Council of the European Union
General Secretariat

PUBLIC

Interinstitutional files:
2025/0381 (COD)
2025/0382 (COD)
2025/0383 (COD)

Brussels, 07 September 2026

WK 13616/2026 INIT

LIMITE

EF
ECOFIN
CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and Banking Union (MISP) Financial Services Attachés
Subject:	MISP - CWP Post-Trading 10.9. - Compromise text EMIR

PUBLIC

(22) Central counterparties ('CCPs') within the Union are currently authorised and supervised by the competent authorities of the Member States in which they are established, in cooperation with ESMA and CCP colleges. Despite progress achieved so far in harmonising supervisory activity for CCPs in the Union, diverging supervisory practices for CCPs amongst those national authorities across the Union persist, creating an unlevel playing field among CCPs within the Union. This increases the complexity of the Union CCP framework and places an additional burden and additional costs on CCPs within the Union, including when compared with Tier 2 CCPs directly supervised by ESMA. With the development of deeper, more liquid Union capital markets under the Savings and Investments Union, that unlevel playing field could increase the risk of, and incentives for, supervisory arbitrage which could in turn lead to financial stability issues. Therefore, to ensure that the prudential, organisational and business conduct requirements for CCPs within the Union are applied in a uniform manner, in particular for CCPs with substantial clearing activity, CCPs with a material cross-border dimension, and CCPs that are part of a group that includes other market infrastructures that are supervised by ESMA, should be supervised by ESMA, based on its expertise and experience in the application of Regulation (EU) No 648/2012 of the European Parliament and of the Council[1]. CCPs with low clearing activity and a more domestic standing, deemed less significant, should continue to benefit from the supervision of local authorities with a greater familiarity with domestic markets[2].

(23) To determine which CCPs authorised under Regulation (EU) No 648/2012 should be deemed significant and thus subject to supervision by ESMA, it is necessary to provide clear and objective criteria, which should reflect the activities and risks of the CCPs concerned. With the aim of simplification and of avoiding unnecessary administrative burden, an existing CCP determined as significant at a later stage, should not be re-authorised.

(24) National competent authorities supervising less significant CCPs should have stronger cooperation with ESMA to ensure a consistent approach to supervision and hence ensure a level playing field for CCPs. In case they wish to do so, Member States should have the option to designate ESMA as the competent authority for less significant CCPs established in their jurisdictions. Moreover, should a previously significant CCP no longer meet the conditions to be considered as such, a sufficient transition period should be granted to the national competent authority to allow it to prepare before formally taking over supervisory responsibilities for that CCP. Alternatively, the ~~national competent authority~~Member State should be able to leave the supervision of this previously significant CCP to ESMA. In addition, to ensure consistency and a level playing field between significant and less significant CCPs, ESMA should also be the authority responsible for authorising interoperability arrangements and for chairing the colleges for less significant CCPs. The new supervisory arrangements for CCPs in the Union, in particular the role of ESMA as competent authority for significant CCPs, should be reflected in Regulation (EU) 2021/23 of the European Parliament and of the Council[3]~~18~~.

---

[1] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/648/oj).

[2] ~~Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/648/oj).~~

[3] Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and

PUBLIC

(25) ESMA should closely cooperate with, and draw on the experience of, the bodies responsible for the oversight of CCPs authorised in the Union and with authorities experienced in the supervision of CCPs to benefit from the knowledge of those bodies. For that purpose, ESMA should develop comprehensive cooperation arrangements with those bodies and authorities, including the national competent authority in the Member State in which the CCP concerned is established, the European Central Bank, other central banks of issue of the most relevant Union currencies that the CCP processes, the competent authorities responsible for the supervision of the trading venues and the central securities depositories served by the CCP, and the competent authority responsible for the supervision of the most active clearing members. Those arrangements should set out the specific modalities and operational arrangements both in ongoing supervision and in exceptional circumstances, such as emergency situations.

(26) The new supervisory responsibilities granted to ESMA and the changes to ESMA's internal organisational structure, including the removal of the CCP Supervisory Committee, whose tasks should be assigned to the newly established Executive Board, should be reflected in Regulation (EU) No 648/2012. Due to the unique status of third-country CCPs, the provisions concerning the procedures applying to them should remain in Regulation (EU) No 648/2012 rather than shifting those provisions to Regulation (EU) No 1095/2010. Furthermore, taking into account those changes, to further simplify the future organisational structure and working arrangements, and to remove unnecessary burden, significant CCPs should not be required to have a college. Similarly, given ESMA's new supervisory responsibilities for significant CCPs, the requirements for ESMA opinions in relation to those CCPs should be removed. Supervisory arrangements for less significant CCPs should largely remain as they were as those CCPs have a more domestic scope and should benefit from the local knowledge and expertise of national authorities.

Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1, ELI: http://data.europa.eu/eli/reg/2021/23/oj).

PUBLIC

Article 2

Amendments to Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

(1) Article 2 is amended as follows:

(a) the following points (1a) and (1b) are inserted:

‘(1a) ‘significant CCP’ means a CCP authorised under Article 14 that qualifies as significant pursuant to Article 22a(1);

(1b) ‘less significant CCP’ means a CCP authorised under Article 14 that is not a significant CCP;’;

(b) point (13) is replaced by the following:

‘(13) ‘competent authority’ means the competent authority referred to in the legislation referred to in point (8) of this Article, the competent authority referred to in Article 10(5), the national competent authority or, the CCP’s competent authority;’;

(c) the following points (13a), (13b) and (13c) are inserted:

‘(13a) ‘CCP’s competent authority’ means the national competent authority for less significant CCPs or ESMA for significant CCPs;

(13b) ‘national competent authority’ means the national authority of the Member State in which a CCP is established, designated pursuant to Article 22(1);

(13c) ‘relevant authority’ means any authority referred to in Article 22d;’;

(d) point (31) is replaced by the following:

‘(31) ‘covered bond entity’ means the covered bond issuer or cover pool of a covered bond;’,

(e) the following point (32) is added:

‘(32) central database’ means the central database established by ESMA pursuant to Article 17c.’;

(f) the following subparagraph is added:

For the purpose of Article 5(1), Article 6(1) point (f), Article 14(4), Article 17(3a), Article 17(3b), third subparagraph, (4) and (5), Article 21(3), first subparagraph, (4) third subparagraph, (4a) and (5), Article 27(3), Article 28 (1), (4) and (5), Article 29 (1) and (3), Article 30 (1) to (5), Article 31(1) to (8), Article 32(1) except for the last two references in the third subparagraph, Article 32(2) to (6), Article 32(7) except for the second to last reference, Article 35(1), (2) and (3), Article 37(1a) and (2), Article 38(1), (3) and (5), Article 41(2), Article 45a(1) and (2), Article 48 (3), Article 49(1), (1d) and (1g), the term “competent authority” shall be read as “CCP’s competent authority”.’;

(2) Article 6a is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

‘For the purposes of point (c) of the first subparagraph, before the request referred to in the first subparagraph, ESMA shall consult the ESRB and the CCP’s competent authorities.’;

PUBLIC

(b) in paragraph 2, first subparagraph, the first sentence is replaced by the following:

'Under the conditions set out in paragraph 1 of this Article, the competent authorities responsible for the supervision of clearing members and the CCP's competent authorities may request that ESMA submit a request for a suspension of the clearing obligation to the Commission.';

(c) in paragraph 8, third subparagraph, the second sentence is replaced by the following:

'For the purposes of point (c) of the first subparagraph of paragraph 1 of this Article, ESMA shall consult the ESRB and the CCP's competent authorities.';

(3) in Article 6b(1), first subparagraph, the introductory wording is replaced by the following:

'Where a CCP meets the conditions laid down in Article 22 of Regulation (EU) 2021/23 of the European Parliament and of the Council[4], the resolution authority of the CCP designated under Article 3(1) of that Regulation or the CCP's competent authority may, on their own initiative or at the request of a competent authority responsible for the supervision of a clearing member of the CCP under resolution, request that the Commission suspend the clearing obligation referred to in Article 4(1) of this Regulation for specific classes of OTC derivatives or for a specific type of counterparty where the following conditions are met:';

(4) Article 7 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

'1. A CCP that has been authorised to clear OTC derivative contracts shall accept clearing such contracts on a non-discriminatory and transparent basis, including as regards collateral requirements, and initial connectivity and access fees, regardless of the trading venue on which a transaction is executed.';

(b) paragraphs 2 to 6 are replaced by the following:

'2. A trading venue seeking to access a CCP's service related to the clearing of OTC derivative contracts shall submit its request to the CCP. The request shall specify the OTC derivative contracts for which the clearing is requested. The trading venue shall inform ESMA, the CCP's competent authority and the competent authority of the trading venue of such a request, via the central database.

3. The CCP shall provide a written response to the trading venue within three months of the receipt of the request referred to in paragraph 2, either permitting or denying access.

4. The CCP may deny a request for access only where such access would affect the smooth and orderly functioning of the markets or cause systemic risk, based on a comprehensive risk assessment subject to the conditions laid down in paragraph 7.

---

[4] Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1, ELI: http://data.europa.eu/eli/reg/2021/23/oj).'

The CCP shall not deny a request on the grounds of a possible loss of revenue in respect of itself or another entity belonging to the same group.

The CCP may charge a reasonable commercial fee for the establishment of such access link on a cost recovery basis, unless otherwise agreed by both parties.

Where the CCP fails to provide a written response to the trading venue within the time limit referred to in paragraph 3, the trading venue shall inform ESMA via the central database. Upon such communication, ESMA may ~~notify the CCP and~~ request ~~additional~~ information from the CCP or the trading venue.

Where there is no indication that the conditions for denial of request as referred to in paragraph 7 are met, ESMA may issue, via the central database, a decision requiring that CCP to grant access to its services within one month of the notification of that decision.

Where the CCP denies access to the trading venue, the written response shall provide a detailed explanation of the reasons for denied access, based on the comprehensive risk assessment referred to in the first subparagraph. ~~The CCP shall~~ I~~i~~mmediately after providing the written response to the trading venue, ~~and in writing,~~ the CCP shall inform, via the central database, ~~-~~ESMA and the competent authorities referred to in paragraph 2 of that decision.

5. Where the CCP has denied access, or where the CCP and the trading venue disagree on the conditions for such access, including on the fee charged for the establishment of the access link referred to in paragraph 4, the trading venue may submit a complaint to ESMA via the central database.

ESMA shall assess the reasons for denied access and, within one month of the date of the complaint, provide the trading venue with a reasoned reply. ESMA may consult the competent authorities referred to in paragraph 2. Where ESMA concludes that the refusal by the CCP to grant access is unjustified, where there is no indication that the conditions for denial of request as referred to in paragraph 7 are met, ESMA shall issue, via the central database, a decision requiring the CCP to grant access to its services within one month of the notification of that decision.

6. A CCP that grants access to the trading venue shall ensure that such access is fully operational within three months of the date of the positive response to the request for access. This period may be extended by up to one month where both parties agree.';

(c) the following paragraph 7 is added:

'7. The conditions laid down in paragraph 1 regarding non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP, and the specific risks to be taken into account by CCPs when carrying out a comprehensive risk assessment as referred to in paragraph 4, shall be further specified by the delegated acts adopted pursuant to Article 36(6) of Regulation (EU) No 600/2014.

When carrying out a comprehensive risk assessment as referred to in paragraph 4 and 5 of this Article, the CCP and ESMA, respectively, shall take account of the relevant conditions set out by the delegated acts adopted pursuant to Article 36(46) of Regulation (EU) No 600/2014.';

(5) Article 8 is replaced by the following:

PUBLIC

PUBLIC

Article 8

Access to a trading venue

'1. A trading venue shall, upon request, provide trade feeds on a non-discriminatory and transparent basis to any CCP that has been authorised to clear OTC derivative contracts traded on that trading venue, including as regards initial connectivity and access fees.';

2. A CCP that intends to access the service of a trading venue related to the OTC derivative contracts shall formally submit its request to the trading venue. The CCP shall inform, via the central database, ESMA, the competent authorities of the trading venue and the CCP's competent authority of such request.

3. The trading venue shall provide a written response to the CCP within three months of the receipt of the request referred to in paragraph 2, either permitting or denying access.

4. The trading venue may deny a request for access only where such access would affect the smooth and orderly functioning of the markets or cause systemic risk, based on a comprehensive risk assessment subject to the conditions laid down in paragraph 7.

The trading venue shall not deny a request on the grounds of a possible loss of revenue in respect of itself or another entity belonging to the same group.

The trading venue may charge a reasonable commercial fee for the establishment of such access link on a cost recovery basis, unless otherwise agreed by both parties.

The trading venue shall not restrict access to specific trade feeds on the ground that the counterparties to a specific transaction have not chosen the same CCP, where the CCPs of their choice have already entered into an interoperability arrangement pursuant to Article 51.

Where the trading venue fails to provide a written response to the CCP within the time limit referred to in paragraph 3, the CCP shall inform ESMA via the central database. Upon such communication, ESMA may ~~notify the trading venue and~~ request ~~additional~~ information from the trading venue or the CCP.

Where there is no indication that the conditions for denial of request as referred to in paragraph 7 are met, ESMA may issue, via the central database, ~~-~~a decision requiring that trading venue to grant access to its services within one month of the notification of the decision.

Where the trading venue denies access, the written response shall provide a detailed explanation of the reasons for denied access, based on the comprehensive risk assessment referred to in the first subparagraph. ~~The trading venue shall i~~Immediately after providing the written response to the CCP, ~~and in writing,~~ the trading ~~-~~venue shall inform, via the central database, ESMA and the competent authorities referred to in paragraph 2 of that decision.

5. Where the trading venue has denied access, or where the trading venue and the CCP disagree on the conditions for such access, including on the fee charged for the establishment of the access link referred to in paragraph 4, the CCP may submit a complaint to ESMA, via the central database.

PUBLIC

ESMA shall assess the reasons for denied access and, within one month from the date of the complaint, provide the CCP with a reasoned reply. ESMA may consult the competent authorities referred to in paragraph 2 when preparing its reply. Where ESMA concludes that the trading venue's refusal to grant access is unjustified, where there is no indication that the conditions for denial of request as referred to in paragraph 7 are met, ESMA shall issue, via the central database, a decision requiring the trading venue to grant access to its trade feeds within one month of the date of the notification of that decision.

6. A trading venue that grants access to the CCP shall ensure that the access is fully operational within three months of the receipt of the positive response to the request for access. This period may be extended by up to one month where both parties agree.

7. When carrying out a comprehensive risk assessment as referred to in paragraph 4 and 5 of this Article, the trading venue and ESMA, respectively, shall take into account the relevant conditions set out by the delegated acts adopted pursuant to Article 36(6) of Regulation (EU) No 600/2014.';

(6) in Article 12, the following paragraph 1b is inserted:

'1b. ESMA shall have the power to impose fines and periodic penalty payments applicable to significant CCPs that infringed the rules under this Title in accordance with Chapter IIa of Regulation (EU) No 1095/2010 and shall take all measures necessary to ensure that those rules are implemented. In addition, ESMA shall, impose fines or periodic penalty payments on the significant CCPs subject to the reporting obligation pursuant to Article 9 where the details reported repeatedly contain systematic manifest errors.';

(7) in Article 14, paragraph 1 is replaced by the following:

'1. Where a legal person established in the Union intends to provide clearing services as a CCP, it shall apply for authorisation to the CCP's competent authority, in accordance with the procedure set out in Article 17.';

(8) Article 17 is amended as follows:

(a) in paragraph 1, first subparagraph, the first sentence is replaced by the following:

'Without prejudice to Article 22a(6), the applicant CCP shall submit an application for authorisation as referred to in Article 14(1) or an application for an extension of an existing authorisation as referred to in Article 15(1).';

(b) in paragraph 3c, third subparagraph, the first sentence is replaced by the following:

'Where the CCP's competent authority does not comply or does not intend to comply with an opinion of ESMA or with any conditions or recommendations included therein, the Executive Board shall inform the Board of Supervisors.';

(9) Article is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'A CCP's competent authority shall submit a request for an opinion:

(a) by ESMA, pursuant to Article 23a(2), where the CCP's competent authority intends to adopt a decision, report or other measure in relation to Articles 7, 8, 20, 21, 29 to 33, 35, 36, 37 and 41;

PUBLIC

(b) by the college referred to in Article 18, pursuant to Article 19, where the CCP's competent authority intends to adopt a decision, report or other measure in relation to Articles 20, 21, 30, 31, 32, 35, 37, 41, 49 and 51.';

(b) in paragraph 3, point (b) is replaced by the following:

'(b) ESMA may, with respect to Articles 7, 8, 29 to 33, 35, 36 and 41, adopt an opinion in accordance with Article 23a and Article 24a(7), first subparagraph, point (bc), on that draft decision, report or other measure where such opinion is necessary to promote a consistent and coherent application of a relevant article; and';

(c) in paragraph 4, third subparagraph, the first sentence is replaced by the following:

'For the purpose of paragraph 3, first subparagraph, points (a) and (b), of this Article, where the CCP's competent authority does not comply or does not intend to comply with the opinion of ESMA or with any conditions or recommendations included therein, the Executive Board shall inform the Board of Supervisors.';

(10) Article 17c is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'ESMA shall establish and maintain a central database in accordance with Article 35c of Regulation (EU) No 1095/2010. Separately for each CCP, the CCP's competent authority, the relevant authorities of the CCP and ESMA as well as the members of the CCP's college referred to in Article 18, where required under a relevant article ('registered recipients'), shall have access to all information and documents referred to in paragraph 2 registered within the central database for that CCP where relevant or necessary for the performance of their duties. A CCP shall have access to the central database as regards the information and documents it submitted to that central database or the documents transmitted to it through that central database by any of the registered recipients. Other recipients shall also submit and have access to certain specific documents or information, where specified under this Regulation, that is registered in the central database. ESMA shall ensure that the central database performs the functions under this Article. ESMA shall make available the information shared via the central database under this Regulation to any authority relevant for the purpose of Regulation (EU) No 909/2014 and Regulation (EU) […/… on settlement finality], where relevant or necessary for the performance of their duties.';

(b) paragraph 2 is replaced by the following:

'CCPs and registered recipients shall upload to the central database, in electronic format, all information and documents, including applications, decisions, recommendations, information, requests, questions, answers and notifications, referred to in this Regulation, unless stated otherwise.

An acknowledgement of receipt shall be sent via the central database within two working days of submission of information or documents.

ESMA shall ensure the database enables DLT recorded data, including on-chain data reading and access to such data.';

(c) paragraphs 3, 4, 5 and 7 are deleted;

(11) Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Without prejudice to Article 22a(6), within 30 calendar days of the submission of the notification referred to in Article 17(2), second subparagraph, point (a), or before the end of the adaptation period as referred to in Article 22a(7), the CCP's competent authority shall establish a college to facilitate the exercise of the tasks referred to in Articles 15, 17, 17a, 20, 21, 30, 31, 32, 35, 37, 41, 49 and 51. That college shall be chaired and managed by ~~ESMA (the 'chair').~~' the competent authority and a member of the ESMA Executive Board.

(b) in paragraph 2, point (a) is replaced by the following:

~~'(a) ESMA';~~ ESMA Executive Board Member:

(c) in paragraph 4, the second subparagraph is replaced by the following:

'The chair shall decide the dates of the college meetings and establish the agenda of such meetings.';

(d) in paragraph 5, third subparagraph, the last sentence is deleted;

(12) in Article 20, paragraphs 3 and 4 are replaced by the following:

'3. Before the CCP's competent authority takes a decision to withdraw the authorisation of the CCP in full or in part, including for one or more clearing services or activities in one or more classes of derivatives, securities, other financial instruments or non-financial instruments under paragraph 1, it shall take one of the following steps:

(a) for a less significant CCP, it shall, in accordance with Article 17b, request the opinion of ESMA and of the college referred to in Article 18 on the necessity of withdrawing the authorisation, in full or in part, of the CCP;

(b) for a significant CCP, it shall consult the relevant authorities of that CCP on the necessity of withdrawing the CCP's authorisation, in full or in part.

The first subparagraph shall not apply where a decision is required urgently.

4. For less significant CCPs, ESMA, or any member of the college referred to in Article 18, and for significant CCPs, any of the relevant authorities, may, at any time, request that the CCP's competent authority examine whether the CCP remains in compliance with the conditions under which the authorisation was granted.';

(13) in Article 21(1), the introductory wording is replaced by the following:

'The CCP's competent authority shall do at least all of the following in relation to a CCP:';

(14) Article 22 is amended as follows:

(a) the title is replaced by the following:

'**Competent authorities designated by the Member States**';

(b) paragraph 1 is replaced by the following:

'1. Each Member State shall designate one or more national competent authorities to carry out the tasks and duties laid down under this Regulation for the authorisation and supervision of less significant CCPs established or to be established in its territory and the support and assistance functions referred to in Article 23(3). Each Member State shall inform the Commission and ESMA thereof.

Formatted: Strikethrough

Formatted: Strikethrough

PUBLIC

PUBLIC

Where a Member State designates more than one national competent authority in accordance with the first subparagraph, it shall determine the respective roles and shall designate a single authority to be responsible for coordinating cooperation and the exchange of information with the Commission, ESMA, other Member States' competent authorities, EBA and the relevant members of the ESCB, where specifically referred to in this Regulation.';

(c) the following paragraph 1a is inserted:

'1a. Without prejudice to Article 22a(1), a Member State may designate ESMA as the competent authority for one or more less significant CCPs established in its territory. Where it exercises this option, the Member State shall notify the Commission, ESMA and the national competent authority thereof via the central database. Following this notification, the CCPs concerned shall be considered as significant CCPs. Those CCPs shall be supervised by ESMA following a potential adaptation period set by ESMA, in consultation with the national competent authorities thereof, which shall not exceed [6 months].

After a period of at least 36 months, Member States that designated ESMA, in accordance with paragraph 1a, as the competent authority for a less significant CCP, may designate one or more national competent authorities as the CCP's competent authorities in consultation with ESMA. That Member State shall notify the Commission, ESMA, and the competent authorities thereof via the central database. Following this notification, those CCPs shall be considered less significant CCPs and shall be supervised by national competent authorities following a potential adaptation period set in agreement with ESMA, which shall not exceed 24 months.

(d) paragraph 2 is replaced by the following:

'2. Each Member State shall ensure that the national competent authority has the supervisory and investigatory powers necessary for the exercise of its functions.';

(e) paragraph 4 is replaced by the following:

'4. ESMA shall publish on its website a list of the CCP's competent authorities for each CCP, designated in accordance with this Article or identified in accordance with Article 22a(1).';

(15) the following Articles 22a to 22e are inserted:

'Article 22a

Competent authority of significant CCPs

1. ESMA shall be the CCP's competent authority of significant CCPs and carry out the supervisory tasks and duties laid down in this Regulation for their authorisation and supervision.

2. A CCP shall be considered significant where it fulfils at least one of the following conditions :

(a) the average open interest of securities transactions, including securities financing transactions, exchange traded derivatives or non-financial instruments cleared by the CCP over a consecutive period of two ~~one~~ years prior to the assessment is more than EUR 100 billion per year;

(b) the average gross notional outstanding of OTC derivatives transactions cleared by the CCP over a comsecutive period of ~~one~~ two years prior to the assessment is more than EUR 500 billion per year;

(c) the average aggregated initial margin requirement and default fund contributions for accounts held by the CCP's clearing members, calculated on a net basis at clearing member account level, over a consecutive period of ~~one~~ two years prior to the assessment, is more than EUR 25 billion per year;

~~(d) [~~it belongs to the same group as ~~any of the following:~~

~~(e)~~(d) ~~(i)~~ a CCP authorised under Article 14 or a Tier 2 CCP]~~;~~

~~(ii) a CSD or a trading venue for which ESMA is the competent authority.~~

~~(f) the Member State where the CCP is established has designated ESMA as the CCP's competent authority in accordance with paragraph 1a of Article 22, where this designation applies to that CCP.~~

ESMA shall determine whether a CCP meets the conditions for qualifying as significant in accordance with this Article.

3. ESMA shall assess, at least every 12 months, whether any authorised CCP fulfils at least one of the conditions set out in paragraph 2.

4. Where ESMA has determined that a CCP authorised under Article 14 of this Regulation fulfils at least one of the conditions laid down in paragraph 2 of this Article, that CCP shall qualify as significant CCP. Where the CCP is not yet supervised by ESMA, ESMA, [in consultation with the CCP's national competent authority], may set a potential adaptation period that shall not exceed 6 months, after which the CCP shall become supervised by ESMA.

5. ESMA shall notify the CCP concerned, its national competent authority, the relevant authorities, the ECB, where a CCP clears financial and non-financial instruments denominated in euro, and the central banks of issue of the most relevant other Union currencies, where a CCP clears financial and non-financial instruments denominated in a currency other than euro, of the outcome of the determination and any adaptation period referred to in paragraph 4 within 2 working days of the date of that determination.

6. Before a legal person established in the Union applies for authorisation in accordance with Article 17, it shall request ESMA via the central database to determine whether it fulfils any of the conditions laid down in paragraph 2 of this Article.

ESMA may request further information from that legal person for that purpose. The legal person shall provide the requested information within the deadline set by ESMA. ESMA shall, within 20 working days from the receipt of all the relevant information, determine whether such legal person fulfils any of the conditions referred in the first subparagraph.

Where ESMA has determined that the legal person fulfils at least one of the conditions laid down in paragraph 2 of this Article, that legal person shall qualify as significant and shall be supervised by ESMA, which shall be responsible for the authorisation of this entity in accordance with Article 17.

Where ESMA has determined that the legal person does not fulfil any of the conditions laid down in paragraph 2 of this Article, it shall qualify as less significant and shall be

PUBLIC

PUBLIC

supervised by the national competent authorities of the Member State, as referred to in Article 22(1), where the legal person is established. Those national competent authorities shall be responsible for the authorisation of the CCP in accordance with Article 17. ESMA shall inform, via the central database, the legal person, the national competent authority of the Member State in which the legal person is established and the ECB where the legal entity intends to clear financial and non-financial instruments denominated in euro, or the central banks of issue of the most relevant Union currencies, other than euro, of the financial and non-financial instruments that the legal person intends to clear, of the outcome of its determination within 2 working days from the date of that determination.

7. Where ESMA determines that a CCP that was previously determined to be significant has not fulfilled any of the conditions set out in paragraph 2 for the past 24~~36~~ months, it shall determine that the CCP shall no longer qualify as a significant CCP. ESMA shall immediately notify the CCP concerned, its national competent authorities, the ECB, where a CCP clears financial and non-financial instruments denominated in euro, and the central banks of issue of the most relevant other Union currencies, where a CCP clears financial and non-financial instruments denominated in a currency other than euro, of that determination. That determination shall take effect after an adaptation period to be determined by ESMA, [in consultation with the CCP's national competent authority], which shall not exceed 24 months. The national competent authority shall establish a college pursuant to Article 18 before the end of the adaptation period.

8. ESMA shall, without undue delay, establish and publish on its website the list of significant CCPs and keep it updated.

9. ESMA shall charge fees to significant CCPs for performing its supervisory tasks and duties laid down in this Regulation for the authorisation and supervision of significant CCPs and in accordance with the delegated act adopted pursuant to paragraph 10.

10. The Commission shall be empowered to adopt a delegated act in accordance with Article 82 in order to supplement this Regulation by specifying the fees referred to in paragraph 9, by setting out:

(a) the types of fees;

(b) the matters for which fees are due;

(c) the method of calculation of the fees; and

(d) the manner in which fees are to be paid.

Article 22b

Specific provisions for significant CCPs

1. By way of derogation from Article 18, no college shall be established for significant CCPs. Where for a CCP that becomes significant, a college had been established pursuant to Article 18, such college shall be dissolved at the latest within a year after the CCP qualified as a significant CCP.

In relation to a significant CCP, the procedures referred to in Articles 7e, 15a, 17, 17a, 17c, 20, 21, 24, 30, 31, 32, 35, 37, 41 and 49 shall apply without including the college.

2. By way of derogation from Articles 6a, 6b, 17, 17a, 17c, 20, 21, 24, 28, 29, 31, 32, 35, 38, 41, 48, 49 and 49a, any requirement for a CCP or a CCP's competent authority

PUBLIC

to interact with ESMA or ESMA to interact with a CCP or a CCP's competent authority referred to in those articles shall not apply with respect to significant CCPs.

3. Article 17b shall not apply with respect to significant CCPs.

Article 22c

Powers of ESMA over significant CCPs under this Regulation

1. ESMA shall be responsible for carrying out its duties under this Regulation for the authorisation and supervision of significant CCPs.

2. ESMA shall ensure on an ongoing basis the compliance by significant CCPs with Articles 7, Article 7e, Article 8, Articles 14 to 17c, Article 20, Article 21, and Article 24 and Titles IV and V.

3. ESMA shall be conferred with the powers necessary for the exercise of its functions over significant CCPs under this Regulation and under Regulation (EU) No 1095/2010.

   ESMA shall use these powers, over significant CCPs and where specified under this Regulation, over related parties, including to:

   (a) supervise the significant CCPs' compliance with the requirements laid down in this Regulation;

   (b) adopt decisions and conduct supervisory assessments and take measures in relation to Articles 7, Article 7e, Article 8, Articles 14 to 17c, Article 20, Article 21, Article 24 and Titles IV and V;

   (c) request significant CCPs, and related third parties to whom those CCPs have outsourced operational functions or activities, to provide, within the time limit provided for in the request, all relevant information or data to enable ESMA to monitor those CCPs' provision of clearing services and activities and to carry out ESMA's tasks and duties under this Regulation. The recipient of such a request shall provide ESMA, with all the information requested by ESMA within the provided time limit. The information request may be of a periodic or one-off nature;

   (d) require the auditors of significant CCPs to provide information or data;

   (e) adopt a decision imposing fines, where a significant CCP has, intentionally or negligently, committed one of the infringements listed in Annex V. Such fines shall be up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or up to 10% of the total annual turnover, of a legal person in the preceding business year and can take into account aggravating or mitigation factors in accordance with the relevant coefficients set out in Annex IV;

   (f) adopt a decision requiring a significant CCP to bring an infringement listed in Annex V to an end.

4. In addition, for the purpose of carrying out its tasks regarding significant CCPs, ESMA shall have the powers to take the temporary measures set out in the second subparagraph in any of the following circumstances:

   (a) ESMA has obtained evidence suggesting that the entity infringes, or is likely to infringe the requirements governing its operations within the next three months;

PUBLIC

(b) ESMA has evidence that the arrangements, strategies, processes and mechanisms implemented by the entity do not ensure a sound management and coverage of its risks.

For the purposes of the first subparagraph, ESMA shall have, in particular, the powers to take the following temporary measures:

(a) require that the entity's arrangements, processes, mechanisms and strategies are properly adjusted to ensure the sound management and coverage of its risks;

(b) require the significant CCP to convene a meeting of its shareholders or, if the significant CCP fails to comply with that requirement, convene the meeting itself. In both cases ESMA shall set the agenda, including the decisions to be considered for adoption by the shareholders;

(c) require entities to present a plan to restore compliance with supervisory requirements and set a deadline for its implementation, including improvements to the scope and deadline of that plan;

(d) restrict or limit the business, operations or network of the entity, or request the divestment of activities that pose excessive risks to its soundness;

(e) require the CCP to mitigate the risk related to the infringement or likely infringement of the requirements under this Regulation and the inherent related risks in the activities, products and systems of the entity;

(f) impose additional or more frequent reporting requirements;

(g) require additional disclosures;

(h) require the suspension of members from the management body of entities who do not fulfil the requirements governing their operations set out in this Regulation.

The decisions of ESMA shall state the reasons on which they are based.

5. ESMA shall refuse or subsequently withdraw the appointment of the person or persons referred to in Article 27 if it is not satisfied that the person is of sufficiently good repute, or if there are objective and demonstrable grounds for believing that the appointment or proposed changes would pose a threat to the sound and prudent management of the entity, the adequate consideration of the clients' interest and integrity of the market.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 82 to amend the list of infringements under Annex V where needed to take account of amendments to the requirements on CCPs under this Regulation and in particular as laid down in Article 7, Article 9, Article 16 and Titles IV and V or where needed to ensure that the infringements under Annex III correspond to the requirements under this Regulation and in particular as laid down in Article 7, Article 9, Article 16 and Titles IV and V.

Article 22d

Relevant authorities for significant CCPs

The following entities shall be involved in the authorisation and supervision carried out by the CCP's competent authority of a significant CCP and be referred to as relevant authorities for such CCP:

PUBLIC

(a) the national competent authority of the Member State in which the significant CCP is established;

(b) the competent authorities responsible for the supervision of the clearing members, of the significant CCP, which are established in the three Member States with the largest contributions to the default fund referred to in Article 42 of this Regulation on an aggregate basis over a one-year period, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013;

(c) the competent authorities responsible for the supervision of trading venues served by the significant CCP;

(d) the competent authorities supervising central securities depositories to which the significant CCP is linked;

(e) the ECB where the significant CCP clears or intends to clear financial and non-financial instruments denominated in euro;

(f) the central banks of issue of the most relevant Union currencies other than euro, of the financial and non-financial instruments cleared or to be cleared by the significant CCP.

Article 22e

Consultation of central banks of issue regarding significant CCPs

1. With regard to supervisory assessments conducted in relation to, and decisions to be taken pursuant to, Articles 41, 44, 46, 49, 50 and 54 in relation to significant CCPs, the Executive Board shall consult the central banks of issue referred to in Article 22d, points (e) and (f), before finalising its assessment. Each central bank of issue may respond. Where the central bank of issue decides to respond, it shall do so within 10 working days of receipt of the draft decision. In emergency situations, that period shall not exceed 24 hours. Where a central bank of issue proposes amendments or objects to assessments related to, or draft decisions pursuant to Articles 41, 44, 46, 49, 50 and 54, it shall provide full and detailed reasons, in writing. Upon conclusion of the period for consultation, the Executive Board shall duly consider the response and any amendments proposed by the central banks of issue and provide its assessment to the central bank of issue.

2. Where the Executive Board does not reflect in its decision the amendments proposed by a central bank of issue, the Executive Board shall inform that central bank of issue in writing stating its full reasons for not taking into account the amendments proposed by that central bank of issue, providing an explanation for any deviations from those amendments.';

(16) in Article 23, the following paragraph 3 is added:

'3. For each significant CCP, ESMA and the relevant authorities shall agree~~establish~~ cooperation arrangements ~~as laid down~~supplementary to those referred to in Article 8a of Regulation (EU) No 1095/2010, including in relation to ESMA's direct supervision of the CCP. Such arrangements shall reflect the distribution of competences and responsibilities pursuant to this Regulation and frame practical cooperation modalities in view of ESMA exercising its competencies and responsibilities with regard to significant CCPs, notably those referred to in Article

22e of this Regulation. In particular, such arrangements may cover support and assistance by the relevant authorities, and/or information sharing as relevant, in respect of all of the following:

(a) the carrying out of their respective competences~~supervisory tasks~~ over a significant CCP, including investigations and on-site inspections;

(b) the preparation of decisions, reports or other measures under this Regulation in relation to the significant CCP, including where specified under Articles 14, 15, 17, 17a, 20, 21, 24, 30, 31, 32, 35, 37, 41, 49, 49a and 51;

(c) any supervisory task to ensure the financial stability and monitor the operational resilience and market conduct of the significant CCP, including stress-testing;

(d) addressing emergency situations in relation to the significant CCP.';

(17) Article 23a is amended as follows:

(a) the title is replaced by the following:

'**Supervisory cooperation between national competent authorities and ESMA with regards to less significant CCPs**';

(b) paragraph 2 is replaced by the following:

'2. Competent authorities shall submit their draft decisions, reports or other measures to ESMA for its opinion before adopting any act or measure pursuant to Articles 7, 8 and 14, Article 15(1), second subparagraph, Article 21, Articles 29 to 33, and Articles 35, 36, 37, 41 and, except where a decision is required urgently, pursuant to Article 20.

Competent authorities may also submit draft decisions to ESMA for its opinion before adopting any other act or measure in accordance with their duties under Article 22(1). Any opinion, decision, input, validations or other measure by ESMA shall be taken in accordance with Article 46a of Regulation (EU) No 1095/2010.';

(18) Article 24 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

'Any authority referred to in this Regulation which becomes aware of any emergency situation relating to a CCP shall inform the CCP's competent authority, ESMA, the college referred to in Article 18, the relevant members of the ESCB, the Commission and, the relevant authorities of the significant CCPs without undue delay of the emergency situation, including:';

(b) paragraphs 2 to 4 are replaced by the following:

'2. In an emergency situation, information shall be provided and updated without undue delay to enable the members of the college referred to in Article 18 or the relevant authorities of the significant CCPs, as applicable, to analyse the impact of that emergency situation in particular on their clearing members and their clients. The members of the college referred to in Article 18 or the relevant authorities of the significant CCPs, as applicable, may forward the information to the public bodies responsible for the financial stability of their markets, subject to the obligation of professional secrecy set out in Article 83. The obligation of professional secrecy in accordance with Article 83 shall apply to those bodies receiving that information.

PUBLIC

PUBLIC

3. In the event of an emergency situation at one or more CCPs that has or is likely to have destabilising effects on cross-border markets, the Executive Board shall coordinate competent authorities, the resolution authorities designated pursuant to Article 3(1) of Regulation (EU) 2021/23 and the colleges referred to in Article 18 of this Regulation or the relevant authorities of the significant CCPs, as applicable, to build a coordinated response to emergency situations relating to a CCP and ensure effective information sharing among competent authorities, the colleges referred to in Article 18 of this Regulation and resolution authorities.

4. In an emergency situation, except where a resolution authority is taking or has taken a resolution action in relation to a CCP pursuant to Article 21 of Regulation (EU) 2021/23, the following ad hoc meetings, may be convened to coordinate the responses of competent authorities:

(c) ad hoc meetings of the Executive Board, convened by its Chair at his or her own initiative or at the request of two members of the Executive Board or the Board of Supervisors;

(d) ad hoc meetings with the relevant authorities for significant CCPs, convened by the Executive Board.;'

(e) paragraph 5 is amended as follows:

(i) point (f) is replaced by the following:

'(f) any member of the college referred to in Article 18 that is not already covered by points (a) to (d) of this paragraph;'

(ii) the following point (g) is added:

'any of the relevant authorities of significant CCPs, that is not already covered by points (a) to (e).';

(~~e~~d) paragraph 6 is replaced by the following:

'6. Where an ad hoc meeting is convened pursuant to paragraph 4, the Executive Board shall inform EBA, EIOPA, the ESRB, the Single Resolution Board established under Regulation (EU) No 806/2014 of the European Parliament and of the Council and the Commission thereof who shall also be invited to participate in that meeting upon their request.

Where a meeting is held following an emergency situation as specified in paragraph 1, point (c), the Executive Board shall invite the relevant central banks of issue to participate in that meeting.';

(~~d~~e) paragraph 8 is replaced by the following:

'8. ESMA may issue recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010 addressed to one or more competent authorities recommending them to adopt temporary or permanent supervisory decisions in line with the requirements set out in Article 16 and in Titles IV and V of this Regulation to avoid or mitigate significant adverse effects on the financial stability of the Union. ESMA may issue such recommendations only where more than one CCP authorised in accordance with Article 14 is affected or where Union-wide events are destabilising cross-border cleared markets.';

(19) in Chapter 3A, the title is replaced by the following:

'**Supervisory tasks in relation to CCPs**';

PUBLIC

(20) Article 24a is amended as follows:

(a) the title is replaced by the following:

'**Supervisory tasks in relation to CCPs**';

(b) paragraph 1 is replaced by the following:

'1. ESMA in accordance with Article 46a of Regulation (EU) No 1095/2010 shall take any decision and carry out any task entrusted to it under this Regulation, and in particular as set out in paragraphs 10 and 11 of this Article.';

(c) paragraphs 2 to 6 are deleted;

(d) paragraph 7 is amended as follows:

(i) the introductory wording is replaced by the following;

'In relation to CCPs, ESMA shall:';

(ii) points (a), (b), (ba) are deleted;

(iii) point (bc) is replaced by the following:

'(bc) in relation to less significant CCPs, adopt opinions in accordance with Articles 17 and 17b, undertake validations in accordance with Article 49 and adopt decisions in accordance with Article 49a and, in relation to significant CCPs, take any decision or other measure in accordance with Article 22c;';

(iv) point (be) is deleted;

(e) paragraphs 8 and 9 are deleted;

(f) paragraphs 10 and 11 are replaced by the following:

'10. The Executive Board shall, in relation to third-country CCPs, take decisions and carry out the tasks entrusted to ESMA in Articles 25, 25a, 25b, 25f to 25q and 85(6).

11. The Executive Board shall, in relation to third-country CCPs, share with the third-country CCP college referred to in Article 25c the agendas of its meetings before those meetings take place, the minutes of its meetings, the complete draft decisions it plans to adopt and the final decisions it has adopted';

(g) paragraphs 12 and 13 are deleted;

(21) in Article 24b, paragraphs 2 and 3 are replaced by the following:

'2. Where the Executive Board does not reflect in its decision the amendments proposed by a central bank of issue, the Executive Board shall inform that central bank of issue in writing stating its full reasons for not taking into account the amendments proposed by that central bank of issue, providing an explanation for any deviations from those amendments.

3. With regard to decisions to be taken pursuant to Articles 25(2c) and 85(6), the Executive Board shall seek the agreement of the central banks of issue referred to in Article 25(3), point (f), for matters relating to the currencies they issue. The agreement of each central bank of issue shall be deemed to be given, unless the central bank of issue proposes amendments or objects within 10 working days of the transmission of the draft decision. Where a central bank of issue proposes amendments or objects to a draft decision, it shall provide full and detailed reasons, in writing. Where a central bank of issue proposes amendments with respect to matters relating to the currency it

PUBLIC

issues, the decision shall be amended with respect to those matters. Where a central bank of issue objects with respect to matters relating to the currency it issues, those matters shall not be included in the decision.';

(22) Article 24c is deleted;

(23) Article 24d is replaced by the following:

'Article 24d

Decision making within the Executive Board ~~in relation to third-country CCPs~~

Where the Executive Board takes decisions or other measures pursuant to Articles 25(2), 25(2a), 25(2b), 25(2c), 25(5), 25p, 85(6), 89(3b) and, for Tier 2 CCPs, also in accordance with Articles 25a, 25b, 25f to 25o, 25q, 41, 44, 46, 50 and 54, the Executive Board shall take such decisions and measures within 10 working days.

Where the Executive Board takes decisions or undertakes other measures pursuant to Articles other than those referred to in the first subparagraph, including Article 22c, it shall take such decisions and measures within three working days.';

(24) Article 24e is deleted;

(25) Article 25c is amended as follows:

(a) in paragraph 2, point (a) is replaced by the following:

~~'(a) the Chair of the Executive Board, who shall chair the college'~~;-a member of the Executive Board of ESMA, who shall chair the college

Formatted: Strikethrough

(b) in paragraph 2, point (b) is deleted;

(c) paragraph 3 is replaced by the following;

'3. The college members may request that the ~~Executive Board~~ third country CCP college discusses specific matters in relation to a CCP established in a third country. Such request shall be made in writing and shall include detailed reasoning for the request. The ~~Executive Board~~ third country CCP college shall duly consider such requests and provide an appropriate response.';

Formatted: Strikethrough

Formatted: Strikethrough

(26) Article 54 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

'1. An interoperability arrangement, or any material change to an approved interoperability arrangement under Title V shall be subject to the prior approval of ESMA.

2. ESMA shall grant approval of the interoperability arrangement only where the CCPs involved have been authorised to clear under Article 17 or recognised under Article 25 or authorised under a pre-existing national authorisation regime for a period of at least three years, the requirements laid down in Article 52 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and the arrangement does not undermine the effectiveness of supervision.

3. Where ESMA considers that the requirements laid down in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the other competent authorities and the CCPs involved.';

(b) paragraph 4 is deleted;

PUBLIC

(c) in paragraph 5, the first subparagraph is replaced by the following:

'ESMA, after consulting the members of the ESCB and the ESRB, shall develop draft regulatory technical standards to further specify the requirements for CCPs to adequately manage the risks arising from interoperability arrangements. For that purpose, ESMA shall assess whether the provisions included therein are appropriate in the case of interoperability arrangements covering all types of products or contracts, including derivative contracts and non-financial instruments.';

(27) Articles 60 to 63 are deleted;

(28) Article 64 is replaced by the following:

'Article 64

Supervisory measures

Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annex I, ESMA shall, take actions in accordance with Article 39e of Regulation (EU) No 1095/2010.';

(29) in Article 65, paragraph 1 is replaced by the following:

'1. Where ESMA finds that a trade repository has, intentionally or negligently, committed one of the infringements listed in Annex I, it shall take actions in accordance with Article 39f of Regulation (EU) No 1095/2010 by adopting a decision imposing a fine in accordance with paragraph 2 of this Article and with Regulation (EU) No 1095/2010.';

(30) Articles 66 to 69 are deleted;

(31) in Article 72, paragraphs 1 and 2 are replaced by the following:

'1. ESMA shall charge fees to the trade repositories in accordance with this Regulation, with Article 39n of Regulation (EU) No 1095/2010 and in accordance with the delegated acts adopted pursuant to paragraph 3.

2. The amount of any fee charged to a trade repository shall be proportionate to the turnover of the trade repository concerned and the type of registration and supervision exercised by ESMA.';

(32) Article 73 is replaced by the following:

'Article 73

Supervisory measures by ESMA

Where ESMA finds that a trade repository has committed one of the infringements listed in Annex I, it shall take one or more of the decisions mentioned in Article 39h of Regulation (EU) No 1095/2010.';

(33) in Article 74(1), the second sentence is replaced by the following:

'Such specific supervisory tasks may, in particular, include the power to carry out requests for information and to conduct investigations and on-site inspections in accordance with Articles 39b to 39d of Regulation (EU) No 1095/2010.';

(34) in Article 81(3), point (e) is replaced by the following:

‘(e) the national competent authorities in the Member States of the CCPs accessing the trade repositories;‘;

Formatted: Indent: Left: 1.5 cm, No bullets or numbering

~~(34)~~(35) Article 82 is amended as follows:

(a) the following paragraph 2a is inserted:

‘2a. The power to adopt delegated acts referred to in Article 22a(10) and Article 22c(6) shall be conferred on the Commission for an indeterminate period of time from [OP insert date = date of entry into force of this amending Regulation].’;

(b) paragraph 3 is replaced by the following:

‘3. The delegation of power referred to in Article 1(6), Article 3(5), Article 4(3a), Article 7a(7), Article 11(3a), Article 11(12a), Article 22a(10), Article 22c(6), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 70 and Article 72(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’;

(c) paragraph 6 is replaced by the following:

‘6. A delegated act adopted pursuant to Article 1(6), Article 3(5), Article 4(3a), Article 7a(7), Article 11(3a), Article 11(12a), Article 22a(10), Article 22c(6), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 70 or Article 72(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.’;

~~(35)~~(36) in Article 84, paragraphs 1 and 2 are replaced by the following:

‘1. Competent authorities, ESMA, and other appropriate authorities shall, without undue delay, provide one another with the information required for the purposes of carrying out their duties.

2. Competent authorities, ESMA, other authorities and other bodies or natural and legal persons receiving confidential information in the exercise of their duties under this Regulation shall use it only in the course of their duties.’;

~~(36)~~(37) in Article 88(1), point (c) is replaced by the following:

‘(c) CCPs authorised to offer services or activities in the Union that are established in the Union, and the services or activities which they are authorised to provide or perform, including the classes of financial instruments or non-financial instruments covered by their authorisation;’;

~~(37)~~(38) in Article 89, the following paragraph 14 is added:

‘14. Following the entry into force of the amendments to Article 24a, the Chair of the CCP Supervisory Committee and the independent members appointed in accordance with Regulation (EU) 2019/2099 shall continue to contribute to ESMA’s work related to CCP supervision and regulation until the end of their term in office or until they decide to step down voluntarily, whichever date is earlier.’;

PUBLIC

~~(38)~~(39) Article 90 is deleted;

~~(39)~~(40) Annex IV to Regulation (EU) No 648/2012 is amended in accordance with Annex II to this Regulation;

~~(40)~~(41) Annex V to Regulation (EU) No 648/2012 is replaced by Annex III to this Regulation.

Article 7

Amendments to Regulation (EU) 2021/23

Regulation (EU) 2021/23 is amended as follows:

(1) Article 2 is amended as follows:

(a) point 7 is replaced by the following:

'(7) 'competent authority' means a CCP's competent authority as defined in Article 2, point (13a) of Regulation (EU) No 648/2012;';

(b) the following point 55 is added:

'(55) 'significant CCP' means a significant CCP as defined in Article 2, point (1a), of Regulation (EU) No 648/2012;';

(2) in Article 4(3), the first subparagraph is replaced by the following:

'ESMA, where it is a member of the college pursuant to point (n) of paragraph 2, EBA and the authorities referred to in points (d), (e), (k) and (l) of that paragraph ~~2~~ shall not have voting rights in resolution colleges.';

(3) in Article 5(1), the first subparagraph is replaced by the following:

'ESMA shall create a resolution committee (the 'ESMA Resolution Committee') pursuant to Article 41 of Regulation (EU) No 1095/2010 for the purpose of preparing the decisions entrusted to ESMA in this Regulation, except for the decisions to be adopted pursuant to Article 11 of this Regulation or adopted in the exercise of its function as the competent authority of a significant CCP.';

(4) in Article 6, paragraph 1 is replaced by the following:

'1. Competent authorities, resolution authorities and ESMA shall cooperate closely for the purposes of this Regulation. In particular, during the recovery phase, the competent authority and the members of the supervisory college or relevant authorities as defined in Article 2, point (13c), of Regulation (EU) No 648/2012, as applicable, should cooperate and communicate effectively with the resolution authority, to enable the resolution authority to act in a timely manner.';

(5) the following Article 6a is inserted:

'*Article 6a*
Significant CCPs

Articles 9 to 20, 70 and 79 of this Regulation shall apply to significant CCPs as follows:

(a) for the purpose of Articles 9, 10, 13, 18, 19 and 70 of this Regulation, references to supervisory colleges shall be construed as references to the relevant authorities as defined in Article 2, point (13c), of Regulation (EU) No 648/2012;

PUBLIC

PUBLIC

(b) the obligations laid down in Articles 18, 19 and 79 of this Regulation on the competent authority to notify ESMA shall not apply;

(c) for the purpose of Article 10(2), (7), (9) and (10) of this Regulation, and by way of derogation from Article 11, ESMA shall coordinate with the relevant authorities, as defined in Article 2, point (13c), of Regulation (EU) No 648/2012 in accordance with the following coordination procedure:

(a) the relevant authorities as defined in Article 2, point (13c), of Regulation (EU) No 648/2012 shall examine the recovery plan and, where any authority considers that there are material deficiencies in the recovery plan or any material impediment to its implementation, that authority shall make recommendations to ESMA with regard to those matters within two months of the transmission of the recovery plan by ESMA;

(b) ESMA shall take decisions on the issues referred to in Article 11(2), points (a) and (b) taking into account the views of the relevant authorities as defined in Article 2, point (13c), of Regulation (EU) No 648/2012;

(c) the cooperation arrangement referred to in Article 23(3), of Regulation (EU) No 648/2012 may specify procedural steps and arrangements concerning the coordination between ESMA and the relevant authorities as defined in Article 2, point (13c), of that Regulation.'.

PUBLIC

ANNEX III

'ANNEX V

List of infringements referred to in Article 22c(3)

I. Infringements relating to access requirements:

(a) a significant CCP infringes Article 7(1) by not ensuring a trading venue's right to non-discriminatory treatment;

(b) a significant CCP infringes Articles 7(2) and 7(3) by not acceding or refusing access to a trading venue within three months of the request, or not providing the trading venue with the full reasons for such refusal.

II. Infringements relating to reporting requirements:

(a) a significant CCP infringes Article 7e(1) by not reporting ESMA on a monthly basis, via the central database established pursuant to Article 17c at least the information mentioned in points (a) to (h) of the same paragraph;

(b) a significant CCP infringes Article 9(1) by not ensuring that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported in accordance with this Article to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77; and by not putting in place appropriate procedures and arrangements to ensure the quality of the data they report;

(c) a significant CCP infringes Article 9(1e) by not ensuring that the details of derivatives contracts to be reported are reported correctly and without duplication, including where the reporting obligation has been delegated.

III. Infringements relating to capital requirements:

(a) a significant CCP infringes Article 16(1) by not having a permanent and available initial capital of at least EUR 7.5 million;

(d) a significant CCP infringes Article 16(2) by not having capital, including retained earnings and reserves, which is proportionate to the risk stemming from its activities and at all times sufficient to ensure an orderly winding-down or restructuring of that activities over an appropriate time span and an adequate protection of the CCP against credit, counterparty, market, operational, legal and business risks which are not already covered by specific financial resources as referred to in Articles 41 to 44.

IV. Infringements relating to requirements to obtain an authorisation or a validation;

(a) a significant CCP infringes Article 15 by not submitting an application for an extension of its authorisation to additional clearing services or activities, before extending its business to additional services or activities.

V. Infringements relating to organisational requirements or conflicts of interest:

(a) a significant CCP infringes Article 26(1) by not having robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed and adequate internal control mechanisms, including sound administrative and accounting procedures or by becoming a clearing member, a client, or establishing indirect clearing arrangements with a clearing member with the aim to undertake clearing activities at another CCP, unless such clearing activities are undertaken under an

PUBLIC

interoperability arrangement under Title V or where conducting its investment policies under Article 47;

(b) a significant CCP infringes Article 26(2) by not adopting policies and procedures which are sufficiently effective to ensure compliance including that of its managers and employees, with this Regulation;

(c) a significant CCP infringes Article 26(3) by not maintaining or operating an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities or by not employing appropriate and proportionate systems, resources or procedures including ICT systems managed in accordance with Regulation (EU) 2022/2554;

(d) a significant CCP infringes Article 26(4) by not maintaining a clear separation between the reporting lines for risk management and those for other operations of the CCP;

(e) a significant CCP infringes Article 26(5) by not adopting, implementing or maintaining a remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards;

(f) a significant CCP infringes Article 26(7) by not making its governance arrangements, the rules governing the CCP, or its admission criteria for clearing membership available publicly free of charge;

(g) a significant CCP infringes Article 26(8) by not being subject to frequent and independent audits or by not communicating the results of those audits to the board or by not making those results available to ESMA;

(h) a significant CCP infringes Article 27(1) or Article 27(2), second subparagraph, by not ensuring that its senior management and the members of the board are of sufficiently good repute and experience to ensure the sound and prudent management of the CCP;

(i) a significant CCP infringes Article 27(2) by not ensuring that at least one third, but no less than two, of the members of that board are independent or by not inviting the representatives of the clients of clearing members to board meetings for matters relevant to Articles 38 and 39 or by linking the compensation of the independent and other non-executive members of the board to the business performance of the CCP;

(j) a significant CCP infringes Article 27(3) by not clearly determining the roles and responsibilities of the board or by not making the minutes of the board meeting available to ESMA or the auditors;

(k) a significant CCP infringes Article 28(1) by not establishing a risk committee or by not composing that risk committee of representatives of its clearing members, independent members of the board and representatives of its clients, by composing the risk committee in a way that one of those groups of representatives has a majority in the risk committee, or by not duly informing ESMA of the activities and decisions of the risk committee where ESMA has requested to be duly informed;

(l) a significant CCP infringes Article 28(2) by not clearly determining the mandate, the governance arrangements to ensure its independence, the operational procedures, the admission criteria or the election mechanism of risk committee members or by not making those governance arrangements publicly available or by not determining that the risk committee is chaired by an independent member of the board and reports directly to the board and holds regular meetings;

(m) a significant CCP infringes Article 28(3) by not allowing the risk committee to advise the board on any arrangements that may impact the risk management of the CCP or by not making

PUBLIC

reasonable efforts to consult the risk committee on developments impacting the risk management of the CCP in emergency situations;

(n) a significant CCP infringes Article 28(5) by not promptly informing ESMA of any decision in which the board decides not to follow the advice of the risk committee;

(o) a significant CCP infringes Article 29(1) by not maintaining all the records on the services and activity provided by that CCP for a period of at least 10 years, which are required to enable ESMA to monitor the CCP's compliance with this Regulation;

(p) a significant CCP infringes Article 29(2) by not maintaining, for a period of at least 10 years following the termination of a contract, all information on all contracts it has processed in a way that enables the identification of the original terms of a transaction before clearing by that CCP;

(q) a significant CCP infringes Article 29(3) by not making the records and information referred to in paragraphs 1 and 2 of Article 29, or all information on the positions of cleared contracts, irrespective of the venue where the transactions were executed, available upon request to ESMA and the relevant members of the ESCB;

(r) a significant CCP infringes Article 30(1) by not, or by falsely or by incompletely, informing ESMA of the identities of its shareholders or members, whether direct or indirect, natural or legal, persons that have qualifying holdings or of the amounts of those holdings;

(s) a significant CCP infringes Article 30(4) by allowing the persons referred to in Article 30(1) exercise an influence which is likely to be prejudicial to the sound and prudent management of the CCP;

(t) a significant CCP infringes Article 31(1) by not, or by falsely or by incompletely, notifying ESMA of any change to its management or not providing ESMA with all information necessary to assess compliance with Article 27(1) or Article 27(2), second subparagraph;

(u) a significant CCP infringes Article 33(1) by not maintaining or operating effective written organisational and administrative arrangements to identify or manage any potential conflict of interest between itself, including its managers, employees or any person with direct or indirect control or close links, and its clearing members or their clients known to the CCP or by not maintaining or implementing adequate procedures aiming at resolving possible conflicts of interest;

(v) a significant CCP infringes Article 33(2) by not clearly disclosing the general nature or sources of conflicts of interest, before accepting new transactions from the clearing member concerned, to the clearing member or to a concerned client of that clearing member who is known to the CCP where the organisational or administrative arrangements of that CCP to manage a conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interest of a clearing member or client are prevented;

(w) a significant CCP infringes Article 33(3) by not taking into account in its written arrangements any circumstances, of which it is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other undertakings with which it has a parent undertaking or a subsidiary relationship;

(x) a significant CCP infringes Article 33(5) by not taking all reasonable steps to prevent any misuse of the information held in its systems or preventing the use of that information for other business activities, or by a natural person who has a close link to a CCP or a legal person that has a parent undertaking or a subsidiary relationship with the CCP using confidential

PUBLIC

information recorded in that CCP for any commercial purposes without the prior consent of the client to whom such confidential information belongs;

(y) a significant CCP infringes Article 36(1) by not acting fairly and professionally in accordance with the best interests of its clearing members and their clients;

(z) a significant CCP infringes Article 36(2) by not having accessible, transparent and fair rules for the prompt handling of complaints;

(aa) a significant CCP infringes Article 37(1) or (2) by using, on an ongoing basis, discriminatory, opaque or subjective admission criteria, or by otherwise failing to ensure fair and open access to that CCP on an ongoing basis or by failing to ensure on an ongoing basis that its clearing members have sufficient financial resources and operational capacity to meet the obligations arising from the participation in that CCP, or by not having admission criteria that ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP, or by failing to conduct a comprehensive review of compliance by its clearing members on an annual basis;

(ab) a significant CCP infringes Article 37(1a) by accepting non-financial counterparties as clearing members where such counterparties have not demonstrated how they intend to fulfil the margin requirements and default fund contributions, or by failing to review the arrangements established to monitor that the condition for such non-financial counterparties to act as clearing members is met;

(ac) a significant CCP infringes Article 37(4) by failing to have objective and transparent procedures for the suspension and the orderly exit of clearing members that no longer meet the criteria referred to in Article 37(1);

(ad) a significant CCP infringes Article 37(5) by denying access to a clearing member meeting the criteria referred to in Article 37(1) where such denial of access is not duly justified in writing and based on a comprehensive risk analysis;

(ae) a significant CCP infringes Article 38(1) by not allowing the clients of its clearing members separate access to the specific services provided;

(af) a significant CCP infringes Article 39(7) by not offering the different levels of segregation referred to in that paragraph on reasonable commercial terms.

VI. Infringements relating to operational requirements:

(a) a significant CCP infringes Article 34(1) by not establishing, implementing or maintaining an adequate business continuity policy and response and recovery plan set up in accordance with Regulation (EU) 2022/2554, aiming to ensure the preservation of its functions, the timely recovery of operations and the fulfilment of the CCP’s obligations, which at least allows for the recovery of all transactions at the time of disruption to allow the CCP to continue to operate with certainty and to complete settlement on the scheduled date;

(b) a significant CCP infringes Article 34(2) by not establishing, implementing or maintaining an adequate procedure aimed at ensuring the timely and orderly settlement or transfer of the assets and positions of clients and clearing members in the event of withdrawal of authorisation pursuant to a decision under Article 20;

(c) a significant CCP infringes Article 35(1), second subparagraph, by outsourcing major activities linked to the risk management of that CCP without ESMA's approval;

(d) a significant CCP infringes Article 39(1) by not keeping separate records and accounts that enable it, at any time and without delay, to distinguish in accounts with the CCP the assets and

PUBLIC

positions held for the account of one clearing member from the assets and positions held for the account of any other clearing member and from its own assets;

(e) a significant CCP infringes Article 39(2) by not offering to keep and not keeping where so requested separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions of that clearing member from those held for the account of its clients;

(f) a significant CCP infringes Article 39(3) by not offering to keep and not keeping where so requested separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions held for the account of a client from those held for the account of other clients, or by not offering its clearing members the possibility to open more accounts in their own name for the account of their clients where so requested;

(g) a significant CCP infringes Article 40 by not measuring and assessing its liquidity and credit exposures to each clearing member and, where relevant, to another CCP with which it has concluded an interoperability arrangement on a near to real-time basis or by not having access to the relevant pricing sources to effectively measure its exposures on a reasonable cost basis;

(h) a significant CCP infringes Article 41(1) by not imposing, calling or collecting margins to limit its credit exposures from its clearing members or, where relevant, from CCPs with which it has concluded an interoperability arrangement, or by imposing, calling or collecting margins which are not sufficient to cover potential exposures that the CCP estimates to occur until the liquidation of the relevant positions or to cover losses that result at least 99 % of the exposures movements over an appropriate time horizon or sufficient to ensure that the CCP fully collateralises its exposures with all its clearing members and, where relevant, with all CCPs with which it has concluded an interoperability arrangement, at least on a daily basis, or, by failing to continuously monitor and revise the level of margins to reflect the current market conditions taking into account any potentially procyclical effects;

(i) a significant CCP infringes Article 41(2) by failing to adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared taking into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction;

(j) a significant CCP infringes Article 41(3) by not calling and collecting margins on an intraday basis, at least when predefined thresholds are exceeded or by holding intraday variation margin payments after it has collected all such payments due, instead of passing them on, where possible;

(k) a significant CCP infringes Article 42(3) by not maintaining a default fund which at least enables it to withstand, under extreme but plausible market conditions, the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members if the sum of their exposures are larger, or by developing scenarios that do not include the most volatile periods that have been experienced by the markets for which the CCP provides its services and a range of potential future scenarios, which take into account sudden sales of financial resources and rapid reductions in market liquidity;

(l) a significant CCP infringes Article 43(2) where its default fund referred to in Article 42 and its other financial resources referred to in Article 43(1) do not enable it to withstand the default of the two clearing members to which it has the largest exposures under extreme but plausible market conditions;

PUBLIC

(m) a significant CCP infringes Article 44(1) by not having access at all times to adequate liquidity to perform its services and activities or by not measuring on a daily basis its potential liquidity needs;

(n) a significant CCP infringes Article 45(1), (2) and (3) by not using the margins posted by a defaulting clearing member prior to other financial resources in covering losses;

(o) a significant CCP infringes Article 45(4) by not using dedicated own resources before using the default fund contributions of non-defaulting clearing members;

(p) a significant CCP infringes Article 45a(1) by taking any of the actions listed under points (a), (b) and (c) of that paragraph where ESMA has required the CCP to refrain from taking any such actions for a period specified by ESMA;

(q) a significant CCP infringes Article 46(1) by accepting anything other than highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members where other collateral is not allowed under the delegated act adopted by the Commission under Article 46(3);

(r) a significant CCP infringes Article 46(1) by accepting public guarantees, public bank guarantees or commercial bank guarantees, where such guarantees are not unconditionally available upon request within the liquidation period referred to in Article 41, or by not setting, in its operating rules, the minimum acceptable level of collateralisation for the guarantees it accepts, or by accepting public guarantees, public bank guarantees or commercial bank guarantees to cover exposures other than its initial and ongoing exposure to its clearing members that are non-financial counterparties or to clients of clearing members, provided that those clients of clearing members are non-financial counterparties or by, where public guarantees, public bank guarantees or commercial bank guarantees are provided to the CCP, not complying with the requirements set out under the third subparagraph, points (a) to (e), of that paragraph;

(s) a significant CCP infringes Article 47(1) by investing its financial resources other than in cash or highly liquid financial instruments with minimum market and credit risk and capable of being liquidated rapidly with minimal adverse price effect;

(t) a significant CCP infringes Article 47(3) by not depositing financial instruments posted as margins or as default fund contributions with operators of securities settlement systems that ensure the full protection of those financial instruments where those are available or by not using other highly secure arrangements with authorised financial institutions;

(u) a significant CCP infringes Article 47(4) by performing cash deposits other than through highly secure arrangements with authorised financial institutions or through the use of standing deposit facilities of central banks or other comparable means provided by central banks;

(v) a significant CCP infringes Article 47(5) by depositing assets with a third party without ensuring that the assets belonging to the clearing members are identifiable separately from the assets belonging to the CCP and from assets belonging to that third party by means of differently titled accounts on the books of the third party or any other equivalent measures that achieve the same level of protection or by not having prompt access to the financial instruments when required;

(w) a significant CCP infringes Article 47(6) by investing its capital or the sums arising from the requirements laid down in Articles 41 to 44 in its own securities or those of its parent undertaking or its subsidiary;

PUBLIC

(x) a significant CCP infringes Article 48(1) by not having detailed procedures in place to be followed where a clearing member does not comply with the participation requirements laid down in Article 37 within the time limit and in accordance with the procedures established by the CCP, or by not setting out in detail the procedures to be followed in the event the default of a clearing member is not declared by the CCP, or by not reviewing those procedures annually;

(y) a significant CCP infringes Article 48(2) by failing to take prompt action to contain losses and liquidity pressures resulting from clearing member defaults and to ensure that the closing out of any clearing member's positions does not disrupt its operations or expose the non-defaulting clearing members to losses they cannot anticipate or control;

(z) a significant CCP infringes Article 48(3) by failing to promptly inform ESMA before the default procedure is declared or triggered;

(aa) a significant CCP infringes Article 48(4) by not verifying that its default procedures are enforceable and not taking all reasonable steps to ensure that it has the legal powers to liquidate the proprietary positions of the defaulting clearing member and to transfer or liquidate the clients' positions of the defaulting clearing member;

(ab) a significant CCP infringes Article 49(1) by not regularly reviewing its models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements or other risk control mechanisms; by not subjecting those models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions; by not performing back tests to assess the reliability of the methodology adopted; by failing to obtain independent validation; by failing to inform ESMA of the results of the tests performed; or by failing to obtain ESMA's validation before adopting any significant change to the models and parameters where ESMA did not allow for a provisional adoption of that change prior to its validation;

(ac) a significant CCP infringes Article 49(2) by not regularly testing the key aspects of its default procedures or by failing to take all reasonable steps to ensure that all clearing members understand them and have appropriate arrangements in place to respond to a default event;

(ad) a significant CCP infringes Article 50(1) by not using, where practical and available, central bank money to settle its transactions or by not taking steps to strictly limit cash settlement risks where central bank money is not used;

(ae) a significant ~~Tier 2~~ CCP infringes Article 50(3) by not eliminating principal risks through the use of delivery-versus-payment mechanisms to the extent possible, where that CCP has an obligation to make or receive deliveries of financial instruments;

(af) a significant CCP infringes Article 50a or Article 50b by not calculating KCCP as specified in those Articles or by not following the rules for the calculation of KCCP set out in Articles 50a(2), 50b and 50d;

(ag) a significant CCP infringes Article 50a(3) by calculating KCCP less than quarterly or less frequently than required by ESMA in accordance with Article 50a(3);

(ah) a significant CCP infringes Article 51(2) by not having non-discriminatory access both to the data that it needs for the performance of its functions from a trading venue to the extent that the CCP complies with the operational and technical requirements established by that trading venue and to the relevant settlement system;

(ai) a significant CCP infringes Article 52(1) by entering into an interoperability arrangement without fulfilling any of the requirements set out in points (a) to (d) of that paragraph;

PUBLIC

(aj) a significant CCP infringes Article 53(1) by not distinguishing in accounts the assets and positions held for the account of another CCP with whom it has entered into an interoperability arrangement;

(ak) a significant CCP CP infringes Article 54(1) by entering into an interoperability arrangement, or making a material change to an approved interoperability arrangement under Title V, without the prior approval of ESMA.

VII. Infringements relating to transparency and the availability of information:

(a) a significant CCP infringes Article 38(1) by not publicly disclosing the prices and fees of each service provided separately including discounts and rebates and the conditions to benefit from those reductions;

(b) a significant CCP infringes Article 38(1) by not disclosing the information on costs and revenues of its services to ESMA;

(c) a significant CCP infringes Article 38(2) by not disclosing to its clearing members and their clients the risks associated with the services provided;

(d) a significant CCP infringes Article 38(3) by not disclosing to its clearing members or ESMA the price information used to calculate its end-of-day exposures to its clearing members or by not publicly disclosing the volume of cleared transactions for each instrument cleared by the CCP on an aggregated basis;

(e) a significant CCP infringes Article 38(4) by not publicly disclosing the operational and technical requirements relating to the communication protocols covering content and message formats it uses to interact with third parties including the operational and technical requirements referred to in Article 7;

(f) a significant CCP infringes Article 38(5) by not publicly disclosing any breaches by clearing members of the criteria referred to in Article 37(1) or the requirements laid down in Article 38(1) except where ESMA considered that such a disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved;

(g) a significant CCP infringes Article 38(6) by not providing its clearing members with a simulation tool allowing them to determine the amount of additional initial margin, at portfolio level, that the CCP may require upon the clearing of a new transaction, including simulation of the margin requirements that they might be subject to under different scenarios, or by not making that tool accessible on a secured access basis;

(h) a significant CCP infringes Article 38(7) by not providing its clearing members with information on the initial margin models it uses, as detailed in points (a), (b) and (c) of that paragraph, in a clear and transparent manner;

(g) a significant CCP infringes Article 38(8) by not providing, or providing with a significant delay, in response to a request by a clearing member, the information requested to allow that clearing member to comply with the first subparagraph of that paragraph, where such information has not already been provided;

(h) a significant CCP infringes Article 39(7) by not publicly disclosing the levels of protection and the costs associated with the different levels of segregation that it provides;

(i) a significant CCP infringes Article 49(3) by not publicly disclosing key aspects on its risk management model or assumptions adopted to perform the stress test referred to in Article 49(1);

PUBLIC

(j) a significant CCP infringes Article 50(2) by not clearly stating its obligations with respect to deliveries of financial instruments, including whether it has an obligation to make or receive delivery of a financial instrument or whether it indemnifies participants for losses incurred in the delivery process;

(k) a significant CCP infringes Article 50c(1) by not reporting the information referred in points (a) to (e) of Article 50c(1) to those of its clearing members which are institutions or to their competent authorities;

(l) a significant CCP infringes Article 50c(2) by notifying those of its clearing members which are institutions less than quarterly or less frequently than required by ESMA in accordance with Article 50c(2).

VIII. Infringements relating to obstacles to the supervisory activities:

(a) significant CCP infringes Article 22c and Regulation (EU) No 1095/2010 by failing to provide information in response to a decision requiring information pursuant to the same paragraph or by providing incorrect or misleading information in response to a simple request for information or a decision by ESMA in accordance with the same paragraph and the provisions of Regulation (EU) No 1095/2010;

(b) a significant CCP or its representatives provide incorrect or misleading answers to questions asked pursuant the provisions of Regulation (EU) No 1095/2010;

(c) a significant CCP infringes the provisions of Regulation (EU) No1095/2010 by not complying with ESMA's request for records of telephone or data traffic;

(d) a significant CCP does not comply in due time with a supervisory measure required by a decision adopted by ESMA pursuant to the provisions of Regulation (EU) No 1095/2010;

(e) a significant CCP does not submit to an on-site inspection required by an inspection decision adopted by ESMA pursuant to the provisions of Regulation (EU) No 1095/2010.'.