing).

### **Overall findings**

Concerning the **functioning of CCP colleges**, the PRC considered that, overall, most chairing NCAs continue to manage CCP colleges in compliance with EMIR, noting that in few cases, some NCAs ensured compliance with certain deadlines under EMIR only after the end of the review period.

The PRC found the **organisational set-up** of all NCAs to be aligned with the principles for the purpose of supervising the CCPs' due diligence of their clearing members. However, the PRC noted the potential conflicts of interest in respect of one NCA (HU), given the staff in charge of the supervision and staff responsible for the ownership rights<sup>1</sup> are reporting to the same director. Direct reporting lines to the Board could address the identified conflicts of interest.

Regarding the **timely receipt of proposed changes to membership rules**, seven out of twelve NCAs approve any proposed changes to the CCPs' membership criteria on an *ex-ante* basis and have formal procedures for this purpose. Three NCAs receive such changes *ex-ante* and have formal "non-objection" procedures. Two NCAs (AT and SE) did not establish formal deadlines ensuring sufficient time for an *ex-ante* review of all material changes<sup>2</sup>.

Concerning the **assessment of the CCP's compliance with participation requirements**, ten out of twelve NCAs assessed regularly the CCP's compliance with the relevant EMIR requirements and identified areas of weakness. Two NCAs largely met the expectation: one of them was AT, where the NCA did not carry out assessments of the CCP's participation requirements between 2016 and 2021, and the other is SE, who need to ensure closure for all the recommendations given by the NCA following their in-depth assessments after the default at Nasdaq Clearing.

With respect to the **assessment of due diligence of clearing members**, all NCAs monitored the due diligence reviews of their CCPs and assessed that CCPs have put in place adequate membership criteria, which ensure that their clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP in accordance with Article 37(1) of EMIR. These requirements are relevant as part of the onboarding of the clearing members.

In particular, the PRC also assessed how the NCAs are monitoring the CCPs' due diligence reviews with respect to clearing members which are NFCs. While seven NCAs confirmed that their respective CCPs do not admit NFCs as clearing members, three NCAs (AT, HU, PT) confirmed that they do not apply any dedicated or ad-hoc criteria to NFCs, and SE mentioned

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<sup>1</sup> Keler CSD owns 99.81%, the MNB owns 0.1% and the Budapest Stock Exchange (BSE) owns 0.09% of Keler CCP. Currently, Keler CSD is owned by the MNB (53.33%) and the BSE (46.67%).

<sup>2</sup> Although both NCAs claim that they have a procedures, but they did not share any document that would provide certainty on the timing for the review of the CCPs' clearing rules.



that the only difference in the participation requirements which are specific to NFCs related to the capital requirements. Noteworthy to mention is that all NCAs confirmed that NFCs can become clearing members, but they cannot become GCMs, where they would be able to clear their clients trades as well.

Furthermore, the PRC also assessed how NCAs monitor the CCP's due diligence reviews with respect to GCMs. The findings show that all CCPs applied a higher level of capital for their GCMs when compared to the DCMs, and some even had tiered levels of financial capital requirements which would increase depending on the number of trading clients which the GCM have. Eleven out of twelve NCAs are fully or largely meeting expectations. HU partially met with this expectation, given the Hungarian Gas Act imposes mandatory clearing for gas transaction. Every single entity that wanted to carry out an activity in the Hungarian gas market had to become a clearing member of the CCP.

With respect to the NCAs' **review of the membership criteria and due diligence policies**, the PRC was satisfied that ten out of twelve NCAs fully or largely met with expectations. The PRC made some recommendations with respect to two NCAs (EL, PL), where the CCPs did not use internal credit rating for their participants.

Finally, in relation to the monitoring of clearing members' **compliance on an ongoing basis with the participation requirements** under Article 37(2) of EMIR, as per the responses from the NCAs, while NCAs and CCPs are focusing on the continuous monitoring of the clearing members' financial capacity, this is not always the case with respect to the operational capacity, which is an area that would benefit for further work to enhance supervisory convergence .

### Overall assessment

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

**TABLE 1 - ASSESSMENT OF NCAS**

	Organisational Set-up	Timely Receipt of Proposed Changes	Assessment of the CCP's Compliance with Participation Requirements under EMIR	Assessment of Due Diligence of Clearing Members	Review of Membership Criteria & Due Diligence Policies	Ongoing compliance with Participation Requirements
AT	Green	Orange	Green	Yellow	Yellow	Orange
DE	Green	Green	Green	Yellow	Green	Yellow
EL	Green	Green	Green	Green	Orange	Yellow
ES	Green	Green	Green	Green	Green	Yellow
FR	Green	Green	Green	Yellow	Green	Orange
HR	Green	Green	Green	Green	Green	Yellow

HU						
IT						
NL						
PL						
PT						
SE						

Fully meeting expectations	Largely meeting expectations	Partially meeting expectations	Not meeting expectations
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### Recommendations

**Organisational set-up:** it is recommended to HU to consider proper Chinese Walls as currently the same director who is responsible for the supervision of the CCP also manages ownership rights in the CCP. For instance, separate reporting lines up to Board level would reduce conflicts of interest.

**Timely receipt of proposed changes:** it is recommended to SE and AT to enhance their review procedures by specifying deadlines for the NCA to receive the Clearing Rules *ex-ante* to ensure them sufficient time to provide feedback/non-objection.

**Assessment of due diligence of clearing member:** the PRC expects HU to follow-up with the relevant Ministry to remediate the implications posed by the Hungarian Gas Act on the CCP's participation requirements.

**Review of Membership criteria and due diligence policies:** EL and PL should follow up with the CCPs on whether the latter should develop an internal credit rating system for the clearing members' financial soundness.

### Convergence matter

**Ongoing compliance with the participation requirements** While CCPs are focusing on the continuous monitoring of the clearing members' financial capacity, this is not always the case with respect to the operational capacity. Given none of the NCAs did meet this expectation fully, ESMA see this as an area where further work needs to be done by the CCPSC to ensure convergence.

### Next Steps

NCAs are expected to address the recommendations within 1 year from the publication.

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

## 2 Introduction

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

### 2.1 Background

3. Article 24a(7) of Regulation (EU) No 648/2012 (EMIR) requires ESMA to conduct at least annually a peer review analysis of the supervisory activities of all competent authorities in relation to the authorisation and the supervision of CCPs in accordance with Article 30 of Regulation (EU) No 1095/2010 (ESMA Regulation).
4. The ESMA Board of Supervisors approved the methodology for mandatory peer reviews in relation to CCPs' authorisation and supervision under EMIR (the methodology), whereby the reviews are conducted by the CCP Supervisory Committee (CCPSC) through delegation to a Peer Review Committee (PRC), composed of the Chair and the two Independent Members of the CCPSC. Each peer review assesses the overall functioning of CCP colleges and provides an in-depth analysis of a specific topic, to be determined within the scope of CCP requirements set by EMIR.
5. At its 4 May 2021 meeting, the CCPSC agreed on the topics for peer reviews in relation to CCPs to be included in the 2022-2023 Peer Review Work Plan (PRWP), whereby the topic of the 2022 peer review is "due diligence of clearing members". This was approved by the Board of Supervisors in September 2021.
6. In June 2022, the Board of Supervisors approved the mandate for the 2022 CCP peer review (Annex 1), as developed by the PRC and validated by the CCPSC. The mandate included the six supervisory expectations relating to: 1) NCAs' organisational set-up, 2) the timely receipt of proposed changes to membership rules, 3) assessment of the CCP's compliance with participation requirements under EMIR, 4) assessment of due diligence of clearing members, 5) review of membership criteria & due diligence policies, and 6) ongoing compliance with participation requirements.

## 2.2 Scope of the peer review

7. This section sets out background information on the importance of the CCPs' due diligence of clearing members. Following the default at Nasdaq Clearing of a physical person in 2018, ESMA issued a survey to NCAs on CCP's members criteria and due diligence to determine whether any supervisory convergence measure was needed to strengthen CCPs' compliance with Article 37 of EMIR as well as Principle 18 of the CPMI-IOSCO Principles for financial market infrastructures (PFMI). This survey identified a number of good practices on Clearing Member Due Diligence, but also highlighted the diversity of practices in place to cater for specific markets, notably commodities, where Non-Financial Counterparties (NFC) are historically more represented.
8. The 2022 CCP peer review aimed to further analyse how NCAs are assessing compliance of their CCPs with the participation requirements under Article 37 of EMIR, in particular with a focus on the annual comprehensive review of NFCs under Article 37(2), as well as on the criteria and arrangements Clearing Members adopt to allow their clients to access the services of the CCP under Article 37(3).
9. The 2022 CCP peer review focused on three areas, namely Clearing Member Due diligence, NFCs and Client Due diligence.
10. In case of clearing member due diligence, the exercise aimed to provide a better understanding of the scope and frequency of the screening exercises conducted by CCPs, as well as the depth of the comprehensive review of compliance. The 2022 CCP peer review also analysed whether the list of best practices identified in the survey on CCPs' Membership Criteria and Due Diligence<sup>3</sup> is still up to date.
11. In respect of NFCs, the exercise assessed how NCAs ensure that the membership criteria for NFCs are as stringent as for financial counterparties and how these are assessed by the CCP as part of the comprehensive annual review.
12. On client due diligence, the 2022 CCP peer review explored how NCAs ensure that clearing members conduct proper due diligence to ensure that their clients have the necessary additional financial resources and operational capacity to clear. Furthermore, the review also focuses on what type of "basic information" is shared by clearing members with the CCP for it to be able to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. It also reviewed how frequently the CCP

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<sup>3</sup> See [final\\_report\\_ccps\\_membership\\_criteria\\_and\\_due\\_diligence.pdf \(europa.eu\)](#)

is updated on the client clearing criteria and arrangements of clearing members and whether this is part of the CCP's annual comprehensive review.

13. Furthermore, the peer review considered how NCAs ensure that client membership criteria are not used to weaken access to central clearing, without adding new risks.
14. Finally, CCPs have developed new business models to allow clients to connect directly to the CCP, while core default management functions are carried out by Clearing Agents. The Peer Review enquired how NCAs assess CCP compliance with EMIR requirements when developing such sponsored or direct access models for clients.
15. In accordance with its mandate, this peer review aimed to assess the effectiveness of supervisory practices put in place by competent authorities to assess CCP compliance with the provisions of Article 37 of EMIR on participation requirements, with a focus on the annual comprehensive review of NFCs and on the criteria and arrangements Clearing Members adopt to allow their clients to access the services of the CCP as well as additional obligations that CCPs may impose on NFCs. The scope also captured membership criteria and due diligence of indirect clearing services, such as Non-Clearing Members (NCMs). The review also assessed whether competent authorities are complying with the relevant provisions of the PFMI.

## **2.3 Process of the Peer Review**

16. The peer review covered the relevant NCAs of CCPs authorised under EMIR as of 1 July 2022. On this date, 14 CCPs were authorised under EMIR in the EU. The peer review thus was intended to cover the NCAs of the 12 Member States where the above mentioned 14 CCPs are established, namely: DE, EL, ES, FR, IT, HU, HR, NL, AT, PL, PT and SE.
17. The peer review considered the NCAs' supervisory activities conducted from 1 January 2021 to 30 June 2022 (the review period), with respect to the assessment of a CCP's compliance with the requirements in Article 37 of EMIR, in connection with: a) the monitoring of the CCP activities and, where relevant, the extension of authorisation under article 15 of EMIR for new services and activities, and b) the yearly review (performed during this period) of the CCP compliance with the scope requirements pursuant to Article 21 of EMIR.
18. While the overall functioning of CCP colleges has been assessed on the basis of ESMA staff's experience in the participation in CCP colleges, in line with the methodology, the PRC also developed a self-assessment questionnaire (the questionnaire – see Annex 2). This provided the PRC with detailed information on each NCA's supervisory activities, practices and approaches related to the assessment of CCPs' due diligence on clearing members.

19. On 30 June 2022, the covered NCAs were invited to answer the questionnaire by 15 September 2022. Where a Member State had assigned several NCAs under Article 22 of EMIR, the authorities from this Member State coordinated a single response to the questionnaire representing the coordinated view of all relevant competent authorities in that Member State.
20. Answers to the questionnaire were generally thorough and provided evidence of the supervisory actions. In a few cases ESMA sent some follow-up questions to NCAs, which were promptly addressed.
21. In November 2022- January 2023, the PRC conducted four on-site visits to the NCAs supervising ECC, Nasdaq Clearing, Euronext Clearing and Keler CCP (i.e. respectively BaFin and Deutsche Bundesbank, Finansinspektionen, Banca d'Italia and Consob, and MNB). The on-site visits took place in person and included a meeting with each CCP, without the participation of the NCAs.
22. The findings of the peer review are presented in this report, which does not intend to provide an exhaustive representation of all responses submitted by the NCAs, but to provide an overview of the approaches followed by the majority of NCAs. The report is intended to highlight any emerging divergence to identify potential opportunities for further supervisory convergence, good practices and, where applicable, identify possible cases of non-compliance.

### **3 Overall functioning of CCP colleges**

23. The peer review considered the functioning of the colleges during the review period, noting that overall, most chairing NCAs continue to manage CCP colleges in compliance with EMIR.
24. The composition of the colleges was reviewed by most of the NCAs in accordance with Article 2(1) of Commission Delegated Regulation (EU) 876/2013, while EL and PL reviewed their respective college composition only in the first half of 2023. By the time of publishing this report, all chairing NCAs and ESMA have published on their websites the list of the members of the college, in compliance with Article 18(2) of EMIR.
25. Most colleges held at least one meeting in 2022, where the NCAs reported on their annual review under Article 21 of EMIR, as well as the outcome of their supervisory activities and their next supervisory workplan. Most of the college meetings were organised via videoconferences. It is noted that in the case of PL, the meeting held in January 2022 was the one postponed from 2021, while there was no meeting for 2022. Furthermore, two NCAs (HR, NL) did not organise in the review period a meeting between the members of the college and the senior management of the CCP, as expected in accordance with

Article 4(5) of Commission Delegated Regulation (EU) 876/2013. Finally, two NCAs (HR and PL) did not test the colleges' communication procedures for emergency situations through simple reachability and connectivity tests, which is a requirement under the written agreement.

26. Regarding the annual review, ESMA appreciates that whilst the new Guidelines<sup>4</sup> were not in force for the entire duration of the 2022 Peer Review's review period, most NCAs already followed these guidelines for the drafting of the annual review and evaluation, except for EL and AT.
27. Concerning the CCPs' initiatives for new services and activities or changes to risk models and parameters, most chairing NCAs apply the framework developed by ESMA for the identification of new services and activities requiring an extension of the authorisation pursuant to Article 15 of EMIR or significant changes for the purpose of Article 49 of EMIR (see ESMA Opinion<sup>5</sup> published on 15 November 2016) and ensured a timely process for adopting the related college opinion. In most cases, the Colleges were consulted in relation to the decision to qualify an initiative as subject to an authorisation or a validation under Article 15 or 49 of EMIR.
28. Two NCAs shared with the college the CCP application for authorisation of outsourcing arrangements for a major activity linked to risk management under Article 35 of EMIR and submitted its risk assessment for the opinion of the college.
29. Overall, the level of engagement by college members can be considered satisfactory once an Article 15, 35 or 49 procedure was triggered, although most college members continue to rely on the review by the chairing NCA and the scrutiny by ESMA. In most cases, college opinions took into account conditions and/or recommendations resulting from ESMA Opinion under Article 23a of EMIR or ESMA validations under Article 49 of EMIR. In two cases the chairing authority reported delay to the college in implementing the conditions and recommendations resulting from previously adopted college or ESMA Opinions. In respect of one Article 35, the FMA did not agree with the recommendations raised in the Opinion by ESMA under Article 23a.
30. In accordance with Article 9(9) of Regulation (EU) No 2021/23 (CCPRRR), CCPs need to review at least annually their recovery plans, which should be submitted to the NCAs. The NCAs should submit the recovery plan to the college under Article 10(2) of CCPRRR. These requirements under CCPRRR entered into force in February 2022, therefore last year was the first time when the recovery plan had to be assessed by the NCAs and also

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<sup>4</sup> Guidelines on common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR" published by ESMA on 24 February 2021.

<sup>5</sup> See [2016-1574 - opinion on significant changes for ccps.pdf \(europa.eu\)](#)



by the college, which should adopt a joint decision in line with Article 11(2) of CCPRRR. Most of the CCPs submitted their recovery plans in the second half of 2022 or in early 2023 to their NCAs, which was also shared with the colleges by the NCAs. Where a recovery plan was submitted, the colleges adopted a joint decision on the CCPs' recovery plans. Three NCAs (AT, NL, PL) only submitted the recovery plans for the first time in May and June 2023, while there are NCAs who are in the process for conducting the annual assessment of the recovery plan for the second time.

31. Some college members are actively providing feedback in respect of the assessment of the CCPs' recovery plans and different initiatives of the CCPs.

## 4 General overview of NCAs' activities

32. EMIR requires NCAs to assess and review the compliance of CCPs with the EMIR requirements, including those in Article 37 of EMIR under 1) the annual review under Article 21 of EMIR, and 2) other ad hoc reviews including, where relevant, the extension of authorisation under Article 15 of EMIR, and 3) on-going monitoring of the CCP activities. The NCAs were asked to provide responses to a number of questions on their supervisory approach and practices with respect to the above supervisory activities, as well as on their organisational set-up.
33. Overall, NCAs reported that they conducted supervisory activities covering several aspects of CCP participation requirements.

### Annual review under EMIR Article 21

34. Most NCAs reported that they included the review of the CCPs' due diligence of clearing members in the scope of the annual reviews under Article 21 of EMIR conducted within the review period (both in 2021 and/or in 2022). In particular, several NCAs referred to the use of specific supervisory activities on the CCPs' compliance with Article 37 of EMIR, as input to the annual review under Article 21 of EMIR.
  - Seven NCAs (DE, FR, HR, HU, IT, NL, PL) confirmed that they are checking the CCPs' admission criteria and due diligence as part of the annual review and evaluation. Five NCAs (AT, EL, HR, HU, NL) confirmed that they can carry out sample checks as part of the annual review and evaluation.
  - Two NCAs (AT, SE) indicated that as they are following a risk-based approach for supervision, they are only reviewing those items that have changed as part of the annual review and evaluation. AT also mentioned that in November 2021 they assessed the participation requirements of the CCP through the extension of authorisation of the CCP.

- Several NCAs (AT, DE, ES, HU, NL, PL, SE) confirmed that as part of their reviews for the participation requirements, they are reviewing the CCPs' internal documents as well. DE indicated that they are reviewing the external auditor's report with regard to the CCPs' compliance with the EMIR requirements. Five NCAs (EL, ES, FR, HR, PT) are requiring their CCPs to carry out an annual assessment of the clearing members' compliance with the participation requirements, which should be submitted to the NCA for review. AT reviews the clearing members' credit rating and asks the CCP about the changes.

### **Other ad hoc reviews**

35. Three NCAs (AT, ES, NL), reported that they carried out an assessment of the CCPs' participation requirements as part of the extension of the CCP's authorisation under Article 15 of EMIR. AT also noted that the CCP started to onboard NFCs as new category of clearing members.
36. HR reported that this was assessed as part of the initial authorisation of the CCP, which started its operation in January 2022.
37. Some NCAs reported that they also carried out ad hoc reviews related to participation requirements, either through on-site visits (AT, EL, HU, PT, SE) or desk-based analysis (FR, PT, SE). For instance:
  - HU also reported that they are carrying out follow-up reviews based on previous years' findings.
  - FR reported that they carried out an assessment of the CCP's clearing members' control framework in relation to the participation requirements.
  - PT referred to a desk-based review of the communication made by the CCP to the NCA whenever there are new rules, policies and internal procedures and its amendments related to participation requirements.
  - SE also reported that they carried out in-depth analysis regarding the CCP's processes on relation to the participation requirements due to the default that happened in September 2018.

### **Ongoing Supervision and Monitoring**

38. Several NCAs reported about the use of regular meetings (AT, FR, NL, SE) and on-site visits (EL, HU, SE, DE, PL, and, most recently, PT) as tools to report and discuss participation requirements topics with CCPs.

39. Due to the recent market developments related to the Russian invasion of Ukraine, all NCAs carried out closer monitoring of the situation of their CCPs, whereby with the lead from ESMA, ongoing monitoring was introduced through templates that CCPs had to complete and submit to the NCAs and then to ESMA. Through this reporting issues relating to the participation requirements could be identified. These mainly affected those CCPs providing clearing service with regard to commodity markets, in particular energy clearing.

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

40. In total, 17 NCAs in 12 Member States have a direct supervisory responsibility to assess the EU CCP's compliance with Article 37 of EMIR:

- In France, three NCAs have shared responsibilities for the supervision of CCPs (ACPR, BdF and AMF), which jointly assess compliance with Article 37 of EMIR.
- In Italy, two NCAs have shared responsibilities for the supervision of CCPs (BdI and Consob).
- In the Netherlands, the responsibilities regarding the supervision of CCPs are divided between AFM and DNB, whereby AFM is responsible for the supervision of Article 37 of EMIR.
- In Germany, BaFin is the sole NCA for the supervision of CCPs. However, due to national legislation (German Banking Act) BaFin works in close cooperation with the Deutsche Bundesbank.
- In Austria, the FMA is the sole NCA for the supervision of the CCP<sup>6</sup>.
- In Hungary, the MNB is the sole NCA for CCPs. Following the onsite visit, the PRC noted that, within the organisation structure of the MNB, the supervision and the ownership of Keler CCP are located within two different departments under the same directorate (Directorate of Financial Infrastructures and Payments), which could create potential conflicts of interest for the NCA. Separate reporting lines up to Board level would reduce these conflicts.

41. The number of Full-Time Equivalent (FTE) staff members assigned to the supervision of a CCP (not only to the assessment of compliance with Article 37 of EMIR) is on average

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<sup>6</sup> However, due to national law (CCP Enforcement Act), a supervision cooperation is established with the Oesterreichische Nationalbank (OeNB) in matters of information technology systems, business continuity management, margin models and stress testing.

3 FTEs per supervised CCP at each NCA, ranging overall between one and six FTEs. These figures are proportionate to the size and the complexity of supervised CCPs.

42. With respect to the supervisory handbook, only 2 NCAs (DE, FR) shared internal supervisory guidance on the supervision of the CCP's participation requirements, while other NCAs gave an overview of their practices through their responses to the questionnaire.

## **4.1 Main general findings**

43. In accordance with the Supervisory Expectation 1 on the NCAs' organisational set-up, the PRC sought to ensure that NCAs are applying a risk-based approach which takes into consideration the size and complexity and the risk profile of the CCPs (in terms of their membership) under their supervision when determining the adequacy of their own organisational set-up, the supervisory activities undertaken, and the number of resources needed to adequately review their CCPs' membership criteria and due diligence processes.
44. Furthermore, where more than one NCA is responsible for the supervision of CCPs within the same EU Member State, it should be clear which supervisory responsibilities fall within each respective NCA's list of responsibilities, which is called out in paragraph 40.
45. In line with the above mentioned, the PRC considered that all of the NCAs are fully meeting with this expectation except for HU which is partially meeting this expectation as explained in paragraph 40 above.

## **5 Review of NCAs' supervisory practices**

46. This section presents current practices on how the NCAs ensure compliance of the CCPs' implementation of the membership requirements with the relevant requirements across four key areas: (i) clearing member due diligence; (ii) due diligence on non-financial counterparties (NFC) acting as clearing members; (iii) due diligence on general clearing members; and (iv) clearing member suspension and additional obligations.
47. It also assesses whether competent authorities' practices are complying with the relevant provisions of the PFMI (in particular, Principle 18, including Key Consideration 3 and the related explanatory notes 3.18.8.).

## 5.1 Clearing Member Due Diligence

### 5.1.1 Authorisation of the clearing rules

48. All NCAs confirmed that in line with the requirements of EMIR and the PFMI, the CCPs' membership requirements are detailed in the CCPs' clearing rules that are publicly available on the CCPs' websites. The clearing rules specify in detail the requirements with regard to the financial obligations and operational capacity that the clearing members need to fulfil to become a member at the CCP.
49. As per their practice, all NCAs are informed ex-ante about the (material) changes of the admission criteria embedded in the CCPs' clearing rules, which allow the NCAs to provide feedback if they see any issues arising. However, 7 NCAs (EL, ES, FR, HR, HU, NL, PL) confirmed that they should provide explicit approval on the amendment of the CCPs' clearing rules.
50. Five NCAs (DE, IT, AT PT, and SE) reported that amendments to clearing rules are not subject to a formal approval process by NCAs. For instance, one NCA (IT) require the CCP to submit the documentation concerning the intended changes 15 business days before the date of approval by the CCP's board. PT require the CCP to submit the approved rules by their Board of Directors, the respective changes with a brief explanatory analysis of those changes, 15 business days before the intended date of its implementation. NCAs are entitled to ask for additional information, or to provide their observation to be considered by the CCP. Moreover, IT explained that in practice, NCAs are informed by the CCP well before the formal submission (i.e. before the launch of the consultation process with participants).
51. While SE and AT confirmed that they are informed ex-ante of any (material) changes made to the CCP's Clearing Rules and can comment on any changes made to such rules whenever it has any concerns, there are no established deadlines ensuring sufficient time for an ex-ante review of all changes.

### 5.1.2 Financial resources and operational capacity

52. All NCAs assessed that CCPs have put in place membership criteria which ensure that their clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP in accordance with Article 37(1) of EMIR. The requirements are relevant as part of the onboarding of the clearing members. Some interesting practices from the CCPs were also shared by the NCAs.

- EL referred that the CCP as part of the onboarding exercise is carrying out so-called “mock clearing sessions” before the official start of the clearing operations. This exercise is used by the CCP to check the new clearing member’s readiness to participate in the clearing process. In the same way, as reported by FR, prior to start-up, technical and functional tests are carried out by the CCP. Moreover, the actual start-up of the activity requires prior formal validation of the member. Performing technical and functional tests confirm thereby operational capacity and readiness of the member.
- AT indicated that as part of the onboarding exercise the staff of each clearing member has to obtain a clearing training including an exam at the CCP. Only if the staff pass the exam, the clearing member can successfully onboard.
- ES reported that a clearing member must submit a technical report on the installations signed by the senior manager and the manager for Technology. The CCP needs to give its approval to the adequacy of the clearing member’s installations and systems. The NCA explained that they are monitoring the creditworthiness and net equity of the CCP’s clearing members and checks whether the changes are correctly registered into the CCP’s system. Furthermore, the NCA also performs some regular analyses on the main metrics of the CCP, which is used to verify that the clearing members fulfil their financial obligations with the CCP. This monitoring has weekly, monthly frequency and also there is special monitoring.
- As part of the financial resources three NCAs (ES, HU, PL) reported that their CCPs are reviewing their clearing members financial exposures to other CCPs.

53. For CCPs to ensure that their clearing members meet with the participation requirements is not only important as part of the onboarding, but they need to ensure this on an ongoing basis and CCPs need to put in place a framework to carry out the monitoring of the clearing members’ compliance with the participation requirements on an ongoing basis in line with the requirements of Article 37(2) of EMIR.

54. Only three NCAs reported that their CCP implemented some measures to monitor clearing members’ compliance with the participation requirements on an ongoing basis:

- FR reported that the operational capacity is also captured in the internal credit score (ICS) that the CCP use for its clearing members. Although the NCA claim that the ICS is also capturing the operational capacity, as per the documents and the explanation of the ICS, what is captured is the operating environment and the business profile which is not synonymous to the operational capacity. Furthermore, in the CCP’s clearing rules there are detailed requirements on the operational

capacity for the onboarding of clearing members, which the CCP should monitor on an ongoing basis.

- From EL's responses it seems that the CCP is paying attention to their clearing members' ability to meet with the requirements on the financial resources, and on the operational capacity at onboarding and on a continuous basis.
- SE reported that the CCP is reviewing the clearing members' financial resources on a quarterly basis and the operational capacity is part of the annual due diligence exercise.

55. Some NCAs reported that they issued recommendations to their respective CCPs that they should enhance their frameworks to ensure monitoring of clearing members' operational capacity on an ongoing basis.

- HU reported that they issued a recommendation to the CCP as part of their annual review and evaluation exercise in 2019, where they required the CCP to enhance its framework to review the clearing members' operational capacity as part of the onboarding and then on an ongoing basis. As part of the follow-up that the NCA is also doing to review the previous years' findings they identified that the CCP made relevant amendments to fulfil this requirement.
- IT explained that as part of the enlargement of the membership base, the CCP is planning to introduce amendments to its due diligence framework, which would help in assessing the risks and in monitoring the compliance of its clearing members with the membership requirement.
- PT confirmed that the CCP does not include the operational capacity assessment in its clearing members' due diligence, so the NCA required the CCP to extend the scope of the next annual review of the participation requirements to include the operational capacity as well.

### **5.1.3 CCPs' annual comprehensive review**

56. In accordance with the requirements in Article 37(2) of EMIR, the CCPs need to carry out an annual comprehensive review to check if their clearing members are meeting with the participation requirements.

57. All NCAs report that this is required from the CCP to carry out this assessment, which should also be submitted to the NCAs to review. AT stated that they are consulting with the CCP if there are any changes in the credit ranking of the clearing member to get the reasons and background of this change. The Italian NCAs reported that the CCP



conducted a thorough annual comprehensive review as part of the changes undertaken in preparation of the future expansion of its business.

#### **5.1.4 Other monitoring activities by NCAs**

58. Four NCAs (DE, ES, FR and PT) indicated that any admission of new clearing members must be notified to the NCA. ES also require the CCP to notify the NCA whether any application for admission has been rejected. FR noted that they need to approve any clearing member which is not member of the European Economic Area. PT also requires ex-ante information of onboarding/suspension/cancellation of Clearing Members and Settlement Agents in each service.
59. Four NCAs (DE, HR, HU, and NL) remarked that they are receiving regular reports (in some cases, including internal audit reports) from the CCP with regard to the membership.
60. ES requires the CCP to submit regular reports on operational incidents that could also affect the CCP and its clearing members. FR also noted that the CCP has to notify any major incident to the French NCAs as soon as possible describing the issues (whether external or internal) and the potential impacts especially on clearing members if any. Once the incident has been resolved, the CCP describes in detail the incident, the causes, the teams and IT system impacted etc. in a “lessons learned” report. French NCAs do a follow up on this report and the implementation of post incident actions. The actions are monitored until its closure and may be discussed during the monthly meetings.
61. Five NCAs (DE, HU, NL, PL, PT) indicated that they are receiving the materials of the Board of Directors, and they are able to provide feedback in advance of the meetings. Four NCAs (DE, HU, NL, PL) also indicated that they can attend the Board of Directors meetings as observers.
62. Two NCAs (IT, PT) indicated that they have access to the CCPs’ systems directly. IT explained that they have electronic monitoring system connected to the CCP which provides information on the collection of end-of-day and intraday margins and outstanding positions, both on aggregated and at participant level. Intraday monitoring is also performed through the mentioned system in order to verify the correct and smooth functioning of the CCP’s systems. PT also confirmed that they have access to the CCP’s system to extract reports from this system. ES also stated that they have access to the main figures similarly to IT, but without direct access to the CCP’s system.
63. Two NCAs (EL, FR) reported that they are carrying out ad-hoc audits on a subset of clearing members to check if those clearing members are in compliance with the CCP’s participation requirements.



64. One NCA (ES) also stated that they performed some in-depth assessments on the CCP's processes for admission criteria through more detailed questionnaires, to test certain aspects of the participation requirements, and also to address the monitoring and the due diligence activities of the Chief Compliance Officer on its clearing members.
65. Where a CCP clears energy products, the NCA have regular meetings and calls with the energy authority, to monitor and better understand market developments, which is the case in respect of DE, PT and SE.

#### **5.1.5 Good practices from the 2019 ESMA survey on CCPs' membership criteria and due diligence**

66. The default at Nasdaq Clearing AB in September 2018 of a physical person acting as a Direct Clearing Member on the Nasdaq Commodities clearing segment highlighted the importance of membership criteria as a first line of defence of CCPs to control counterparty credit risk.
67. As a follow-up to this incident, in 2019 ESMA conducted a survey on CCPs' Membership Criteria and Due Diligence, in order to learn about CCPs' practices in this field and determine whether any supervisory convergence measure is needed to strengthen CCPs' compliance with Article 37 of EMIR as well as Principle 18 of the CPMI-IOSCO Principles for financial market infrastructures.
68. The results of the survey emphasized six practices used by EU CCPs on an ongoing basis to perform the due diligence of their clearing members:
- o internal credit classification;
  - o warning monitoring system of their economic and financial situation;
  - o availability of reporting packages or connection to CCP dedicated risk system;
  - o mandatory due diligence questionnaire;
  - o regular engagement with clearing members; and
  - o onsite visits.
69. As part of this year's peer review exercise, it was checked with the NCAs which CCPs are using the above-mentioned practices as of their clearing members' due diligence, and also what action was taken by the NCAs to encourage the use of these practice as wide as possible.

### *Internal credit classification*

70. Ten NCAs (AT, DE, ES, FR, HR, HU, IT, NL, PT, SE) indicated that their CCPs are applying internal credit rating in respect of clearing members. In case of EL and PL, the CCPs are not applying internal credit ratings. The credit classification of clearing members is assessed based on the annual reports and other sources of information (e.g. external ratings) and includes the calculation of classical financial ratios. Five NCAs (AT, DE, HR, HU, IT) confirmed that in respect of the internal credit rating, their CCPs mainly rely on financial information. Three NCAs (FR, PT, SE) confirmed that their CCPs are taking into account not just qualitative, but also quantitative information in the calculation of the internal credit rating.
71. HR explained that they issued a recommendation to the CCP to improve the risk sensitivity of its rating methodology, and to adjust its solvency model to the size and capacity of the clearing members compared to the exposures that they bring to CCP.
72. DE also explained that they issued a recommendation following an on-site inspection in 2019 for one of their CCPs with regard to weaknesses in the internal credit classification and the NCA has quarterly monitoring to see how the entity progresses with the remediation.
73. NCAs confirmed that their CCPs are not relying solely on external credit ratings. In respect of ES, the CCP relies on external ratings, together with annual reports from the clearing members and equity prices. ES confirmed that they issued a finding on the CCP's reliance on external credit ratings and the CCP needs to further develop its internal credit rating methodology for its clearing members, whereby the NCA requires the CCP to include more forward-looking indicators (CDS, bond prices, more robust equity monitoring, etc).
74. In the case of PL, it was indicated that the CCP does not rely neither on external, nor on internal credit rating, but monitors the risk generated by the clearing members on the overall assessment of their activities and financial situations.
75. In the case of EL, the NCA explained that the CCP does not apply an internal credit classification for its clearing members and instead refers to documentation requested from the clearing members, namely audited financial statements and information regarding their capital adequacy, own funds, solvency ratio or large exposures, and other financial statements. Furthermore, the CCP applies a proactive risk monitoring approach with a real-time risk monitoring mechanism, and requests full collateral/margins from its clearing members before entering any order into its system. The CCP may also monitor the external ratings of its CMs on a quarterly basis.

76. From the responses of HU, it was reported that in November 2021, a gas market clearing member was subject to insolvency proceedings. The CCP provided clearing services to the clearing member for a small period of time until the member actually ceased its activity, and the positions were closed, and thus the clearing member's membership was voluntarily terminated. The CCP monitored the clearing member's situation closely and had daily discussions with the relevant stakeholders. The CCP also asked for additional financial collateral. Despite the event, the CCP did not change the clearing member's credit rating, which was a breach of the CCP's internal policy. A follow up action for the NCA is to request the CCP to clearly show in its internal rating system if an entity is subject to insolvency proceedings.

#### *Warning monitoring system*

77. Four NCAs (FR, NL, PT, SE) reported that there is a warning monitoring system available in their CCPs. The other NCAs (AT, HR) mentioned that there is no warning monitoring system available in their CCPs, however the CCPs are checking if there are any issues on posting margins and if there is any bad news on the clearing members. HR also noted that implementing a warning monitoring system would also be too costly for the CCP and would not be proportionate considered to the CCP's clearing activity.

78. DE stated that in the case of their CCPs, credit watchlists are implemented for the monitoring of the clearing members and they also monitoring the potential breaches of sanctions.

79. Two NCAs (ES, IT) indicated that their CCPs developed early warning indicators on their clearing members financial situation. IT confirmed that they are checking the CCP's exposure towards its clearing members and HU confirmed that the CCP also carries out position and exposure monitoring. PL stated that the CCP checks the posted margins and collaterals and the financial reports that the clearing members need to submit on quarterly or on an annual basis. EL stated that the CCP is manually monitoring the clearing members and there is an alert service tool in place whereby the CCP receives articles from a national media monitoring agency.

80. ES indicated that they raised findings, whereby it is required from the CCP that it should include other early warning indicators, for example, taking into account CDS information or the market prices of debt instruments issued by its clearing members.

#### *Availability of reporting packages or connection to CCP dedicated risk system*

81. Ten NCAs (DE, EL, ES, FR, HR, HU, IT, NL, PT, SE) reported that in case of their CCPs there are reporting packages. Three NCAs (PL, PT, SE) confirmed that there are required reports that the clearing members need to submit to the CCPs.

82. Quite a number of NCAs (AT, DE, EL, ES, FR, HR, HU, NL) noted that clearing members need to report on their financial information based on the established cycle and as part of the annual comprehensive review. Furthermore, clearing members need to send notification in line with the clearing rules.
83. ES explained that all clearing members need to notify the CCP of their level of insolvency and rating assigned by the credit rating agencies in a pre-established format. The NCA also issued a recommendation, whereby the CCP should produce internal reports, which may be used to track any particular situation of any of its clearing members.
84. Nine NCAs (DE, EL, ES, HR, HU, IT, NL, PT, SE) confirmed that clearing members need to connect to the CCPs' dedicated system.

#### *Mandatory due diligence questionnaire*

85. Seven NCAs (DE, EL, FR, HU, NL, PL, SE) indicated that the use of a due diligence questionnaire is already embedded in their CCPs' practices for the monitoring of the membership requirements at least on an annual basis, which also serves the basis of the annual comprehensive review that is required in accordance with Article 37(2) of EMIR.
86. Two NCAs (ES, IT) indicated in their responses that the development of a due diligence questionnaire is part of the process of enhancements that was either required by the NCA (ES) or is part of a proposal of a clearing rule change (IT). As Euronext Clearing is going to increase its membership, it is indeed particularly important that the CCP strengthens its ongoing monitoring process appropriately.
87. PT indicated that the CCP has an internal procedure to revise and update clearing members' information and as part of the on-site supervisory action the NCA required the CCP to provide more information on how it will comply with this practice.
88. AT reported that there is no specific due diligence questionnaire used by the CCP as the checklist is available on the CCP's website with regard to the information and documentation that the clearing members need to submit as part of the annual comprehensive review that CCP needs to carry out.
89. As per the response from HR, the CCP uses mandatory due diligence questionnaire with its Clearing Members. The operational capacity of the CCP will be checked on an ongoing basis, as part of the annual supervisory process. The first step in the process covers the obligation of the CCP to prepare answers to the annual questionnaire prepared by Hanfa for the purpose of the review and evaluation assessment under Article 21 of EMIR.

### *Regular engagement with clearing members*

90. All NCAs indicated that the CCPs have regular engagement with their clearing members, either through Risk Committee meetings or other meetings where new services, products or technology changes are discussed, and also bilateral meetings can be organised as and when necessary.
91. It was also confirmed that CCPs have regular engagement with clearing members as part of the onboarding and in case the clearing members have any issues.

### *On-site visits*

92. Nine NCAs (DE, EL, ES, FR, HR, HU, NL, PT, SE) indicated that their CCPs have the possibility in their clearing rules to carry out on-site visits at the clearing members. Although PT stated that the CCP confirmed that it never carried out an onsite visit. Furthermore, the NCA found that the criteria that trigger the operational test and technical audits are not clarified and need further development.
93. IT confirmed that as part of the proposed clearing rules changes, the CCP will introduce the right to carry out on-site inspections at the clearing members' premises, which would allow the CCP to analyse how the clearing members implement their risk management and organisational arrangements, information technology systems and related internal procedures.

## **5.1.6 Assessment**

94. In accordance with the **Supervisory Expectation 2** on the timely receipt of proposed changes to membership rules, a NCA would fully meet the PRC's expectation if the NCA require the CCP to submit the proposed changes to the clearing rules *ex-ante* to the NCA, whether they need to approve or not the changes, before implementing any changes to its admission criteria or due diligence annual reviews. It is also expected that the NCAs would have a well-defined process for this with their supervised CCPs. If the NCAs do not have the chance to provide feedback to the CCP *ex ante*, then it would be largely meeting this expectation. A NCA would be considered to be partially meeting this expectation if there is no defined procedure or deadline by which it should receive any proposed changes to the rules on an *ex-ante* basis. Furthermore, the NCA should receive all necessary information in relation to such changes, including amendment(s) made to the admission criteria or due diligence policies and procedures with respect to the previous version of the relevant provisions.
95. Ten NCAs are fully meeting expectation, where more than half of the NCAs under review (EL, ES, FR, HR, HU, NL, PL) reported that they are approving changes to the admission

criteria on an *ex-ante* basis. Three NCAs (DE, IT, PT) reported that whilst there is a formal procedure by which changes need to be communicated to the NCA on an *ex-ante* basis, the NCA is not required to formally approve such changes. Two NCAs (AT, SE) reported that they are notified *ex-ante* of any changes or any substantial changes, but there are no defined deadlines for the CCPs to submit such notifications.

96. **Supervisory Expectation 3** as set out in the Mandate was in relation to the NCAs' assessment of their CCPs compliance with their obligations dealing with participation requirements which are imposed on them by virtue of Article 37 of EMIR at least on an annual basis. Furthermore, NCAs should assess that CCPs have put in place membership criteria which ensure that their clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Furthermore, NCAs should verify that the membership criteria of the CCP take into account the differentiated risk profiles of the various clearing members covering both financial and operational participation requirements. NCAs carrying out annual checks in line with the above would be fully meeting with this expectation.
97. Some NCAs (AT, DE, NL, PL and SE) adopted a risk-based approach and did not carry out a review on an annual basis, meaning they largely meeting expectations. This convergence issue was also identified by ESMA which in turn issued the Guidelines on common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR (the 'Guidelines'), which came into force on 11 May 2022. In case of AT the replies to the questionnaire imply that there was a five-year period between 2016 (when the NCA carried out a small review as part of the on-site visit and during the off-boarding process of UK Clearing members following Brexit) and 2021 (following an EMIR Article 15 extension of activities) where the NCA did not check the CCP's admission criteria. ESMA duly notes that AT informed their college that from next year they will ensure compliance with these Guidelines. EL, ES, FR, HR, HU, IT and PT were deemed to be fully compliant with the PRC's expectation.
98. **Supervisory expectation 4** is in relation to the NCA's monitoring of the CCPs' due diligence reviews, whereby the NCA's checks should cover the CCPs' annual comprehensive review of the participants, and if the CCPs' due diligence checks cover the full scope of its admission criteria. This review should be carried out by the NCAs more frequently and/or, where relevant on an ad hoc basis in cases of market disruptions or significant events. Furthermore, as part of the article 21 Annual Review, the NCA is expected to perform sample checks on the due diligence exercises carried out by the CCPs under their supervision with respect to clearing members subject to ongoing due diligence and new clearing members onboarded within the last year, to verify that such due diligence activities were performed thoroughly and correctly by the CCP. NCAs should also ensure that the CCP's due diligence checks cover the full scope of its admission criteria, cross-check the CCP's due diligence checklist (where available) with the



admission criteria set out in the rulebooks, and the relevant application documents which the clearing members are asked to fill in at onboarding stage.

99. From the responses received, most of the NCAs are largely meeting this expectation. The PRC notes that EL and HR are fully meeting this expectation. In the case of HU, due to impediments imposed on the CCP by the Hungarian Gas Act which does not allow the CCP to apply strict risk-based participation requirements, HU is deemed to be partially meeting this expectation.
100. **Supervisory Expectation 5** was focused on the NCAs' reviews of the fitness of the CCPs' membership criteria and due diligence procedures, which would cover reviewing the CCPs' clearing rules and internal policies and procedures. Furthermore, the CCPs and the clearing members have put in place efficient notification systems by which the clearing members may promptly alert the CCP in case they are not able to perform their obligations or are not fulfilling one or more of the participations requirements. The NCAs should have also verified whether the good practices identified in ESMA's survey from 2019 have been implemented by the CCPs or are planned to be implemented in the near future.
101. From the responses received, most of the NCAs are fully meeting this expectation. The PRC notes that AT and NL are largely meeting expectations, but remarks that further information would have aided the PRC to better understand the NCAs' practices with respect to their review of the membership criteria and due diligence policies of their respective CCPs as they did not demonstrate this to a sufficient degree. PL is partially fulfilling the PRC's expectation since the NCA noted that it was checking whether the membership criteria and due diligence policies and procedures are still adequate to meet the needs of the CCP but did not explain what is being done as part of these checks. The NCA did not provide a demonstration of their processes and activities that would confirm their statements. Furthermore, the PRC notes that in respect of EL and PL, the NCAs may wish to thoroughly review the adequacy of CCPs' assessment of their clearing members since no internal credit ratings are applied by the CCP. In the case of ES, the PRC notes that the NCA identified that the CCP has a relevant reliance on external credit ratings and made a recommendation to the CCP to develop an internal credit rating system for its clearing members.
102. In line with **Supervisory Expectation 6**, it is also important to check that, where relevant, the NCA is reviewing the CCP has taken measures to ensure ongoing compliance with participation requirements, particularly with their clearing members' financial and operational capacity. This would include cases of market disruptions or significant events, as well as enhanced monitoring of members that have shown compliance issues in past years. The NCAs should adopt a risk-based approach when determining the frequency of the measures. The NCAs should also have frequent

communication with the CCPs, which would also include the provision of guidance, training.

103. None of the NCAs did meet this expectation fully, as their review of CCPs' continuous monitoring of the clearing members' ongoing compliance with participation requirements focused on the clearing members' financial capacity, disregarding the latter's operational capacity. In particular, those NCAs that have reviewed their CCPs' ongoing monitoring procedures (DE, EL, ES, HR, HU, NL, PT and SE) have been considered largely meeting the expectation. The remaining NCAs have been considered partially meeting the expectation. ESMA expects NCAs to enhance supervisory focus on the CCP's review of their clearing members' ongoing operational capacity and will conduct further work to ensure convergence in this respect.

## **5.2 Non-Financial Counterparties (acting as Clearing Members)**

104. As part of the Peer Review, it was also reviewed whether the specific membership criteria for NFCs which should be at least as stringent as those for financial counterparties (FCs). Furthermore, the review also captured the specific additional obligations that a CCPs may impose on NFCs and how a CCP ensures that the additional obligations are proportionate to the risk that a particular NFC brings in. This section provides details on the CCPs' practices in respect of NFCs when they are acting as clearing members.

105. Seven NCAs (DE, EL, ES, FR, HR, NL, PL) confirmed that NFCs cannot become clearing members in their respective CCPs.

106. IT mentioned that only two peculiar NFC entities are currently participating in the CCP as clearing member. Both entities are controlled by the state. One of the entities is subject to the same financial participation requirements as FCs, since it is subject to the prudential regulation, and the entity need to provide periodical information on its capital, like other FCs. The other entity is out of scope of the prudential regulation, but it is a financial intermediary and the CCP checks periodically the capital requirements for this entity as well, albeit the capital of this entity is significantly higher than the minimum required. It was confirmed that both entities are subject to the same operational requirements established for FCs. Besides these 2 specific NFCs, the CCP does not allow other NFCs to become clearing members.

107. Among the remaining four NCAs of the CCPs which admit NFCs as clearing members, three NCAs (AT, HU, PT) confirmed that the CCPs do not apply any additional requirements on NFC, while the fourth NCAs (SE) reported that the only difference in the participation requirements which are specific to NFCs related to the capital requirements. In particular, two NCAs (AT, HU) confirmed that NFCs cannot become clearing members at the securities markets, only for the energy segments. HU indicated that the credit rating



methodology is differentiated for gas market clearing members and energy market non-clearing members.

108. The NCAs' practices for the supervision of the CCPs, where NFCs can become clearing members are not different for reviewing FCs as clearing members. One thing worth noting is that in all cases where NFCs can become clearing members, the relevant NCAs (AT, HU, PT, SE) confirmed that NFCs cannot become General Clearing Members.

### 5.2.1 Assessment

109. It is expected from NCAs to assess that their CCPs are complying with their obligations dealing with participation requirements, which are imposed on them by virtue of Article 37 of EMIR at least on an annual basis in respect of NFCs. This would therefore include any ad hoc or additional participation requirements, which are proportionate to the risks which certain NFCs expose the CCP to.

110. The responses show that none of the five CCPs impose additional requirements for NFCs, even if EMIR include this possibility. Nonetheless, the PRC appreciate that the information provided by the relevant 4 NCAs indicates that the NCAs and CCPs have carefully considered the admission of NFCs as clearing members.

111. In line with **Supervisory Expectation 4** and with respect to HU, the PRC highlights that the CCP is not able to select the clearing members based on appropriate risk-based categorisation as the Hungarian Gas Act requires trading members to become clearing members. In this respect, the PRC recommended to the NCA to follow-up with the relevant Ministry to remediate the impediments posed by the Hungarian Gas Act, to allow the CCP to apply strict risk-based participation requirements, which would also ensure full compliance with the requirements under Article 37(1) of EMIR.

## 5.3 Due Diligence on General Clearing Members

112. All the NCAs confirmed that clearing members which clear transactions on behalf of their clients and act as a GCM are required to have higher capital requirements than an Individual Clearing Member (ICM), which is required by Article 37(3) of EMIR.

- HR indicated that whilst this requirement is set out in the clearing rules of the CCP, as of the date of this report, there are no GCMs in the CCP.
- Two NCAs (FR, IT) mentioned that the amount of supervisory capital required for GCMs increased with the number of Trading Clients with which the GCM had entered into an agreement. NL indicated that the financial resources requirement

for GCMs is more than three times higher than it is for Direct Clearing Members (DCM).

113. All NCAs confirmed that the GCM's capital requirements are assessed by the CCPs as part of the annual comprehensive review that they need to carry out in line with Article 37(2) of EMIR to review if their clearing members are meeting with the admission criteria. In particular, seven NCAs (DE, ES, FR, HR, HU, NL, PL, AT) confirmed that they are reviewing the annual comprehensive review that the CCP carried out as part of their annual review and evaluation exercise in accordance with Article 21 of EMIR.
114. With respect to the monitoring of clearing members' position and the concentration of clients NCAs provided the following responses:
115. ES stated that they monitor on an ongoing basis the most significant positions held by clearing members and their clients, as well as margins posted by each of them. They also explained that the CCP monitors the concentrated positions at different levels: calculation of concentration add-ons at account and group/corporate structure level, which are aggregated at clearing member level. To perform these analyses, the CCP mainly relies on own data, but it needs information from clearing members running second-tier accounts, whereby the clearing members need to inform the CCP of their clients' trades registered in second tier register accounts. This NCA carried out a thematic review in the energy segment where the NCA asked several clearing members active in the segment about the liquidity and financial capacity of their clients.
116. NL confirmed that there is monthly reporting from the CCP to the NCA on clearing members' margin and default fund contribution requirements, which allows for checking whether clearing members met their financial obligations toward the CCP.
117. EL indicated that they are reviewing the CCP's compliance with the above-mentioned requirement through ad-hoc audits.
118. In accordance with Article 37(3) of EMIR, the CCP's rules for clearing members shall allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. In this regard the NCAs provided the following information:
119. As per the responses of four NCAs (AT, EL, HR, PL), the CCPs are only requesting basic financial information from their clearing members. DE stated that one of their CCPs requests information through its annual due diligence questionnaire and the other CCP knows its clearing members' clients and this CCP considers client clearing in its regular clearing member reviews.

120. HU indicated that the CCP requires the names of clients whose initial margin reaches or exceeds the announced limit. The limit calculation is performed on a weekly basis and the CCP is entitled to impose additional financial collateral against clearing members who fail to comply with the reporting obligation.
121. IT stated that the CCP performs on an annual basis a classification of its GCMs in terms of concentrate percentage of trading clients on the most relevant markets. Once the first three GCMs have been identified then a creditworthiness analysis is carried out based on several indicators.
122. PT explained that since all trading members are registered at the CCP as registration agents, the CCP has information regarding the positions of the clients of the GCM, which allows the CCP to manage any concentration risk related to clients of the GCM.
123. FR confirmed that the CCP partially performs a control on the client clearing arrangements at onboarding of GCMs and upon request by the CCP. However, after the audit that the NCA carried out, the CCP is currently strengthening the due diligence questionnaire related to client clearing management to include controls on identifying, monitoring and managing relevant concentrations of risk related to the provision of services to clients.
124. Finally, SE stated that as part of its in-depth review, they took samples to check how the CCP ensures that it has sufficiently detailed information to assess account level concentration of risk. This would be important for the NCA to conduct on an ongoing basis as part of their annual review exercise. Furthermore, the CCP compiles a weekly report with concentration figures in relation to each clearing member's total initial margin.
125. Also, in Article 37(3) of EMIR, clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP. With regard to the clearing arrangements, the NCAs provided the following information:
126. Two NCAs (AT, ES) stated that they are checking the agreement between the CCP and the clearing members from time to time, and three NCAs (AT, ES, NL) mentioned that they are checking the agreement between the GCMs and their respective clients. ES also stated that the latter agreements and CCP's rules establish certain obligations on the GCM's clients, which have to comply with the CCP's rules. NL indicated that the CCP set criteria and arrangements the CCPs require the clearing members to have in place in order to allow their clients to access the CCP services. As part of the annual comprehensive review that the CCPs need to carry out, the clearing members required to submit a questionnaire that includes information on the criteria and arrangements the clearing members adopt to allow their clients to access the CCPs' services. The NCA also reviews

this as part of their annual review and evaluation exercise in accordance with Article 21 of EMIR.

127. Two NCAs (EL, HR) indicated that the GCMs need to inform the CCP about the contract between the respective GCM and its clients. SE stated that the CCP has certain requirements for contractual terms that must be in place between the clearing member and its clients.
128. IT explained that the CCP's clearing rules contains specific provisions concerning the relations between the GCM and trading clients. It is also required that each agreement shall be defined on the basis of an outline agreement provided by the CCP. This outline agreement also provides that for the purposes of the opening of a gross omnibus segregated client account, the GCM shall ensure that the trading client is a regulated entity and shall also provide the CCP with all the information necessary to identify the contractual positions held for the account of each indirect client by each trading client at least on a daily basis, to enable recording of such positions in the dedicated sub-accounts. Furthermore, the clearing members are required to inform the CCP of any update on the client clearing criteria and arrangement.
129. HU mentioned that they did not review whether the CCP requested from clearing members the criteria and arrangements that they adopt to grant their clients' access. PL stated their CCP does not require clauses in the agreement between the GCM and its clients.
130. PT explained that as part of their desk-based and on-site supervisory action the NCA realised that the CCP never requested the criteria and arrangements adopted by their GCMs to grant their clients access to the CCP's services. The NCA requested the CCP to address this topic in respect of their GCMs.

### **5.3.1 Direct access or sponsored model**

131. The direct access or sponsored model allows the client to become a direct counterparty to the CCP, whereby an agent/sponsor on its behalf pays contributions to the default fund and, where necessary, loss-sharing obligations stemming from the default management procedures. Depending on the model envisaged, the agent can also act as paying agent for other client's payment obligations e.g. related to margin calls and collateral management, etc.
132. Ten NCAs (EL, ES, HU, IT, HR, AT, NL, PL, PT, SE) responded that there is no direct access or sponsored model offered by their CCPs. NL confirmed that one of their CCPs are offering direct access, but it is not used.

133. Where the model is available (DE, FR), the NCAs reviewed either through authorisation or a validation under Article 15 or 49 of EMIR and no convergence issues emerged.

### **5.3.2 Anti-procyclicality measures**

134. The PRC also considered whether the NCAs reviewed whether CCPs asked if clearing members have adopted anti-procyclicality margin measures for their clients, although there is no legal requirement for this.

135. Five NCAs (AT, DE, FR, HR, NL) stated that the responsibility is on the GCM how they are managing these requirements with their clients, and there are no requirements on the CCP or the NCA to review this. NL stated that they are not reviewing whether the CCPs have asked if their clearing members have adopted APC margin measures for their clients as the NCA has not encountered specific issues on GCM client clearing at the CCPs. Two NCAs (HU, PL) stated that they are not reviewing this area. Finally, PT and SE stated that this is not captured in the CCP's due diligence questionnaire.

136. IT explained that NCAs intend to monitor the development of the framework concerning the survey for participants that the CCP has introduced in the context of the enhancement of its clearing rules adopted to cater to the expansion of the CCP's business. The NCA intend to verify that the most relevant aspects of client clearing arrangements, including those concerning the measures adopted by CMs to limit procyclicality of margins requests they apply to their clients, would be included in the scope of the survey.

137. ES indicated that in the context of evaluating the APC measures followed by the CCP and the market participants, the NCA performed an analysis on the topic through a targeted questionnaire. Furthermore, in the context of the increasing energy prices, the Spanish NCA also contacted the most active clearing members in the CCP's energy segment. As part of this exercise, it was confirmed that it is a common practice for clearing members to require from their clients an excess in margins to cover the exposures that may arise from the time margins are required up to the time their clients finally post the margins to the clearing member.

### **5.3.3 Assessment**

138. It is expected from NCAs to assess that their CCPs have in place membership criteria which require GCMs to demonstrate that they have the necessary additional and sufficiently liquid financial resources and operational capacity to clear transactions on behalf of clients in view of the heightened risks that GCMs pose to CCPs. The NCA should enquire whether their CCPs have visibility of the criteria and arrangements which their GCMs adopt to allow their clients to access the services of the CCP. Furthermore, it the NCA should enquire whether the CCPs request any other basic information from their

GCMs in order to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients in line with Article 37(3) of EMIR and the CCP's own due diligence policies.

139. It is also expected from the NCAs to check whether the information requested by the CCPs from their GCMs, at a minimum, enables the CCP to identify the proportion of activity that a GCM conducts on behalf its clients (indirect participants), the clients whose transaction volumes or values are large relative to those of the GCM which clears transactions on their behalf and which of their GCMs act on behalf of a material number of clients. The CCP should also have visibility of the clients with significant volumes or values of transactions in the system, which therefore pose a heightened risk to the CCP itself.
140. All NCAs confirmed that their CCPs impose higher capital requirements on GCMs, and some NCAs (FR, IT) also confirmed that the capital requirements increased depending on the number of trading clients or indirect clearing members which the GCMs serve.
141. The PRC noted that all NCAs are meeting with the expectations for this section.

## **5.4 Clearing Member suspension and additional obligations**

142. As per Article 37(4) of EMIR the CCP shall have objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the admission criteria. It was confirmed by all the NCAs that the CCPs' clearing rules contain the relevant information on suspension and orderly exit, which is publicly available on their websites.
143. It was also confirmed by all the NCAs that if there is an issue with a clearing member, the CCP will immediately notify the relevant NCAs and cooperate closely with them. Cooperation between the CCPs and their competent authorities is very important given that the NCA should be able to decide if a suspension of a clearing member should not be published on the relevant CCP's website as the CCPs are obliged to inform the market and the other clearing members, unless the NCAs would decide not to as there could be spill-over effects.
144. The CCPs are also conducting a default management simulation exercise, which is required at least once a year under EMIR, where they would test their framework with their participants.
145. Five NCAs (AT, DE, EL, FR, HU, PT) are either participating in the annual default simulation exercise or following closely.

146. Two NCAs (AT, HR) confirmed that the participation is completely voluntary. HR also issued a recommendation for the CCP that all clearing members have to participate in the default simulation exercise.
147. ES mentioned that all members are invited to participate in the default management simulation test.
148. In accordance with Article 37(6) of EMIR, a CCP may impose specific additional obligations on clearing members, such as the participation in auctions of a defaulting clearing member's position. Such additional obligations shall be proportional to the risk brought by the clearing member and shall not restrict participation to certain categories of clearing members. The PRC asked feedback from the NCAs on how the above-mentioned requirement is fulfilled by their CCPs.
149. EL stated that in case of default the CCP's procedures requires that non-defaulting clearing members participate in auctions and/or in transactions covering the defaulting member's position.
150. ES also explained that here is mandatory participation in the default auctions and fire drills for all clearing members in the IRS segment of the CCP. Currently clients are not invited, but the CCP will include this possibility. The NCA also conducted a thematic review and suggested that the CCP should further develop the internal documentation to clarify the potential participants in the default auctions.
151. DE indicated that the default management framework was amended for one of their CCPs to promote mandatory participation from clearing members in the default management process. The possible benefits of the voluntary participation of clients in auction was also discussed. For the other CCP voluntary and mandatory auctions are also possible, where the CCP selects the clearing members and NCMs on a discretionary basis and the CCP's clearing rules entail the criteria to be considered in the decision.
152. FR stated that the CCP put in place default management procedures which differ per business segments. There are segments where there is mandatory participation required from all clearing members and there is voluntary participation where only those clearing members are invited who can absorb large portfolios of derivatives. In the business segments where the participation is mandatory in the default management exercise this is binding under the legal agreements. Where it is voluntary, only several clearing members signed the binding participation in the auction. In the tests, all clearing members are invited, which ensures non-discrimination.
153. HU stated that the CCP's default management framework does not include auctions.



154. IT mentioned that where portability is not possible, the CCP appoints a close-out agent to liquidate the positions on the market. For this the CCP signed an agreement with clearing members, which on a voluntary basis expressed willingness to act as close-out agent. The introduction of auction in the context of default management procedure is currently being internally assessed by the CCP.
155. NL indicated that there is no discrimination for deciding which clearing members can participate in auctions. The only requirement is to be able to demonstrate capacity to perform relevant obligations during the auction process. In theory, clients of clearing members can participate in the auction process if they have demonstrated to the CCP that they can meet the relevant obligations. However, the obligation to participate in the default testing only binds the CCPs clearing members.
156. PT mentioned that regarding the participation of clients into the auctions, all clients that are trading members in the markets that the CCP has a connection agreement with, may participate.
157. Finally, SE stated that as part of ongoing supervision, the CCP has presented the process regarding close-out arrangements with close-out providers which are invited to participate in the default process on a best-effort basis. Clients of GCMs can also be invited given they have signed a close-out provider agreement and the GCM. Typically, all close-out providers will be invited to participate in the bidding, however CCP's Default Committee may decide to only invite a subset depending on the situation.

#### **5.4.1.1 Assessment**

158. The expectation as part of NCAs review the fitness of the CCPs' membership criteria and due diligence policies and procedures, that the CCP has clearly defined and publicly disclosed criteria and procedures for facilitating the suspension and orderly exit of a participant that no longer meets the participation requirements.
159. In line with the above mentioned, the PRC considered that all NCAs are following the EMIR requirements in this respect.

## **5.5 Assessment and Recommendations Table**

160. The following tables set out the peer review's assessment grade for each NCA under review for the areas assessed. In each case, NCAs are assessed as fully compliant, largely compliant, partially compliant or non-compliant.



	Organisational Set-up	Timely Receipt of Proposed Changes	Assessment of the CCP's Compliance with Participation Requirements under EMIR	Assessment of Due Diligence of Clearing Members	Review of Membership Criteria & Due Diligence Policies	Ongoing compliance with Participation Requirements
AT	Green	Yellow	Yellow	Yellow	Yellow	Yellow
DE	Green	Green	Yellow	Yellow	Green	Yellow
EL	Green	Green	Green	Green	Yellow	Yellow
ES	Green	Green	Green	Green	Green	Yellow
FR	Green	Green	Green	Yellow	Green	Yellow
HR	Green	Green	Green	Green	Green	Yellow
HU	Yellow	Green	Green	Yellow	Green	Yellow
IT	Green	Green	Green	Yellow	Green	Yellow
NL	Green	Green	Yellow	Yellow	Yellow	Yellow
PL	Green	Green	Yellow	Yellow	Yellow	Yellow
PT	Green	Green	Green	Green	Green	Yellow
SE	Green	Yellow	Yellow	Yellow	Green	Yellow

TABLE 2 - ASSESSMENT OF NCAS

Fully meeting expectations	Largely meeting expectations	Partially meeting expectations	Not meeting expectations
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### 5.5.1 Recommendations by the PRC

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

TABLE 3 - RECOMMENDATIONS

Topic	NCA / Recommendation	Follow up
Organisational Set-up (Supervisory Expectation 1)	<b>HU</b> - to consider proper Chinese Walls as currently the same director who is responsible for the supervision of the CCP also manages ownership rights in the CCP. For instance, separate reporting lines up to Board level would reduce conflicts of interest.	For consideration

Timely receipt of proposed changes (Supervisory Expectation 2)	<b>SE and AT</b> - to enhance their review procedures by specifying deadlines for the NCA to receive the Clearing Rules <i>ex-ante</i> to ensure them sufficient time to provide feedback/non-objection.	For consideration
Assessment of Due Diligence of Clearing Members (Supervisory Expectation 4)	<b>HU</b> - To follow-up with the relevant Ministry to remediate the implications posed by the Hungarian Gas Act on the CCP's participation requirements.	Open
Review of Membership Criteria & Due Diligence Policies (Supervisory Expectation 5)	<b>EL, PL</b> - To follow up with their CCP on whether the latter should develop an internal credit rating system for the clearing members' financial soundness.	For consideration

### 5.5.2 Convergence Matter

162. NCAs should carry out checks to ensure that their CCPs are properly defining all the relevant factors for the operational capacity that they expect from their clearing members as part of onboarding and also that the same factors are assessed by the CCPs on an ongoing basis, in line with Article 37(2) of EMIR. As current practices diverge among NCAs and CCPs, this is an area where further supervisory convergence work would be beneficial.

## Annex 1 – Mandate



ESMA91-372-2185  
2022 CCP Peer Review

## Annex 2 – Questionnaire



ESMA91-372-2212  
2022 Peer Review Qu