

## ESMA PEER REVIEW METHODOLOGY

### Introduction

1. According to Article 30 of the ESMA Regulation, ESMA periodically organises and conducts peer reviews of some or all of the activities of competent authorities, to further strengthen consistency in supervisory outcomes. In addition, ESMA follows up on its peer reviews two years after the publication of the peer review report. To that end, ESMA develops methods to allow for objective assessment and comparison between the authorities reviewed and for assessing the adequacy and effectiveness of NCAs' actions in response to the peer review findings.
2. This Methodology<sup>1</sup>, which has to be read together with the ESMA Regulation ("the Regulation"), sets out the methods and tools to conduct peer reviews of National Competent Authorities ("NCAs"). The Methodology is divided in 5 titles. The first title provides an overview of the peer review framework and process. The second title relates to the determination of topics for peer reviews. The third describes the peer review process. The fourth title relates to the framework for the follow-up to peer reviews. Finally, the fifth title describes the fast track peer reviews.
3. The Principles for Stakeholder Engagement in peer reviews [ESMA/2016/632] and the Confidentiality Undertaking and Declaration of Conflicts of Interest are integrated into this Methodology (see Annexes IV and V).

### Title I - Overview of the peer review framework and process

#### Section 1. The types of peer reviews

4. ESMA performs two types of peer reviews: discretionary peer reviews and mandatory peer reviews. Discretionary peer reviews are exercises performed on topics approved by the Board of Supervisors ("BoS") upon proposal by the Management Board ("MB") whereas mandatory peer reviews are exercises required by sectoral EU legislation covered in Art. 1(2) and 1(3) of the Regulation. Unless otherwise agreed by the BoS, this Methodology applies to both discretionary and mandatory peer reviews. Given the specific governance structure provided for in EMIR, a dedicated annex applies for CCP peer reviews (see Annexe VI).

---

<sup>1</sup> The ESMA Peer Review Methodology was revised following the adoption of the ESA review (Regulation (EU) 2019/2175) and the 2020-2022 Strategic Orientation.

5. ESMA performs two categories of discretionary peer reviews: peer reviews on topics determined for a two year period and integrated in the peer review work plan<sup>2</sup> (PRWP), and peer reviews on additional topics that are not in the PRWP and can be decided by the BoS in case of urgency or unforeseen events, i.e. “fast-track peer reviews”. The characteristics of the fast track peer reviews are described under Title V.

## **Section 2. The role of the Peer Review Committee, the relevant Standing Committee(s), the Management Board and the BoS in the individual peer review process**

6. This section gives an overview of the role of the main bodies in the peer review process.
7. An ad hoc peer review committee chaired by ESMA staff (PRC) is set up for each peer review. The PRC:
  - proposes a mandate defining the scope of the peer review and supervisory expectations,
  - proposes NCAs to be on-site visited in the mandate and/or following NCAs’ responses to the questionnaire,
  - prepares the questionnaire to NCAs,
  - conducts on-site visits,
  - performs the assessment of supervisory practices of NCAs based on supervisory expectations and decides on benchmarks,
  - elaborates the peer review report and the follow-up report.
8. The relevant Standing Committee(s) is the committee having expertise on the topic under review. It is:
  - consulted for the preparation of the PRWP,
  - informed of the call for participation in the PRC,
  - consulted on the mandate prepared by the PRC,
  - consulted on NCAs to be on-site visited,
  - consulted on the peer review report and the follow-up report,
  - invited to discuss good practices identified by the PRC.
9. The MB:
  - proposes peer review topics for the PRWP and in case of urgency or unforeseen events,
  - is consulted on the composition of the PRC,
  - is consulted on the mandate prepared by the PRC,
  - is consulted on the peer review report and the follow-up report to maintain consistency with, respectively, other peer review reports and follow-up reports, and assess, in particular, whether the Methodology has been applied in the same manner.

---

<sup>2</sup> The PRWP is part of the ESMA annual and multi annual work programme

#### 10. The BoS:

- approves the PRWP proposed by the MB,
- approves the peer reviews proposed by the MB in case of urgency or unforeseen events,
- approves the composition of the PRC proposed by ESMA Chair following consultation of the MB,
- approves the mandate of the PRC following consultation of the MB,
- approves NCAs to be on-site visited,
- approves the peer review report and the follow-up report in written process further to a BoS discussion.

11. The flowcharts of relevant processes for peer reviews, follow-ups and fast track peer reviews can be found respectively in annex I, II and III.

### **Title II – The topics for peer reviews**

#### **Section 3. Preparation of the PRWP**

12. The MB proposes the strategy for determining in which areas NCAs are to be analysed and their activities subjected to a peer review. Peer reviews are conducted in order to foster regulatory and supervisory convergence and a common supervisory culture, through consistent, efficient and effective application of sectoral legislation. The aim is to prevent regulatory arbitrage and achieve a uniformly high level of supervisory outcomes and investor protection. For this purpose, the MB proposes a PRWP for the coming two years for the approval of the BoS.

13. In order to prepare for the PRWP, ESMA staff consults the relevant Standing Committee(s) including the Supervisory Convergence Standing Committee (SCSC) and the Securities and Markets Stakeholder Group (“SMSG”). Based on input received, ESMA staff prepares a draft PRWP for the MB, specifying the proposed topics and timeframe for peer review. The PRWP specifies the planned discretionary peer reviews, mandatory peer reviews and follow-ups to earlier peer reviews.

14. The draft proposal for the PRWP is submitted for consultation to the SCSC for a cross-cutting view, before being submitted to the MB.

15. In proposing the PRWP as well as the scope of each peer review, the MB shall take due account of the availability of resources, both human and financial, required for its implementation. Therefore, the subject matter of a chosen topic for a peer review has to concentrate on the aspects most relevant for supervisory convergence.

#### **Section 4. Criteria to define the peer review topics**

16. When defining the topics for peer reviews, the MB shall consider the following, non-exhaustive, list of criteria:

- Relevance of the topic as regards ESMA's mission of investor protection, orderly markets and financial stability;
- Scale of the potential issue and expected impact of the peer review in terms of supervisory convergence at the EU level, e.g. relevance from a cross-border perspective, areas with potential differences in practices/understanding of the EU regulatory framework;
- Adequacy of the peer review as a supervisory convergence tool to address the issue;
- Existence of relevant guidance on which to conduct a peer review (e.g. EU legislation, technical standards, ESMA guidance, agreed EEA level practice);
- Timeliness of the peer review, e.g. previous and on-going ESMA work in the area, entry into application of relevant EU legislation.

### **Section 5. The fast-track peer reviews**

17. Beyond the topics listed in the PRWP and in case of urgency or unforeseen events, when a peer review is considered the appropriate tool, a topic for a fast track peer review is proposed by the MB for BoS approval. The proposal may originate from the MB's own initiative or following suggestions received from sources such as the relevant Standing Committee(s), ESMA staff, ESMA Chair or the SMSG.

### **Title III – The peer review process**

18. The timeline and sequencing of the peer review process is presented in Annex I.

### **Section 6. Setting up an ad-hoc Peer Review Committee**

19. Each peer review is performed by a PRC chaired by a member of ESMA staff, composed of experts from ESMA and NCAs' staff and a Rapporteur from ESMA staff.
20. To allow for early planning, the calls for participation in the PRC are launched following the approval of the PRWP for peer reviews to be initiated within the year. The ESMA Chair reaches out to BoS members with the list of peer reviews and their expected timeframe to allow NCAs to organise themselves for responding to the call for participation.
21. NCAs are requested to propose candidates who demonstrate deep supervisory expertise on the specific topic and/or expertise in the assessment methodology/on-site missions, are available and can dedicate the time necessary to provide high quality contributions. NCAs are requested to indicate the relevant professional experience of the candidates to ESMA. The call for candidates is circulated for information to the relevant Standing Committee(s).
22. ESMA staff assesses applications from NCAs to ensure candidates meet the criteria set in paragraph 21.
23. ESMA Chair prepares a proposal for the PRC Chair, members and a reserve list with preferably at least two members. The size of the PRC is proportionate to the objectives

and scope of the peer review. PRC members are subject to strict confidentiality and conflict of interest rules.

24. Following consultation of the MB, ESMA Chair proposes to the BoS the composition of the PRC with a reserve list for each peer review. When circulated in written format, the ESMA Chair proposal is deemed approved by the BoS unless the BoS rejects it within 10 working days.
25. Should a member not be available or leave the PRC, depending on the stage of the work and the remaining number of members in the PRC, the chair of the PRC, in consultation with the Rapporteur, decides whether there is a need for replacement. If so, the chair of the PRC can draw an expert from the reserve list. Alternatively, the chair of the PRC can request that an open call for candidates be launched via the BoS. In this case, the process as described in this section applies *mutatis mutandis*.
26. The PRC may decide to consult external experts. Such experts shall be bound by a suitable confidentiality agreement.

### **Section 7. The mandate**

27. Once the peer review is launched, the first task of the PRC is to draft the mandate. The mandate is focused and indicates the scope, the assessment period, the proposed stages and timeline for the work to be undertaken.
28. The focus of each peer review, while respecting the need for both objectivity and proportionality, can be differentiated on two aspects:
  - if the focus is mainly on the actual supervision, on achieving an equally high level of supervisory outcomes and on promoting investor protection, orderly markets or financial stability through convergence rather than full harmonisation of supervisory practices, this requires the PRC to take into account the differences between jurisdictions and markets and may therefore justify the BoS in restricting a peer review of supervisory activities to a limited number of NCAs or in targeting a limited scope of activities of certain NCAs;
  - if the focus is mainly on the legal framework, the application of the single rulebook requires the PRC to ascertain that throughout the EEA, Union law - including regulatory and implementing technical standards - is uniformly implemented and enforceable, and that the implementation of guidelines and recommendations (under article 16 of ESMAR) fully respects the “comply or explain” mechanism.
29. According to its focus, the peer review targets all jurisdictions, or a defined set of jurisdictions chosen on the basis of objective criteria, and on-site visits are conducted to the NCAs of some or all of those jurisdictions.
30. Within that framework and as appropriate, the mandate covers the assessment of the following areas as foreseen by the Regulation:

- the degree of independence of NCAs and their capacity to achieve high quality supervisory outcomes, including the adequacy of their resources and governance arrangements, in particular regarding the effective application of the legal texts falling within the remit of ESMA, and the capacity of NCAs to respond to market developments;
- the effectiveness and the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory and implementing technical standards, guidelines and recommendations, and the extent to which the supervisory practice achieves the objectives set out in Union law;
- the application of best practices developed by NCAs which might be of benefit for other NCAs to adopt;
- the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative sanctions and other administrative measures imposed against persons responsible where those provisions have not been complied with.

31. For the peer review assessment to be made in an objective, transparent and comparable manner, the mandate specifies the supervisory expectations set towards NCAs. They will be used in the framework of the assessment leading to the application of the benchmarks defined in paragraph 55. The definition of the supervisory expectations takes into account, as appropriate, the objectives of the topic under review, the need to strengthen the consistency of supervisory outcomes through a uniformly high level of supervisory practices and the promotion of investor protection, orderly functioning of markets or financial stability. In order to get a good understanding of practices at NCAs ahead of defining the supervisory expectations, the PRC will usually reach out to the NCAs' relevant supervisors through a workshop or a call. The PRC may also reach out to stakeholders relevant at the European level.
32. The mandate sets out the minimum criteria for the selection of NCAs for on-site visits in line with paragraph 44. In addition, and when possible, it will also specify, for the NCAs already identified for on-site visits, the engagement with stakeholders and any other information relevant for performing the peer review. The PRC can adjust the selection of NCAs for on-site visits based on criteria set in the mandate in view of the answers provided by NCAs through their self-assessment.
33. The PRC consults the relevant Standing Committee(s) and thereafter the MB before the mandate is submitted to the approval of the BoS.

## Section 8. The questionnaire

34. In order to achieve the assessment required by its mandate, the PRC drafts a concise<sup>3</sup> questionnaire to be filled in by each participating NCA.
35. The questionnaire gives guidance to both the NCAs and the PRC in order to allow the assessments required by the mandate to be made in an objective, transparent and comparable manner. It therefore respects the supervisory expectations specified in the mandate.
36. Responses to the questionnaire provides the PRC with a full description by each NCA of its regulations, supervisory activities and practices regarding the topic under review, in a format that allows an objective comparison of all the national submissions. The description is factual and gives a frank self-assessment by the NCA of its perceived weak or strong points. Narrative text is used as appropriate.
37. The assessment of each area of the mandate takes into account not only the situation of each NCA on a stand-alone basis, but also of the NCAs in comparison to each other and taken as a whole.
38. It is useful to make reference to or quote the provisions of the relevant EU legislation or ESMA measures in the questionnaire. Where statistics are required, the parameters for the statistics need to be consistent, transparent and clear.
39. The answers to the questionnaire are underpinned by acceptable evidence, as defined by the PRC for each questionnaire. The evidence is provided in English if available. When an English version of the evidence is not available, the answer – to the extent practicable – describes the relevant evidence in English.
40. NCAs are committed to participate by providing timely and high-quality responses to the questionnaire and during the on-site visit. Only if all NCAs provide complete, coherent and high-quality responses, can the PRC's work result in a meaningful outcome, which appropriately describes supervisory powers, activities and practices as well as enforcement provisions or actions, and allow the PRC to draw the appropriate conclusions from its findings.
41. If an NCA does not provide its full contribution within the deadline and if a coordinated intervention by the Rapporteur and the Chair of the PRC does not produce the required contribution, the situation is reported to the ESMA Chair for follow-up with that NCA. The lack of contributions by one or more NCAs must not however delay the PRC's work.

---

<sup>3</sup> The questionnaire should be limited to no more than 30 questions

42. Once it has received the responses by NCAs to the questionnaire, the PRC shall start to analyse them with a view to drafting its report. The assessment is not a box-ticking exercise. It requires in-depth understanding of the national submissions and individual as well as collective analysis. This can only be achieved through an ongoing dialogue between the PRC and the NCAs, during which the PRC may ask for clarifications or for additional evidence. As foreseen by Article 30 of the Regulation, existing information and evaluations already made with regard to an NCA under review are taken into account.
43. All participating jurisdictions are assessed jointly and simultaneously according to the same criteria, in order to minimise the risk of uneven or biased results. The transparency, objectivity, accuracy and analytic quality of the work are essential to its effectiveness and credibility. The assessment is based on the supervisory expectations defined in the mandate. To undertake the assessment work, the Chair of the PRC organises the work taking into account existing and potential conflicts of interests. No member of the PRC is permitted to assess his/her own jurisdiction.

### **Section 9. On-site visits**

44. Peer reviews include on-site visits and engagement with stakeholders. Although for practical and resource reasons, the number of on-site visits needs to be restricted to a limited number of jurisdictions for a given peer review, the BoS endeavours to ensure that over several peer reviews all NCAs are subject to on-site visits. The choice of NCAs to be visited during a given peer review is made on the basis of objective criteria. With this in mind, ESMA staff maintains an overview of all on-site visits that have taken place including the number and timing of on-site visits to each NCA.
45. On-site visits enhance the quality of peer reviews. In the selection of NCAs for on-site visits, the following objective criteria shall be considered at a minimum, taking into account available data and information:
- NCAs' relative significance as regards the topic under review (assessed through e.g. relative market size and level of activity);
  - Relevance of the topic under review at national level and from a cross border perspective;
  - Report or indication of insufficient implementation, insufficient level of supervision by NCAs, or
  - Lack of clarity of the answers provided by NCAs through their self-assessment or failure to submit a self-assessment.
46. The frequency and number of on-site visits is taken into consideration if the objective criteria do not lead to a conclusive selection of NCAs and in order to provide a balance of on-site visits between NCAs.
47. The BoS, upon a proposal by the PRC and following consultation of the relevant Standing Committee(s) and thereafter the MB, designates the NCAs to be visited. This normally occurs through the approval of the mandate but can also be considered at a later stage of



the peer review, especially based on the NCAs' responses to the self-assessment. Once NCAs to be visited are selected, the chair of the PRC, with the help of the Rapporteur, specifies the areas or issues to be reviewed, the stakeholders with whom to engage, determines the dates and timelines as well as the size and composition of the visiting team, taking care to avoid conflicts of interest.

48. The leader of the visiting team is the Chair of the PRC. A visiting team comprises a subset of the PRC members. PRC members cannot be part of the visiting team of their NCA. If needed, because of conflict of interest, the Chair of the PRC may call upon experts on the reserve list or alternatively call on BoS members to designate additional persons from non-conflicted NCAs for the composition of the visiting teams. In this case, the process as described in paragraph 24 applies mutatis mutandis. Those persons then also join the PRC and contribute to the report.
49. Visits are announced sufficiently in advance and prepared, involving the NCAs, on the basis of an agenda, list of topics for discussion, request for supporting evidence and documentation to be answered in advance of the visit. Visits are expected to last from one to a maximum of three days. The NCAs provide assistance to the visiting team to identify the relevant stakeholders and set the bilateral interview/meetings for engagement.
50. Some of the tools that can be used in on-site visits include, but are not limited to, interviews with NCAs' staff, the demonstration of work carried out, and access to supervisory files. If the NCA so requires, such supervisory files are anonymised.

## **Section 10. The content of the peer review report**

51. The PRC produces a peer review report (report), based on the analysis of responses to the questionnaires and the findings from the on-site visits and engagement with stakeholders. The drafting of the report is subject to a process of interaction with the NCAs concerned and the PRC allows sufficient time for factual accuracy checks with NCAs.
52. Country reports following on-site visits are expected to be short (about 10 pages) and the peer review report is expected to be concise (normally maximum of about 50 pages). The report includes an executive summary and clearly sets out conclusions. Findings and recommendations (under article 16 of ESMAR or not) subject to a follow-up are clearly identified in the report.
53. The report clearly states the assessment period and the date of the information gathering. It must be as accurate and up-to-date as materially possible, taking into account all known relevant developments up to its submission to the MB for consultation.
54. The report covers all the issues to be addressed under the mandate and, at least, the elements detailed in Article 30 (3) of the Regulation, as referred to in paragraph 29 above. Moreover, it responds to all the following points:

- a. signal the extent to which NCAs achieve convergence in supervisory practices and apply specific regulatory provisions;
- b. include an assessment of the global level of convergence achieved and an indication for each NCA of the level to which it meets expectations within the framework set by EU legislation and level 3 measures, on a topic by topic basis<sup>4</sup>;
- c. express views on specific problems encountered by individual NCAs, signal inconsistencies, differences in interpretation, or general problems in the implementation or potential breaches of Union law, technical standards, guidelines or recommendations and identify the reasons;
- d. explain and indicate the measures that are deemed appropriate, proportionate and necessary including recommendations (under article 16 of ESMAR or not) (where applicable) that work should be undertaken to amend a specific provision or practice that raises significant problems in relation to the operation of the Single Market or to clarify provisions which are interpreted differently. Measures may be adopted in the form of guidelines and recommendations pursuant to article 16 and opinions pursuant to article 29(1)(a) for serious issues;
- e. clearly identify the findings and recommendations (under article 16 of ESMAR or not) that will be submitted to the follow-up as provided for in Title IV;
- f. describe possible good practices developed by some competent authorities, which might be of benefit for other competent authorities to adopt.

55. The report includes the result of the assessment of the supervisory expectations. For this purpose, the PRC applies the following benchmarks to NCAs:

- Fully meeting expectations: An NCA is considered fully meeting expectations when all supervisory expectations are met without any significant deficiencies. There may be instances where an NCA can demonstrate that the supervisory expectations have been fulfilled by other means.
- Largely meeting expectations: An NCA is considered largely meeting expectations whenever only minor deficiencies are observed which do not raise any concerns about the overall effectiveness of the NCA. The assessment “largely meeting expectations” can be used when the NCA does not meet all supervisory expectations, but the overall effectiveness is sufficiently good, and no material risks are left unaddressed.
- Partially meeting expectations: An NCA is considered partially meeting expectations whenever there are severe deficiencies affecting the effectiveness of the NCA, and some material risks are left unaddressed.
- Not meeting expectations: An NCA will be considered not meeting expectations whenever supervisory expectation are not met at all or to an important degree, resulting in a significant deficiency in the overall effectiveness of the NCA, and material risks are left unaddressed.

The role of the benchmarks is to ensure consistency among the assessments.

---

<sup>4</sup> The peer review report indicates how each NCA meets expectations on a topic-by-topic or area-by-area basis.

56. The PRC consults the relevant Standing Committee(s) and thereafter the MB on the report. The consultation of the MB aims at maintaining consistency with other peer review reports and ensuring a level playing field, assessing in particular whether the methodology has been applied in the same manner.

## **Section 11. Decisions by the Board of Supervisors and publication**

57. Following BoS discussion of the draft peer review report in order to foster supervisory convergence, the BoS approves the report in written procedure. The report is considered approved unless a simple majority of voting members objects within eight working days. However, three voting members can object to the written procedure in which case the report is approved in a BoS meeting.
58. The BoS decides on the publication of the peer review report, including the reasoned main findings identified by the PRC. The peer review report is, as a rule, published on ESMA's website in full on a named basis, subject to the agreement of the NCA concerned. An NCA that does not give its agreement to publication is expected to state the reasons for this to ESMA. If the BoS agrees, such publication may exclude certain main findings that would pose a risk to the stability of the financial system. The BoS may also exclude from the publication the names of NCAs in cases when the supervised entity<sup>5</sup> can be clearly identified on that basis. On-site visit reports are summarised in the peer review report and are not published on their own. An on-site visited NCA may submit a written statement to be annexed to the peer review report before its publication, subject to review by the ESMA Chair following a bilateral dialogue with the NCA. This review aims at ensuring factual correctness and consistency of the statement with the peer review report as well as preserving the objectivity of the assessment while maintaining the intention of the statement of the NCA.
59. The PRC usually organises a workshop or a call to present the peer review results to relevant NCA supervisors. The main findings and recommendations of the peer review are presented to the SMSG and findings, issues, recommendations and good practices identified by the PRC are discussed with the relevant Standing committee(s).
60. Good practices are made publicly available through the peer review report. In this context, they describe regulatory or supervisory practices that have been elaborated by one or more NCAs and which are considered to be particularly effective, well targeted, or broadly applied. In no way are good practices intended to disqualify other practices, or forms of implementation, that may be more suitable for a specific jurisdiction. Good practices do not have any normative or binding character and, the "comply or explain" procedure does not apply to them. Nor are they ESMA guidelines or recommendations, although they may

---

<sup>5</sup> This may apply for instance to CCPs and CSDs where there may be only one entity in a jurisdiction.

serve as the basis for developing such guidelines or recommendations under article 16 of ESMA Regulation.

61. The individual responses to the assessment questionnaire and the on-site visit reports are not published. However, on-site reports are made available on ESMA's extranet.

## **Section 12. Information to the European Parliament, the Council and the European Commission**

62. When the reasoned main findings approved by the BoS differ from those identified by the PRC, the ESMA Chair transmits the PRC findings to the European Parliament, to the Council and to the Commission, on a confidential basis.

## **Title IV – Framework for the follow-up to peer reviews**

### **Section 13. Timeframe of the follow-up**

63. After two years from the publication of the peer review report, ESMA undertakes a follow-up of the peer review. The follow-up covers findings and recommendations (under article 16 of ESMAR or not) clearly identified in the report.

64. ESMA and its Groups stand ready, if requested and as appropriate, to assist NCAs in correcting deficiencies and in achieving better convergence.

### **Section 14. The follow-up process**

65. The PRC undertakes the follow-up to the peer review and the preparation of the follow-up report. The PRC sends to the relevant member of the BoS or the Head of the NCA an individual letter pointing out the findings and recommendations (under article 16 of ESMAR or not) of the peer review report subject to the follow-up. The NCA is requested to provide a status update on the work performed to address the findings and recommendations (under article 16 of ESMAR or not) providing supporting evidence. The letter indicates the deadline for the NCA's response.

66. A focused on-site visit may be performed to those NCAs with serious findings subject to the follow-up. Engagement with stakeholders takes place during the on-site visit in line with the Principles defined in Annex IV.

67. Following analysis of responses and/or on-site visits when performed, the follow-up report is prepared by the PRC. NCAs concerned have sufficient time to perform a factual accuracy check. The report includes an assessment of the adequacy and effectiveness of the actions undertaken by the NCAs in response to the findings and recommendations (under article 16 of ESMAR or not) of the peer review report and suggests suitable responses in case of possible delays in implementation.

## **Section 15. The approval of the follow-up report**

68. Following consultation of the relevant Standing Committee(s), the report is submitted to the MB for consultation. The consultation of the MB aims at maintaining consistency with other follow-up reports.
69. Following BoS discussion of the draft follow-up report in order to foster supervisory convergence, the follow-up report is submitted to the BoS in written procedure. It is considered adopted unless a simple majority of BoS voting members objects within eight working days. However, three BoS voting members may object to the written procedure, in which case the follow-up report is approved by the BoS in a meeting. The follow-up report adopted by the BoS is published.

## **Title V - Fast track peer review**

### **Section 16. Definition and applicable framework**

70. In case of urgency or unforeseen events, on its own initiative or following suggestions including from the relevant Standing committee(s), ESMA staff, ESMA Chair, or the SMSG, the MB may propose to the BoS to carry out additional peer reviews not included in the PRWP (fast-track peer review), when it is considered the appropriate tool. The provisions set in Titles II, III and IV apply to the fast-track peer review, except as provided in section 17 below.

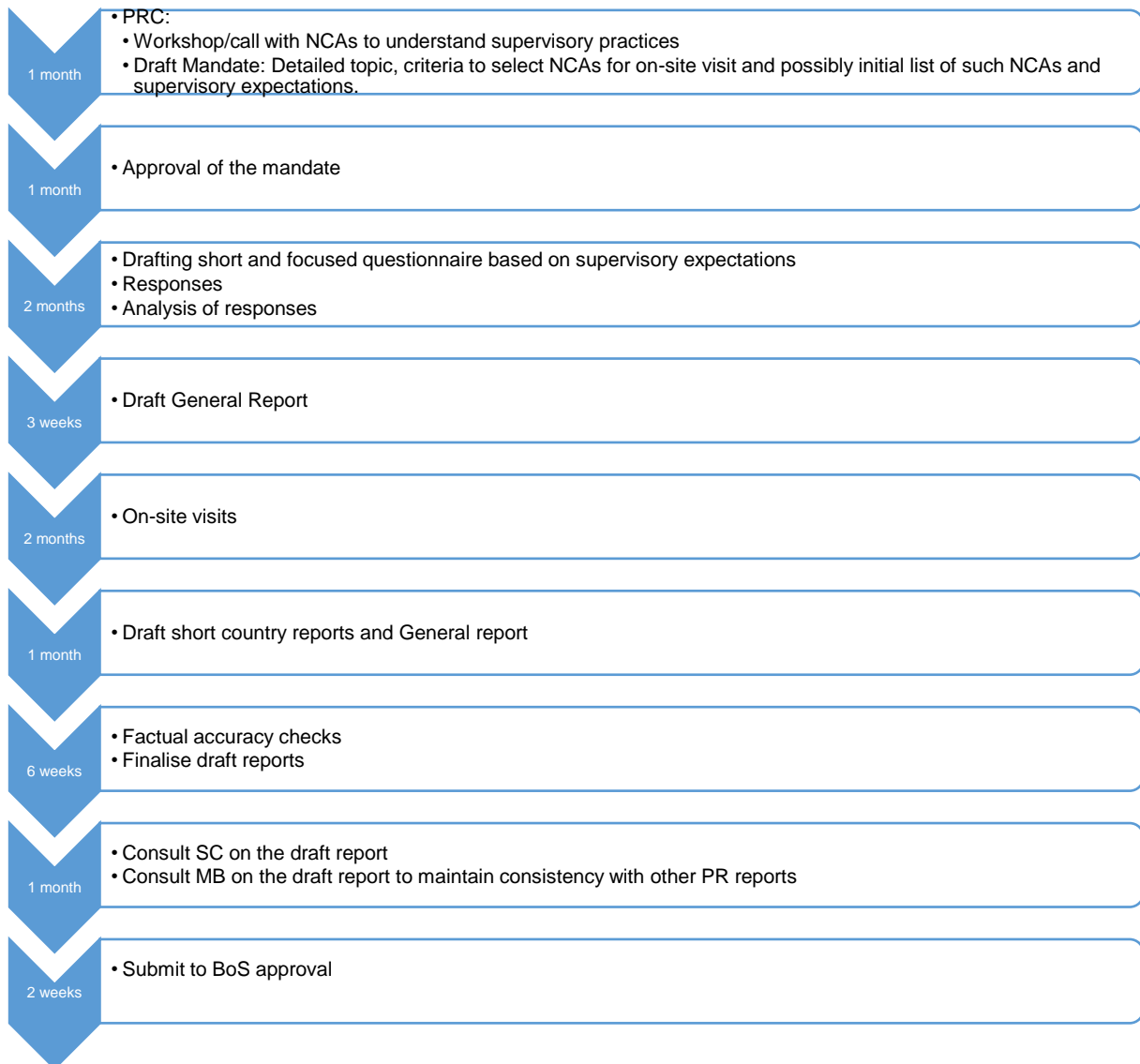
### **Section 17. Specific process of the fast-track peer review**

71. In order to set up the PRC, the call for participation is launched when the BoS approves the topic for the peer review. NCAs send the application and the CV of their candidate to ESMA within 5 working days of the launch of the call for participation.
72. Following the process set in paragraphs 20 to 22, the ESMA Chair proposes the PRC composition to the BoS within 10 working days of the approval of the peer review topic by the BoS. Following BoS approval, the PRC is set up as provided in paragraphs 23 to 25.
73. When preparing the mandate, the PRC considers that the scope of the fast-track peer review is limited to issues and areas strictly relevant for the urgent/unforeseen events and to some relevant NCAs, for instance NCAs in which jurisdiction the issue arises.
74. The PRC focuses on-site visits and engagement with stakeholders as provided in section 7 related to the mandate. The on-site visits and engagement with stakeholders take place as soon as possible and in principle within the month of the BoS approval of the mandate. Although the PRC does not use the questionnaire as provided in section 8, the PRC may send some questions to the NCAs in order to prepare the on-site visit.

75. The PRC drafts a concise peer review report and no on-site visit reports, in order to concentrate the efforts and deliver its assessment in a reasonable timeframe.

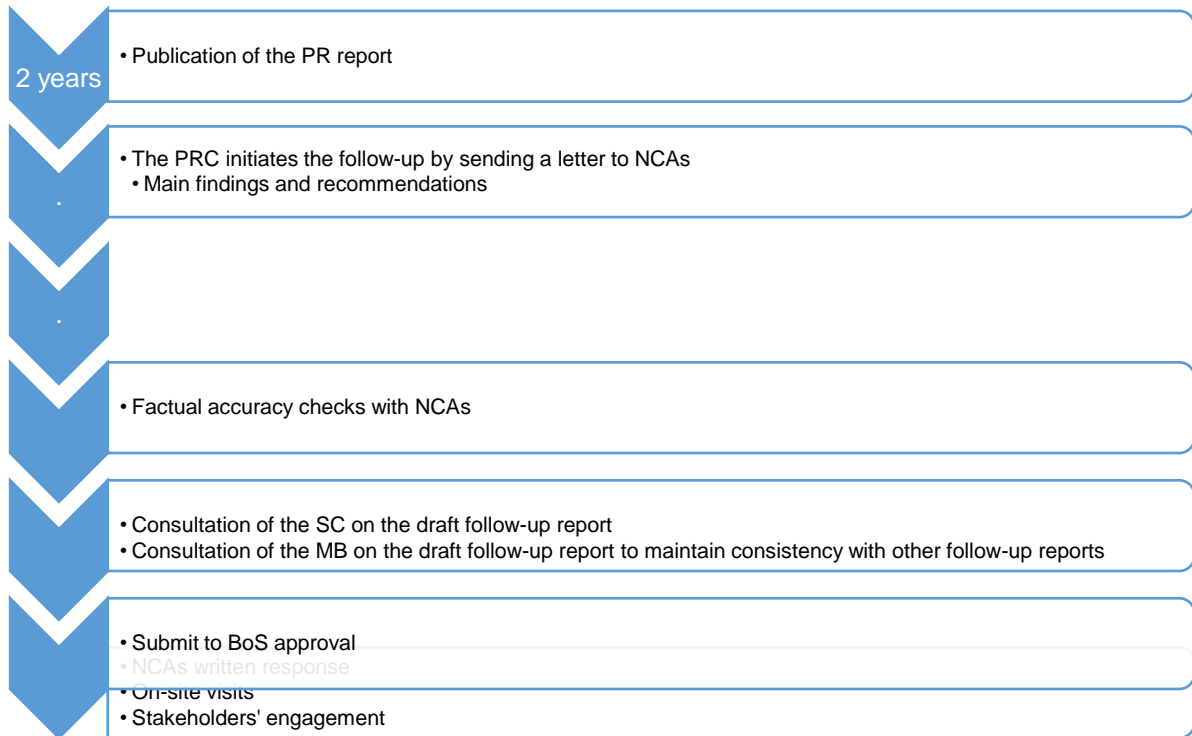
## ANNEX I

### Peer review process



## ANNEX II

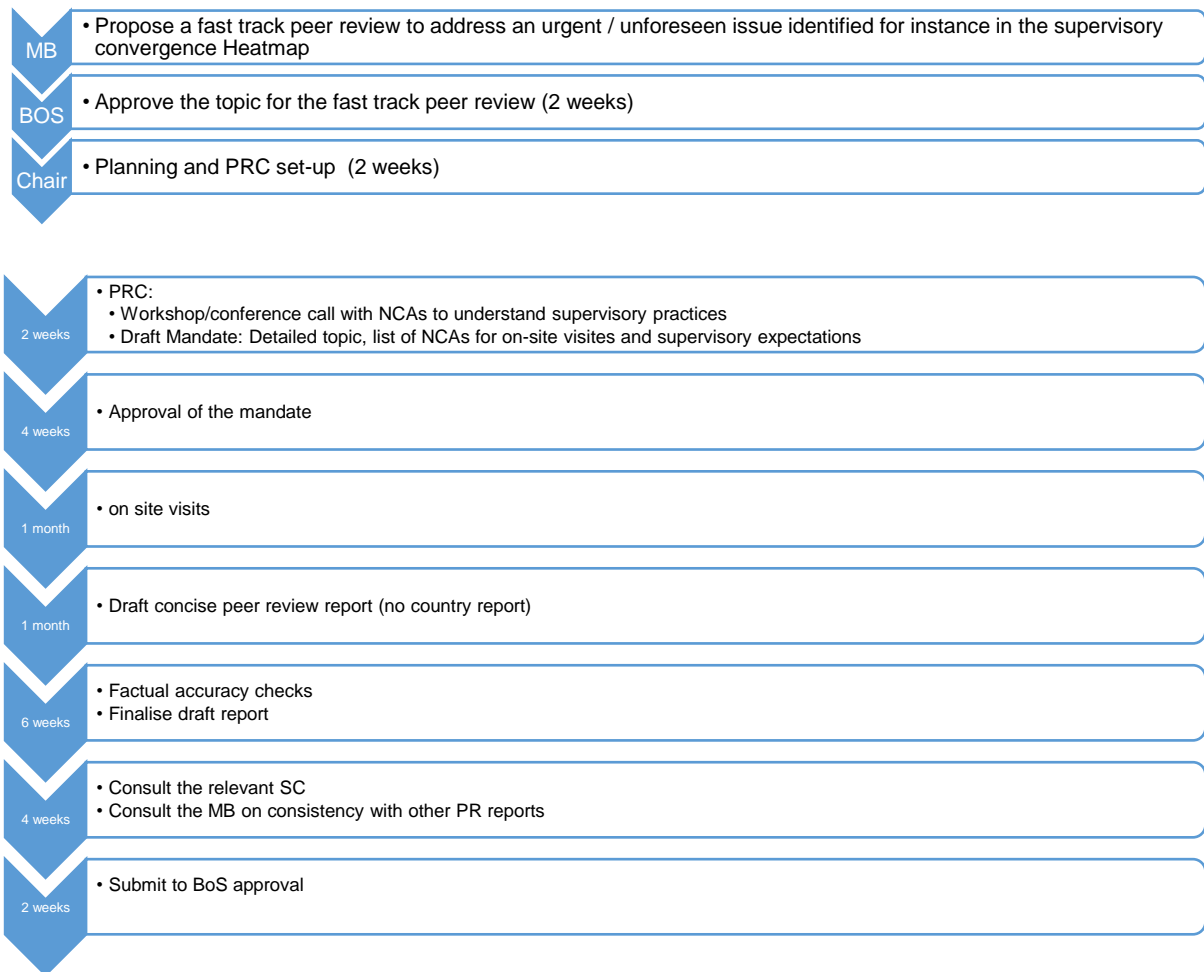
### Process for the follow-up to peer review





## ANNEX III

### Fast track peer review process



## ANNEX IV

### Principles for Stakeholder Engagement in peer reviews

#### **Principle 1 – Interaction can only be considered with stakeholders having an interest – direct or indirect – in the topic under review**

1. Stakeholders, for the purposes of this note, have been defined as third parties affected or having any type of interest/responsibility in the subject being examined in the context of a peer review but not subject to the peer review. This means that competent authorities cannot be regarded as stakeholders.

2. Stakeholders can be split in two categories:

Category A – Entities which although not established as competent authorities under national law have been entrusted with some supervisory/oversight functions, either directly or by delegation, e.g. trading venues or post-trading infrastructures, as well as authorities in charge of customer protection, accounting standard setters and/or supervisors, anti-trust authorities, the national ombudsman, etc., when they have a direct or indirect interest /responsibility in the topic under review;

or

Category B – Other stakeholders (regulated or non-regulated) , comprising a wide variety of entities, including – but not limited to- market participants (such as intermediaries, listed firms, fund managers, trading venues, post trading infrastructures (as supervised entities)), law firms, investors' associations, academics, etc.

3. ESMA already has dedicated groups for institutional interaction with stakeholders. The SMSG is typically involved in supervisory convergence work: it provides topics for possible peer reviews and is informed of the outcome of these reviews. Similarly, a number of standing committees have established Consultative Working Groups (CWGs), which provide technical input on specific matters. Interaction with the existing stakeholder groups should therefore be considered in light of the objective and desired outcome of stakeholder involvement in a peer review, although it cannot be seen as a prerequisite to interaction with other stakeholders.

## **Principle 2 – Stakeholder interaction needs to be reasoned and its usefulness in a given peer review is a matter for the Board of Supervisors to decide upon**

4. The usefulness of engaging with stakeholders will be considered when preparing the mandate for a peer review, and if such interaction is deemed desirable, it will be included in the mandate, highlighting the line of reasoning, the expected benefits and the type of stakeholders targeted. As the mandates of peer reviews are to be adopted by the BoS, so will any stakeholder interaction.
5. If the need to engage with stakeholders emerges at a later stage of a peer review specific approval of the BoS needs to be granted before any interaction with stakeholders can be organised.
6. Depending on the subject-matter under review the purpose of stakeholder visits could be:
  - to make sure that all relevant parties having some supervisory function on the topic under review are engaged with;
  - to obtain information as regards a specific peer review topic under way, (beyond what is provided by the NCAs to ESMA/the PRC under Article 35 of the Regulation), for the purposes of better understanding the supervisory practices adopted by the relevant NCA in relation to the matter under review;
  - to make use of the practical experience of stakeholders, gathering information about the market or the subject under scrutiny, especially as regards cross-border activities;
  - to complement the views provided by NCAs in the self-assessment process; and
  - to identify good practices or points of attention as perceived by the market.

## **Principle 3 – NCAs must permit engagement with category A stakeholders, but a discretion remains as regards engagement with category B stakeholders**

7. If stakeholder engagement in the context of a specific peer review is approved in principle by the BoS, NCAs would not be permitted to veto engagement with *category A* stakeholders, whose tasks are closer to NCAs. NCAs would, however, retain discretion to refuse to permit engagement with *category B* stakeholders, such as financial market participants.
8. As regards the second category of stakeholders, such a refusal should be explained in broad terms (e.g. enforcement case underway at some firms, lack of representativeness of proposed stakeholders), and conveyed for information to the BoS.

#### **Principle 4 – Stakeholder meetings are organised in liaison with NCAs**

9. Selecting stakeholders is a joint effort of the PRC and NCAs concerned. While the PRC establishes criteria for selecting stakeholders that will be applied consistently throughout the review, the NCAs are best placed to set up a list of stakeholders meeting those criteria. Based on this list, and on the availability of stakeholders, the PRC finalises the shortlist of stakeholders with whom to interact.
10. NCAs will arrange the meetings with stakeholders and can, but do not have to be present at the meetings with the AG. The meeting can be arranged either at the NCAs' premises or, if deemed easier for the NCA and suitable for the stakeholder, at the premises of the stakeholders. The NCA can also, but does not have to be present whenever there are contacts with the stakeholders via conference calls, video conferences and comparable means.
11. Last, the nature of the visit and interaction needs to be clarified at the outset. The information to be sought should be related to market intelligence and general information, and should not cover specific client files nor disputes/(pre)litigation between firms and NCAs, nor files/data related to the NCAs' exercise of their supervisory tasks towards visited supervised stakeholders.

#### **Principle 5 – Confidentiality**

12. The content and type of information exchanged with stakeholders will vary from one peer review to another.
13. Any communication and interaction with the PRC must be considered confidential and must not violate the rules on professional secrecy in national legislation.

#### **Principle 6 – Published peer review reports do not contain stakeholders' names**

14. The outcome of stakeholder engagement will be reflected in the peer review report, without necessarily requiring a specific section. Whenever reference is made to stakeholders' views, this should be made clear.
15. However, as the information that stakeholders may provide is relevant as one among many contributions to the peer review reports, stakeholders' names will be redacted before the report is published.

## ANNEX V

# CONFIDENTIALITY UNDERTAKING AND DECLARATION OF CONFLICTS OF INTEREST

to be signed by Members of the Peer Review Committee (PRC)

**In view of the following definitions:**

**“Peer Review Committee”** designates a group of representatives of ESMA staff and national competent authorities (NCA) tasked by the ESMA Board of Supervisors to undertake a peer review, as specified under the ESMA Peer Review Methodology (ESMA42/111/4966).

**“PRC Activities”** encompass (but are not restricted to) activities related to my role and responsibilities for the purpose of contributing to a peer review on behalf of the European Securities and Markets Authority (“ESMA”). This includes, for example, any meeting (including meeting preparation and follow-up as well as on-site visits), associated discussion or any other related activity.

**“confidential information”** means all information, facts, data and any other matters of which I acquire knowledge, either directly or indirectly, as a result of my PRC activities.

**“confidential documents”** mean all drafts, preparatory information, documents and any other material, together with any information contained therein, to which I have access, either directly or indirectly, as a result of my participation in PRC activities. Furthermore, any records or notes made by me relating to confidential information or confidential documents shall be treated as confidential documents.

**“conflict of interest”** means any situation or other current/potential/perceived circumstance that bears the potential to unduly influence my professional judgement in the course of my participation in PRC activities.

“**interest**” means the relation of being objectively concerned in something, e.g. by having a right or title thereto, a claim thereupon, or a share therein, falling within fields of competence of ESMA that creates or have the potential to create a conflict of interest.

“**third party**” means any legal or natural person other than ESMA and its staff, the members of the relevant Standing Committee(s) (SC), as well as the members of the Board of Supervisors or NCA staff.

I take note and acknowledge the ESMA Peer Review Methodology (ESMA42/111/4966) (Peer Review Methodology), the guidance note in relation to on-site visits in peer reviews (ESMA/2015/RP/011). Any guidance on confidentiality and conflicts of interest in these documents remain fully applicable. I will hold myself to the same high standards as established in the Decision of the Management Board “Adopting a Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff” (ESMA-22-328-402). In the course of a peer review that ESMA has asked me to carry out, I may directly or indirectly obtain information orally or in writing (whether or not in documented form/printed or computer-based information) relating to the NCA’s and its internal affairs, and information about third parties.

**In consideration of being engaged or permitted to carry out that work, I hereby agree and acknowledge as follows:**

1. to treat all confidential information and confidential documents under conditions of strict confidentiality.
2. not to disclose (or authorise any other person to disclose) in any way to any third party any confidential information or confidential document without ESMA’s and the NCA’s prior written consent.
3. not to use (or authorise any other person to use) any confidential information or confidential document other than for the purposes of my work in connection with PRC activities.
4. to dispose of confidential documents as confidential material as soon as I have no further use for them.
5. to return to ESMA all confidential information no later than the end of my engagement to carry out work for ESMA and sooner if I have no further use for them.
6. to agree that all rights in any writings or other work done by me in connection with my work at ESMA shall be the property of ESMA.
7. to continue to be bound by this undertaking after the end of my engagement to carry out work for ESMA, and without limit of time.
8. to disclose to the PRC chair and to the PRC Rapporteur all current circumstances that might result in a conflict of interest.
9. to inform the PRC chair and the PRC Rapporteur without undue delay of any conflict of interest that might arise during the course of the activities of the PRC.

I hereby take note that all individual, non-public, securities and market level quantitative and qualitative data made available to me in the context of the PRC exercise must be kept strictly confidential. Originals will be returned to the NCA in the Member State concerned. I also understand that with the approval of the NCA the ESMA may retain confidential documents or copies of confidential documents needed for the performance of the peer review. In such case, I declare that at the end of the peer review that ESMA has asked me to carry out I will hand over any confidential documents or copies of confidential documents needed for the performance of the peer review to the PRC Rapporteur. This includes electronic and print versions.

For the purposes of this undertaking I am subject to Professional Secrecy. In the case that I am not subject to the obligations on professional secrecy as stipulated by Article 70 of 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>6</sup>. I agree to be bound by Article 70 of the ESMA Regulation and subsequently by the ESMA Management Board Decision on Professional Secrecy and Confidentiality.<sup>7</sup>

This undertaking shall not be limited in time, but shall not apply to any document or information that I can reasonably prove was known to me before the date of this undertaking or which becomes public knowledge otherwise than as a result of a breach of any of the above undertakings.

I acknowledge that, where disclosure of the information I obtain is controlled by statutory provisions, I may be prosecuted for wrongful disclosure.

I acknowledge that any declaration of Interest (DoI) is to be made in writing using the declaration template (Annex 1).

I HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO ITS TERMS.

---

<sup>6</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, published in the Official Journal of the European Union, L 331, 15.12.2010, p. 84-119, accessible via internet: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R1095>.

<sup>7</sup> Decision ESMA40-1432018523-304 of 25 January 2017 and accordingly to relevant obligations applicable to the staff of ESMA in the Union's Staff Regulations, particularly concerning personal interests, integrity, and the unauthorised disclosure of information whether de jure as ESMA staff or as personal commitment as a member of a NCA participating to the Assessment Group.

Three copies of this agreement have been signed of which one is intended for the purposes of the NCA concerned, one for ESMA and the last for each member of the PRC.

I acknowledge having received a fully executed copy of this agreement.

Signed

.....

Date

.....

....

In witness of the PRC Rapporteur.....

***Annex - Declaration of Interests (DoI)***

<b>First Name</b>	
<b>Surname</b>	
<b>Authority / MS</b>	
<b>Role in the PRC</b>	



<b>Interest</b>	
-----------------	--

I declare that this declaration is truthful and complete.

Whenever I have a Conflict of Interest, I will alert the PRC chair and the PRC Rapporteur without undue delay.

Date:	Signature:
-------	------------

## ANNEX VI

### Specific provisions for the CCP mandatory peer reviews

1. According to Article 23a(1) of EMIR, ESMA shall fulfil a coordination role between competent authorities and across colleges with a view to building a common supervisory culture and consistent supervisory practices, ensuring uniform procedures and consistent approaches, and strengthening consistency in supervisory outcomes, especially with regard to supervisory areas which have a cross-border dimension or a possible cross-border impact. For this purpose, according to Article 24a(7)(a) of EMIR<sup>1</sup>), in relation to CCPs authorised or applying for authorisation in accordance with Article 14 of EMIR, the CCP Supervisory Committee (CCPSC) 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 accordance with Article 30 of Regulation (EU) No 1095/2010 (CCP mandatory peer review).
2. The ESMA Peer Review Methodology applies to CCP mandatory peer reviews that the CCPSC shall undertake, except as otherwise provided in this Annex.
3. The need for specific provisions for the CCP mandatory peer reviews results from (1) the role assigned to the CCPSC in the conduct of peer reviews covering competent authorities supervising CCPs, and (2) their annual frequency, entailing a constrained timeline for completion.
4. In view of the above the following provisions will apply:

#### **Title II – The topics for peer reviews**

#### **Section 3. Preparation of the PRWP**

Paragraph 13 of the ESMA Peer Review Methodology is replaced with the following:

5. The CCPSC, including in view of information available through colleges, will identify the topics for CCP peer reviews without having a dedicated workshop or call. The CCPSC will identify the topics for mandatory CCP peer reviews to be proposed to the MB in the PRWP for the coming two years.
6. When defining the topics for mandatory CCP peer reviews, the CCPSC shall consider the following, non-exhaustive, list of criteria:
  - Scale of the potential issue and expected impact of the peer review in terms of supervisory convergence at the EU level, e.g. relevance from a cross-border perspective, areas with potential differences in practices/understanding of the EU regulatory framework;

- Adequacy of the peer review as a supervisory convergence tool to address the issue;
- Timeliness of the peer review, e.g. previous and on-going ESMA work in the area, entry into application of relevant EU legislation.

### **Title III – The peer review process**

#### **Section 6. Setting up an ad-hoc Peer Review Committee**

Paragraphs 19 to 25 of the Peer Review Methodology are replaced as follows:

7. In accordance with Article 24a(7)(a) of EMIR the Peer Reviews in relation to CCPs are to be conducted by the CCPSC.
8. The CCPSC established by delegation (ESMA41-137-1302) a Peer Review Committee (PRC) once for all peer reviews in relation to CCPs under EMIR. The PRC is composed of ESMA members in the CCPSC, namely the Chair and the two Independent Members of the CCPSC. It is chaired by the Chair of the CCPSC.
9. The PRC should submit its main deliverables (namely, the mandate, the peer review report and the follow-up report) to the CCPSC for validation before consultation of the Management Board and submission to the Board of Supervisors for approval.
10. A member of ESMA staff from the CCP Directorate shall, in principle, act as Rapporteur of the PRC. Besides the Rapporteur, other members of the ESMA staff from the CCP Directorate with relevant expertise may be requested to participate in the work of the PRC and give support to the PRC.

#### **Section 8. The questionnaire**

In addition to paragraphs 34-43 the following also applies:

11. The PRC shall submit its draft questionnaire to the CCPSC for validation before submission to the NCAs for their answer.
12. The PRC shall follow up with the relevant NCAs where answers are incomplete or unclear and the NCAs shall timely provide any missing information or requested clarification (within maximum two weeks from the receipt of the follow-up request).
13. The PRC may request follow-up bilateral conference calls or physical meetings with NCAs under review to discuss remaining unclear, inconsistent or incomplete answers.
14. Upon request, the NCAs responses to the questionnaire may be shared with the CCPSC on ESMA's extranet.

#### **Section 9. On-site visits**

In addition to paragraphs 44 to 50 of the ESMA Peer Review Methodology the following should apply:

15. The PRC shall endeavour to ensure that over several peer reviews all NCAs are subject to on-site visits and to maintain a balance of on-site visits between NCAs. With this in mind, ESMA staff shall maintain an overview of all on-site visits that have taken place including the number and timing of on-site visits to each NCA to be shared upon request with the MB and BoS for information. The PRC can adjust the selection of NCAs for on-site visits based on criteria set in the mandate in view of the answers provided by NCAs to the peer review questionnaire.
16. A visiting team shall comprise a representative of the PRC members as well as supporting ESMA staff.
17. In case the PRC adjusts the selection of NCAs for on-site visits identified in the mandate of a peer review in view of the answers provided by NCAs to the peer review questionnaire, the revised list of the NCAs which will be subject to on-site visits will be sent to the MB and BoS.

#### **Section 11. Decisions by the Board of Supervisors and publication**

In addition to paragraphs 57 to 61 of the ESMA Peer Review Methodology, the following should apply:

18. The BoS decides on publication of the results of the peer review, upon the proposal by the CCPSC.

#### **Section 12. Information to the European Parliament, the Council and the European Commission**

19. When the main findings approved by the BoS in the report differ from those identified by the CCPSC, the ESMA Chair transmits the CCPSC findings to the European Parliament, to the Council and to the Commission, on a confidential basis.

### **Title IV – Framework for the follow-up to peer reviews**

#### **Section 13. Timeframe of the follow-up**

20. After two years from the publication of the peer review report, the CCPSC undertakes a follow-up of the peer review. The follow-up covers findings and recommendations (under article 16 of ESMAR or not) clearly identified in the report.
21. ESMA, and the CCPSC, shall stand ready, if requested and as appropriate, to assist NCAs in correcting deficiencies and in achieving better convergence.

#### **Section 15. The approval of the follow-up report**

Paragraph 68 of the ESMA Peer Review Methodology is replaced by the following paragraph:

22. The follow-up report is submitted to the CCPSC for validation and submitted for consultation to the MB. The consultation of the MB aims at maintaining consistency with other follow-up reports.