



## **Guidelines and recommendations regarding written agreements between members of Central Counterparties (CCPs) colleges of supervision. July 2013.**

ESMA published, on the 4 of June 2013, a report with the Guidelines and Recommendations regarding written agreements between members of Central Counterparties colleges (forward CCPs).

Article 18 of the Regulation (UE) n° 648/2012, of the European Parliament and of the Council, of 4 July 2012, on OTC derivatives, Central Counterparties, and Trade Repositories, indicates that the establishment of the CCPs colleges of supervision shall be based on a written agreement between all its members. This agreement shall determine the practical arrangements for the functioning of the college, including detailed rules on voting procedures, and may determine tasks to be entrusted to the CCP's competent authority or another member of the collage. ESMA, in order to ensure the consistent and coherent functioning of colleges across the UE, shall develop draft regulatory technical standards detailing the above referred practical arrangements for the functioning of the colleges.

On 31 January 2013, the EC informed ESMA that it had not endorsed ESMA's first draft because it exceeded the mandate given by the legislator to specify the details of the practical arrangements of the agreement. Besides, the EC interprets that EMIR Regulation imposes an obligation for the national authorities to participate in any CCP college for which they are eligible (excluding also a potential veto power over the authorisation of a CCP on the part of individual competent authorities) and that, if that an authority decides not to participate, such failure would entail a breach of EU law.

ESMA issued, the 14 of March, an opinion proposing in its Annex I a new draft regulatory technical standards on colleges for CCPs. ESMA's opinion and the recital 5 of the draft address that ESMA should issue some Guidelines and Recommendations adopting a standard written agreement that will facilitate the establishment of CCP colleges. ESMA includes in the report the discussion of why it was considered appropriate to issue these Guidelines without public consultation.

ESMA, following the EC's opinion, considers that these Guidelines could work as an early mechanism to ensure the establishment of the college, before activating a legal proceeding. When a national competent authority elects no to agree with the provisions of the standard written agreement included in the Guidelines and Recommendations, which could affect the establishment of a college and the authorization of the CCP, that national competent authority should be required to justify in front of ESMA such decision stating its reasons. The Guidelines and Recommendations are two:

### **1. Standard written agreement.**

When establishing a CCP college under article 18.5 of EMIR, a national competent authority should propose a written agreement in accordance with the standard written agreement included in Annex I of these Guidelines for the establishment and functioning of the college of a CCP.

## 2. Adoption of written agreement by college members.

When presented with a written agreement for the establishment and functioning of a CCP college that does not depart from the standard written agreement included in Annex I a national competent authority should agree to such written agreement within 12 calendar days from receipt and should avoid requesting changes to the written agreement that introduces a departure from the standards written agreement. A proposal to entrust additional tasks on one or more members of the college relating to the specific circumstances of an individual CCP should not be considered as a departure from the standard written agreement.

**Annex I** details the provisions of the **standard written agreement** outstanding the following features:

- The standard written agreement does not create any additional legally binding obligations on the college members.
- The standard written agreement intends to facilitate the establishment of the college within the peremptory 30 calendar days of the submission of a complete application for a CCP authorisation, as well as to exercise the tasks assigned in EMIR Regulation.
- The formation of the college, authorisation applications and withdrawals of authorisation are described in the agreement.
- The chairing authority is defined as the competent authority designated by the Member State of the CCP.
- The working language and the language in which chairing authority will communicate with college members will be English.
- The college will meet in person at least annually and where it is not feasible for a college member to physically attend an in person meeting, they might participate by teleconference or videoconference call. The quorum for meetings of the college is two-thirds of the college members.
- The college will be notified of the chairing authority opposition to a proposed direct or indirect acquisition of a qualifying holding in a CCP.
- The chairing authority, when performs an on going risk review or evaluation, shall consult and be informed by the views of college members who will receive a detailed result of the finding of such review or evaluation.
- Any entrustment of tasks will be voluntarily entered into by the college members in question and should be structured in such a way as to not to impact on the operation of the written agreement or the ability of other college members to participate fully and effectively in the college and shall not result in a change in the allocation of voting rights between college members.
- The chairing authority will be responsible for meeting any request for information made to the college from authorities other than college members. Information requests from college members will be addressed to the chairing authority and the requesting authority should copy the request to all college members. Such request should include an explanation of its reasons.
- Chairing authority and college members are responsible for assessing whether a CCP is facing an

emergency situation, for guidance, any situation on which there is (or is a serious threat of) a major disruption to the functioning of CCP or there is significant evidence of a high risk of default of a major participant of a CCP. The chairing authority will share critical information with college members and will coordinate the preparation of a protocol regarding the operation of the college in that situation.

- The college members will endeavor to resolve any disputes in the operation of the (bilateral or multilateral) college or during the adoption of opinions of the college through informal discussion between the college members. Such discussion may be bilateral or multilateral, chairing authority shall always be informed of any dispute. If the dispute were not resolved internally, it will be referred to ESMA.

These guidelines will now be translated into all EU languages and will enter into force two months after the publication of the translations in ESMA's webpage.

If you want to read the final report that contains the Guidelines and Recommendations regarding written agreements between members of CCP colleges, please, do click, on: [http://www.esma.europa.eu/system/files/2013-661\\_report\\_gr\\_on\\_college\\_written\\_agreement\\_-\\_final\\_for\\_publication\\_20130604.pdf](http://www.esma.europa.eu/system/files/2013-661_report_gr_on_college_written_agreement_-_final_for_publication_20130604.pdf)