

Peer review on supervision of CSDs providing cross-border services or participating in interoperable links

Peer Review Report

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List of Terms and Acronyms

BoS	Board of Supervisors
CSD	Central Securities Depository. A legal person that operates a securities settlement system and provides at least a notary services or a central maintenance service.
CSDR	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
ESMAR	ESMA Regulation - Regulation (EU) No. 1095 /2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
EU	European Union
FTE	Full time equivalent. One FTE is equivalent to one employee working full-time
Home NCA	NCA of the home Member State as defined under Article 2(1)(23) of CSDR
Host NCA	NCA of the host Member State as defined under Article 2(1)(24) of CSDR
ICSD	International Central Securities Depository. A CSD that settles domestic and international securities transactions and typically offers additional services such as securities lending and collateral management. ICSDs are usually run on direct or indirect (through correspondent banks) links to local CSDs ¹ .
Investment firms	As per definition in Article 4(1)(1) of MiFID II
ITS on CSD requirements	Commission Implementing Regulation (EU) 2017/394 of 11 November 2016 laying down implementing technical standards with regard to standard forms, templates and procedures for authorisation, review and evaluation of central securities depositories, for the cooperation between authorities of the home Member State and the host Member State, for the consultation of authorities involved in the authorisation to provide banking-type ancillary services, for access involving central securities depositories, and with regard to the format of the records to be maintained by central securities depositories in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council.
Mandate	Mandate for this peer review as approved by the BoS on 28 January 2021
Methodology	ESMA Peer Review Methodology (ESMA42-111-4966)
MS	Member State

NCA	National Competent Authority
PRC	Peer Review Committee
PTSC	Post-Trading Standing Committee
RTS on CSD Requirements	Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories.
RTS on CSD Prudential Requirements	Commission Delegated Regulation (EU) 2017/390 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on certain prudential requirements for central securities depositories and designated credit institutions offering banking-type ancillary services.
SSS	Securities Settlement System as per Article 2(1)(10) of CSDR

¹ EC impact assessment report accompanying the Proposal for a regulation amending CSDR, https://ec.europa.eu/finance/docs/law/220316-csdr-review-impact-assessment_en.pdf

1. Executive Summary

With the aim to increase safety and efficiency in the area of securities settlement, CSDR lays down uniform conditions for the provision of CSD services in other Member States, including for links between CSDs. Effective supervision by NCAs of CSDs providing services on a cross-border basis is therefore of key importance to ensure the smooth functioning of securities markets.

According to Article 24(6) of CSDR, without prejudice to Article 30 of ESMA Regulation, ESMA shall, after consulting the members of the ESCB, organise and conduct, at least every three years, a peer review of the supervision of CSDs which make use of the freedom to provide services in another Member State (to be read as EEA State hereinafter) in accordance with Article 23 of CSDR or to participate in an interoperable link.

In this context, in 2020 the ESMA Board of Supervisors (BoS) decided, through the ESMA Annual Work Programme 2021, to launch the first peer review on the supervision of CSDs providing cross-border services or participating in interoperable links.

The peer review was carried out based on the Peer Review Methodology² (the Methodology) by an ad-hoc Peer Review Committee (PRC).

Assessment areas

The peer review covers the supervision of cross-border provision of services by CSDs including through links and branches and were applicable through the operation of an interoperable link, under the freedom to provide services in another Member State in accordance with Article 23 of CSDR. Accordingly, the peer review focuses on the NCAs' supervision of cross-border provision of services by CSDs, in the NCAs' capacity as home and host authorities, across six key areas: (i) initial authorisation process; (ii) passporting procedure; (iii) cooperation arrangements between home and host NCAs; (iv) ongoing supervisory activities; (v) investigations and inspections; and (vi) enforcement measures.

Through questionnaires, on-site visits and stakeholders' outreach, the peer review provides an assessment of NCAs against supervisory expectations on all these key areas. In line with the expectations set out in the peer review Mandate (Mandate) which forms the basis of this peer review, specific supervisory focus is given to the cross-border dimension of CSDs' activities and the specific risks and complexities that this type of activities carries for CSDs and NCAs' supervision.

The PRC applied a proportionate approach by taking into account the range of services provided by the CSDs (distinguishing between CSDs with a banking licence and those without a banking licence), the number of host jurisdictions where the CSDs provide cross-border services, the organisational and operational set-up used (e.g. interoperable link, branches), as well as the respective size of the markets served.

Jurisdictions assessed

The peer review targeted the six most relevant jurisdictions (BE, DE, FR, LU, LV and SE), selected taking into account (i) the substantial importance of a CSD in more than one host Member State, (ii) the number and use of CSD links between EEA CSDs and (iii) the balanced distribution in terms of the model for the provision of cross-border services. The peer review

² [esma42-111-4966_peer_review_methodology.pdf \(europa.eu\)](https://esma.europa.eu/press-material/press-news/press-news-releases-and-other-statements/esma42-111-4966-peer-review-methodology-pdf)

assessed all six relevant NCAs in their capacity as home NCAs in respect of selected CSDs. Their assessment in their capacity as host NCAs was conducted in respect of the CSDs from other EEA countries providing (or intending to provide) cross-border services in their respective jurisdictions under Article 23 of CSDR.

The PRC assessed these six jurisdictions against the supervisory expectations specifically identified in the Mandate approved by the BoS, taking into account the importance of an appropriate level of safety in the provision of services by CSDs in another Member State.

Overall findings

All NCAs except two (LV, SE) have conducted satisfactory initial authorisation processes, using adequate tools and procedures to assess the links.

While all NCAs appear to fully comply with the CSDR passporting requirements in their capacity as home NCAs, the practices appear to differ between NCAs when they act in their host NCA capacity, where they have a crucial role to play, under the existing procedure i.e. to approve the assessment of the measures that the CSD intends to take to allow its users to comply with their national law. All NCAs, except for SE, have a process in place to monitor and update the list of key provisions of their securities law, which serves as reference for CSDs to provide a self-assessment; moreover, all NCAs, except for SE, involve their legal teams in the analysis of the self-assessment submitted by the CSDs.

On cooperation, the findings overall reflect a lack of structured cooperation between home and host authorities. As home NCAs, only one (LV) of the reviewed NCAs, having set up a fully-fledged college of supervisors, fully complies with the CSDR requirements, while another one (LU) after the end of the PR period has started the negotiation of a MoU with its supervised ICSD's host NCAs. The other reviewed NCAs in their home capacity have not yet established the cooperation arrangements required by Article 24 (4) of CSDR in the context of the CSDs they supervise being of substantial importance for host jurisdictions. As host NCAs, all reviewed NCAs request very limited to no information on the CSDs which provide services in their jurisdiction and should consider requesting more information to the relevant home authorities. The PRC considered the college of supervisors examined in the course of this peer review as a very efficient forum to exchange information, foster discussion and coordinate supervisory tasks among the participating authorities.

All six NCAs, in their home NCA capacity, conduct the CSD ongoing supervision in a holistic way considering the entire organisation, activities and services provided by the CSDs, without distinguishing between domestic and cross-border services. Nevertheless, the PRC highlights that there are some aspects that are specific for cross-border services (e.g. in terms of monitoring the mitigation of additional risks, as well as in terms of having adequate information on the services provided on a cross-border basis, so that this information could be communicated to host NCAs). Depending on the identified risks, ongoing supervision should target specific cross-border aspects, such as settlement via links, servicing foreign issuers and foreign participants, holding assets in foreign jurisdictions, settlement services in non-national currencies, the provision of services in respect of financial instruments constituted under the law of another Member State.

Furthermore, while acknowledging the different risk profiles and the range of services provided by the CSDs, the peer review showed very different approaches across NCAs in terms of ongoing supervision, ranging from limiting this activity to the annual CSDR review and evaluation

process to a monitoring of the risks faced and posed by the CSD with advanced tools and a rich set of daily data.

All six NCAs have processes and procedures for conducting investigations and on-site inspections, which provide for inter-departmental cooperation. However, only two NCAs (BE and LV) have conducted on-site inspections under CSDR (partly due to the recent authorisation of the CSDs under CSDR); at the same time, two NCAs (DE and LU) have conducted investigations and on-site inspections under the banking regulation. BE has a very good, proactive process in place including a scoring of the findings. DE, LU, LV make good use of investigations and on-site inspections as supervisory tools. FR and SE have not yet made use of investigations and on-site inspections covering CSD cross-border services.

All six NCAs have governance arrangements and procedures for the enforcement process that allows for the right to be heard. At the same time, only one NCA (LV) has launched an enforcement case under CSDR against the CSD it supervises, which resulted in a public warning.

Overall assessment - The tables below summarise the PRC's assessment of the six NCAs against the expectations specifically defined for this peer review, in their role as home and host (where applicable) NCA in each assessment area. The assessment is based on the benchmarks set in the Methodology.

TABLE 1 - ASSESSMENT OF NCAS IN HOME CAPACITY

	BE	DE	FR	LU	LV	SE
Initial authorisation process	Green	Yellow	Green	Yellow	Orange	Orange
Passporting procedures	Green	Green	Green	Green	Green	Green
Cooperation arrangements	Orange	Orange	Orange	Yellow	Green	Orange
Ongoing supervisory activities	Green	Orange	Green	Orange	Red	Orange
Investigations and inspections	Green	Yellow	Orange	Yellow	Yellow	Orange
Enforcement measures	Yellow	Yellow	Yellow	Yellow	Green	Yellow

TABLE 2 - ASSESSMENT OF NCAS IN HOST CAPACITY

	BE	DE	FR	LU	LV	SE
Passporting procedures	Green	Green	Green	Green	Yellow	Red
Cooperation arrangements	Orange	Orange	Orange	Orange	Orange	Orange

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

Authorisation/notification of links process: for DE, SE, LV to develop specific tools to monitor links; for LV, to take more into consideration all potential risks linked to the unique multi-jurisdictional structure of its supervised CSD when making assessments.

Passporting procedure: As host NCA, given the complexity of the regulatory process set out in Article 23(3) to (7) of CSDR, as specified in various supervisory convergence guidance, the PRC suggests to NCAs to define a specific internal process to assess passport requests (including a method to review the assessment and to communicate its decision to the

requesting CSD). It could be envisaged to discuss at ESMA level if new supervisory convergence measures to harmonise the procedures used by NCAs are needed.

Cooperation arrangements: The PRC expects NCAs acting as home NCAs to CSDs which are of substantial importance in other Member States to negotiate and establish cooperation arrangements with all concerned authorities to comply with Article 24(4) of CSDR and suggests to NCAs in their host NCA capacity to make use of the opportunity offered by Article 24(2) and (3) of CSDR³ to request information on the provision of services by CSDs from other Member States in their jurisdictions and concretely assess the possibility to establish a college of supervisors.

Ongoing supervision: The PRC invites NCAs to develop specific risk indicators on cross-border services and a process for measuring (scoring) risks related to the provision of cross-border services, which should be supported by analytical tools to assess risks. In this regard, ESMA may undertake supervisory convergence work. While the PRC acknowledges that supervision of cross-border provision of services is an integral part of the CSD supervisory framework, the PRC recommends NCAs to include cross-border services as an area of focus in their supervisory activities, developing assessment criteria and supervisory expectations. In most cases, NCAs appear to have the relevant information and data, however without using it to assess cross-border services in particular. An active engagement and exchange of information on this topic with the CSDs as well as with the host authorities or the home authorities, as the case may be, should be put in place as part of the ongoing supervisory activities. The PRC suggests to NCAs, in their capacity as host NCAs, to be more proactive and: a) encourage participants and issuers to report issues they may encounter; and b) ask home NCAs for information and data regarding CSD cross-border services.

In terms of NCA specific recommendations, the PRC acknowledges that LV is in the process of restructuring as of next year, through the merger with the Bank of Latvia that will take over the NCA's responsibilities and recommends that more resources be allocated for the supervision of the CSD. The PRC recommends that LV increases its proactivity in situations of sudden particular market events which could impact the smooth functioning of its CSD, e.g. cyber incidents affecting trading venues and potentially other entities of the same group to which major operations are outsourced. The PRC also recommends LV to engage more with other competent authorities in relation to the CSD's Group, covering information sharing on outsourced services. LU is recommended to consider going one step lower for incident notification by the CSD, as this would enable a closer monitoring of the issues; at the same time, less important incidents may not need to trigger the need to be escalated to the Board of the NCA.

Investigations and on-site inspections: The PRC recommends all NCAs, apart from FR and SE, that have not made use of investigations and on-site inspections covering CSD cross-border services, to conduct thematic investigations/ on-site inspections with a focus on cross-

³ CSDR, Article 24 (2) : The competent authority of the home Member State or of the host Member State may require CSDs which provide services in accordance with Article 23 to report to them periodically on their activities in that host Member State, including for the purpose of collecting statistics. The competent authority of the host Member State shall, on request of the competent authority of the home Member State, provide those periodic reports to the competent authority of the home Member State.

CSDR, Article 24(3): The competent authority of the home Member State of the CSD shall, on the request of the competent authority of the host Member State and without delay, communicate the identity of the issuers and participants in the securities settlement systems operated by the CSD which provides services in that host Member State and any other relevant information concerning the activities of that CSD in the host Member State.

border services. However the PRC also understands that, currently, the CSDR Review and Evaluation (R&E) takes a lot of resources. Given the importance of its supervised CSD for three foreign jurisdictions, the PRC recommends LV to develop criteria to select the topics for investigations and inspections, including a focus on cross-border services and related risks (e.g. operational risks related to branches, legal risks). The PRC recommends supervisors in DE not to over-rely on the outsourced audits, but to also conduct their own supervisory work and to ensure that the audit methodology contains enough specific focus on the CSD cross-border services and relevant risks.

Enforcement measures: Based on the severity of the infringements, NCAs may consider the sanctioning process notwithstanding whether remediation is achieved or not, for punishment / deterrence purposes.

Good practices

Some good practices were also identified in the peer review, such as the definition of specific monitoring tools for the review of links in the context of the CSD authorisation process, or regarding cooperation among authorities, the very early involvement of host NCAs in the authorisation process of the CSD in LV and the cooperation among authorities that already exists at group level for certain CSDs.

Regarding the ongoing supervision of CSD cross-border services, the PRC would like to mention several good practices in respect of the on-going supervision conducted by BE as follows: a) the integration of the findings of investigations and on-site inspections in the CSDR R&E assessment, b) the use of an advanced tool to analyse quantitative data, c) the approach to incidents reporting and substantive changes notifications going beyond the CSDR requirements; d) the process to monitor incidents and to communicate incidents related information to concerned authorities, where the incidents have a cross-border impact. The PRC also notes as good practice that in FR, the NCA monitors legal risks as being relevant when assessing the risks of the provision of cross-border services (for example, risks derived from the asset protection rules applicable to the receiving CSD, the securities eligibility, and the tax regimes of the different markets), as well as operational risk, which, according to the NCA, could materialize, for instance, through problems in the reconciliation process, or problems in the communication flows. The PRC considers as a good practice LV's discussion of preliminary findings from the CSDR R&E with the other members of the CSD Supervisory College.

The PRC also identified some good practices in respect of investigations and on-site inspections: a) issues spotted by BE during the recurrent risk analysis are used to trigger targeted investigations and on-site inspections, as well as the other way around, findings during investigations and on-site inspections feed into the CSDR R&E and the SREP (such practices reflect the expectations for the application of risk-based supervision); b) LV has used on-site inspections to gather information as part of the CSDR R&E process; c) LU's NCA shares findings with DE's NCA in the context of cooperation arrangements.

When it comes to enforcement measures, the PRC welcomes the practice where actions for remediation come first (e.g. the follow-up letter used by FR after an inspection report or the use of injunction letters in the case of LU).

While the peer review covers six NCAs, all NCAs in the EEA should consider the findings,

recommendations and good practices in this report in the context of their supervisory framework. Indeed, to a varying extent, all NCAs across the EEA have a responsibility as home authority to supervise outgoing cross-border activities from the CSD(s) authorised in their jurisdictions. In turn, all NCAs will also be impacted, from a host perspective, if CSD services provided in their territory are detrimental to their national market stakeholders' interests. Therefore, all NCAs across the EEA have a role to play and can benefit from each other's reinforced supervisory practices for the supervision of CSD cross-border services.

2. Introduction

1. This report presents the main findings of the peer review carried out on NCAs' supervision of CSDs providing cross-border services or participating in interoperable links.
2. The report is organised as follows: (i) this section provides background information on the peer review work; (ii) Section 3 provides contextual information on the nature, scale and complexity of cross-border activities from the jurisdictions in scope; (iii) Section 4 presents the peer review findings and assessment including recommendations and good practices; (iv) the Annexes enclose the Mandate that formed the basis of the peer review, the questionnaire sent to NCAs in scope, and statement provided by Latvijas Banka.

2.1 Background

3. According to Article 24(6) of CSDR, without prejudice to Article 30 of ESMA Regulation, ESMA shall, after consulting the members of the ESCB, organise and conduct, at least every three years, a peer review of the supervision of CSDs which make use of the freedom to provide services in another Member State in accordance with Article 23 of CSDR or to participate in an interoperable link.
4. One of the main objectives of CSDR is to increase the safety and efficiency of securities settlement and settlement infrastructures by laying down provisions allowing CSDs to provide their services on a cross-border basis without having to comply with different sets of national requirements such as those concerning the authorisation, supervision, risk management.
5. With the aim to increase safety and efficiency in the area of securities settlement, CSDR lays down uniform conditions for links between CSDs and for access between CSDs and other market infrastructures which should be granted on fair, reasonable and non-discriminatory terms and should be refused only where it threatens the smooth and orderly functioning of the financial markets or causes systemic risk.
6. Effective supervision by NCAs of CSDs providing services on a cross-border basis is therefore of key importance to ensure the smooth functioning of securities markets.
7. In view of the above, in 2020 the BoS decided, through the ESMA Annual Work Programme 2021, to launch the first peer review on the supervision of CSDs providing cross-border services or participating in interoperable links.

2.2 Scope of the peer review

8. The peer review focuses on supervision of cross-border provision of services by CSDs.
9. In particular, the review considers six assessment areas as relevant to supervision:
 - Initial authorisation process pursuant to Articles 17 of CSDR and where applicable the extension and outsourcing of services and activities under Article 19 of CSDR in respect of the provision of cross-border services by CSDs including through links and branches and, where applicable, through the operation of an interoperable link;
 - Processing of passporting procedure pursuant to Article 23(3) of CSDR and the supervisory assessment by NCAs in their host Member State capacity of the measures

CSDs from other EEA States intend to take to allow their users to comply with the NCA's national law referred to in Article 49(1) of CSDR;

- Cooperation arrangements between home and host NCAs pursuant to Article 24 of CSDR;
 - Arrangements in place to carry out ongoing supervisory activities;
 - Carrying out of investigations and inspections; and
 - Enforcement activities including administrative sanctions and measures foreseen under the national framework and, applied where relevant, in relation to the provision of cross-border services, in particular under Article 24(5) of CSDR.
10. The Peer Review Committee (PRC) worked across these areas in relation to NCAs' work in their home authority capacity (for BE, FR and LU, in respect of only one of the CSDs under their respective supervision) as well as in their host authority capacity in respect of all CSDs from other EEA countries providing (or intending to provide) cross-border services in their respective jurisdictions under Article 23 of CSDR.
11. Across these areas, and in accordance with ESMAR, the PRC reviewed the independence of the NCAs and their capacity to achieve high quality supervisory outcomes, including the adequacy of resources and governance and the effective application of CSDR objectives, the capacity of the NCA to respond to market developments, the degree of convergence in the application of law and supervisory practices, and the extent to which the practices achieve CSDR objectives.

2.3. NCAs under review

12. The peer review targeted the six most relevant jurisdictions⁴, namely those supervising CSDs whose settlement activities represent at least 15% of the overall provision of settlement services at a host Member State. In addition to this, the selection was also based on the number and use of CSD links between EEA CSDs⁵. The peer review assessed all six NCAs in their capacity as home and host authorities. The assessment was based on the full set of key areas namely the initial authorisation, passporting procedure, cooperation arrangements, ongoing supervisory activities, investigations and inspections and enforcement measures.

⁴ Under the Peer Review Methodology, peer reviews can cover all EEA NCAs or restricted to a limited number of NCAs and/or target a limited scope of activities of certain NCAs.

⁵ The data has been collected for the purpose of the Report to the European Commission on cross-border services and handling of applications under Article 23 of CSDR, published in November 2020 (ESMA70-156-3569).

TABLE 3 – NCAS ASSESSED IN THE PEER REVIEW

Code	Country	Competent Authority	Acronym
BE	Belgium	Banque Nationale de Belgique	NBB
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
FR	France	Autorité des Marchés Financiers	AMF
LU	Luxembourg	Commission de Surveillance du Secteur Financier	CSSF
LV	Latvia	Finanšu un kapitāla tirgus komisija	FKTK
SE	Sweden	Finansinspektionen	FI-SE

2.4. Process of the Peer Review

13. The peer review was carried out by the ad-hoc PRC identified in the Mandate and composed of experts from NCAs and from ESMA staff and chaired by a senior ESMA staff member.
14. As a basis of the assessment, in August 2021 the PRC addressed a questionnaire (enclosed in Annex 2) to the NCAs in scope, followed by complementary information and documentation requests in November 2021 and April 2022. On-site visits⁶ took place between 3 February and 9 March 2022 covering three NCAs: in LU and BE on the basis that the NCAs supervise the two “international CSDs” (ICSDs) and in LV on the basis that the NCA supervises a CSD that has three branches in three other jurisdictions. Such on-site visits to NCAs, including the related access to representative samples of supervisory files and cases, played a key role in enhancing the understanding of the NCAs’ supervisory approaches and in assessing the NCAs against the supervisory expectations defined in the Mandate. The PRC wishes to note that visited NCAs engaged openly and constructively and to thank NCAs for the good cooperation in this peer review. The assessment of other NCAs relied solely on the questionnaire with follow-up questions when needed.
15. During these visits, the PRC met with stakeholders in each country visited, as facilitated by each NCA. In total, the PRC met three supervised CSDs as relevant stakeholders. The outcome of discussions with stakeholders was taken into account in the assessment in Section 4.
16. The period under review covers from 7 April 2017 to 30 April 2021 adjusted to the particular case of each NCA under review given that: a) the date of application of CSDR differs for each CSD as it depends on its date of authorisation under Article 16 of CSDR, which is the date when the CSD must begin to comply with CSDR requirements, b) the scope of the peer review includes the authorisation processes conducted by the selected

⁶ Conducted through remote settings, due to sanitary conditions and travel restrictions linked to Covid-19.

NCA, therefore the dates of submission by CSDs of their application for authorisation under Article 16 of CSDR should be considered as relevant for the purpose of this peer review. Based on the above, Table 2 below provides information on the period of assessment per NCA under review which is adjusted after consideration of the respective date of authorisation of their respective supervised CSD.

TABLE 4 – ASSESSMENT PERIOD PER NCA IN THEIR HOME MEMBER STATE CAPACITY

Peer Review Period: 7 April 2017 to 30 April 2021																	
NCA	2017				2018				2019				2020				2021
Review period	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1
BE									4/12/2019								
DE														21/1/2020			
FR									16/4/2019								
LU																	12/4/2021
LV	18/9/2017																
SE									14/11/2019								

17. The PRC reported its findings to the BoS, for its approval, after having consulted the Post Trading Standing Committee (PTSC), as the relevant Standing Committee for the topics at stake, and the Management Board (MB).
18. For each of the six assessment areas, the Mandate identifies supervisory expectations against which NCAs have been assessed. Considering these expectations, the PRC made a qualitative assessment whether, for each of the six assessment areas, an NCA is likely to be: (i) fully meeting the peer review's expectations, (ii) largely meeting the peer review's expectations, (iii) partially meeting the peer review's expectations or (iv) not meeting the peer review's expectations. The summary of findings and assessment for each of the six assessment areas is included in Section 4.1. The assessment table for all NCAs and the areas for improvement identified are set out in Section 4.2. Good practices identified in each assessment area are presented in Section 4.3.

3. General information

19. This section sets out background information on the data related to the provision of cross-border activities in respect of the CSDs supervised by the NCAs in scope. The outgoing cross-border activity supervised by the six NCAs under review varies importantly in nature and size. The PRC indeed recognises that the level of supervision carried out in respect of a CSD's cross-border services should be proportionate to their nature, scale and complexity. Therefore, when assessing each NCA against the supervisory expectations set out in the Mandate, the PRC considered the overall volume, type and complexity of outgoing cross-border services and the risks attached.
20. The EEA CSDs' cross-border activity i.e. the CSD services provided in host EEA States, can be measured through the study of the use of CSD links established between EEA

CSDs and through the measurement of the services provided to participants and issuers from host EEA States. ESMA has published a first report on this topic in November 2020.⁷

21. The 22 CSDs which responded to ESMA survey (out of the 29 CSDs⁸ in operation in the EEA at the time of the survey) all had links with CSDs from other EEA States and maintain an average of five links with other EEA CSDs. The numbers are relatively stable since 2017 but respondents foresee a potential increase in the coming years with the progressive harmonisation of the regulatory framework.
22. More specifically, under CSDR, a CSD link is “an arrangement between CSDs whereby one CSD becomes a participant in the securities settlement system of another CSD, in order to facilitate the transfer of securities from participants of the latter CSD to the participants of the former CSD, or an arrangement whereby a CSD accesses another CSD indirectly via an intermediary. CSD links include standard links, customised links, indirect links, and interoperable links.”
23. In practice, it allows one CSD to give its clients access to the securities recorded and settled in another CSD, through the opening of an account with the latter CSD.
24. The reviewed NCAs were chosen on the basis that at least one CSD under their supervision had a minimum number of links with other EEA CSDs (between six and thirty-one for the concerned CSDs, which have very different business profiles).
25. In addition to the establishment of CSD links, another criterion used to assess the cross-border activity of CSDs is the “*substantial importance for the functioning of the securities markets and the protection of the investors*” of a CSD in host Member States, which is measured through a pan-EEA annual data collection exercise and calculation performed by ESMA since 2017.
26. The criteria to identify the “substantial importance” of a CSD have been developed in Commission Delegated Regulation (EU) 2017/389⁹, with indicators including i) notary and central maintenance services provided by a CSD to the issuers of host Member States and ii) for settlement services provided by a CSD to participants and other account holders from host Member States.
27. The NCAs chosen for this peer review all supervise at least one CSD which is of substantial importance in more than one Member State (between 3 and 23 host Member States, depending on the concerned CSD and its business profile). Such criteria indeed triggers certain reinforced cooperation requirements, against which the selected NCAs’

⁷ [ESMA Report to the European Commission on cross-border services and handling of applications under Article 23 of CSDR](#) (ESMA70-156-3569)

⁸ Not operated by central banks

⁹ [Commission Delegated Regulation \(EU\) 2017/389](#) of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council as regards the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States, OJ L 65, 10.3.2017, p. 1–8

practices as home authorities were specifically examined for the purpose of this review, in respect of the respective CSD.

4. Peer review findings

28. The following sections contain a summary of the peer review findings as follows: (i) the assessment of the six assessment areas and a summary of the on-site visits to BE, LU and LV (Section 4.1); (ii) the assessment table and the PRC recommendations (Section 4.2); (iii) the good practices that the PRC identified (Section 4.3).

4.1 Peer review findings in each area under review

29. The peer review assessed NCAs in each of the six areas (Authorisation Activities, Passporting Procedures, Cooperation Arrangements, Ongoing Supervisory Activities, Investigations and On-site Inspections and Enforcement Measures) against specific supervisory expectations detailed in the peer review Mandate.¹⁰ These are summarised below in the introduction of each assessment area.
30. The Mandate notes that the cross-border dimension of CSDs' activities and the specific risks and complexities that this type of activities carries for CSDs and NCAs' supervision, deserve specific supervisory focus. Accordingly, it is expected that NCAs are able to demonstrate the relevant supervisory work that they conduct specifically on cross-border activities of CSDs including through branches and links and, where applicable, an interoperable link.

4.1.1. Authorisation Activities

31. Although CSDR entered into force in September 2014, most of its provisions required the entry into force of Level 2 measures to apply. It was the case for the articles organising the CSDR authorisation process, which only entered into force in March 2017, requiring the entities already operating as CSDs in the EU to formally apply for their authorisation as CSDs under CSDR by the end of September 2017. It took on average two years to EEA CSDs to be authorised under CSDR.
32. The PRC assessed whether home NCAs: (i) have effectively and efficiently assessed the CSD's authorisation application under Article 17 of CSDR in relation to cross-border services; (ii) have effectively and efficiently assessed the CSD's authorisation under Article 19 of CSDR for extension and outsourcing of cross-border services; and (iii) process and use information and intelligence collected through cooperation with and requests from host NCAs in their authorisation work and inform and consult the authorities referred to in Article 17 of CSDR in an effective and timely manner; (iv) have thoroughly evaluated any potential risk to the CSD due to the activity of the branch for which the CSD has submitted an application of authorisation; (v) have assessed the measures put in

¹⁰ A summary of supervisory expectations is provided in each sub-section below. For the detailed supervisory expectations in each assessment area, please refer to the Mandate enclosed in Annex 1.

place by CSDs to ensure that any potential risks resulting from the link arrangements such as credit, liquidity, organisational or any other relevant risks for CSDs are fully mitigated and in the case of the interoperable links have checked that linked securities settlement systems have identical moments of entry of transfer orders into the system and irrevocability of such transfer orders and use equivalent rules concerning the moment of finality of transfers of securities and cash; (vi) at a first stage have put in place specific procedures and at a second stage if these have been followed as well as how the assessments were performed in practice.

Summary of findings

33. **Policies and procedures on cross-border aspects in the CSDR authorisation process.** Four NCAs (BE, DE, FR, LU) have designed specific policies, procedures or other guidance documents in relation to the CSDR authorisation process, among which three of them (BE, FR, LU) have designed specific tools to assess cross-border aspects (links and passport requests):

TABLE 5 – PROCEDURES AND TOOLS DESIGNED BY THE NCAs FOR THE AUTHORISATION PROCESS

NCA	Authorisation procedure: General (applicable beyond CSDR) or CSDR-specific?	Specific tools	
		designed for the CSDR authorisation procedure	designed for assessing cross-border aspects
BE	General	General checklist Art 17	Checklist on links
		Applicant CSD's self-assessment	Checklist on passports status
DE	General	General checklist Art 17 ('Mastersheet')	None
		Applicant CSD's self-assessment	
FR	General	Pre-assessment on targeted topics (including a self-assessment by the applicant CSD)	Dashboard on links compliance assessment
		Dashboard on completeness and assessment under Art 17	Dashboard on passport status update (as home and host)

		Dashboard listing CSDR requirements and supporting documents (gap analysis)	
LU	CSDR-specific	General checklist Art 17 Checklist for banking services authorisation Art 55 Checklist for interoperable link authorization Art 19 Checklist on ESMA GL on default rules Applicant CSD's self-assessment	Dashboard on passport status (as home and host) Checklist on links
LV	General	Checklist as per Table 2 of Annex I "Document references" of Commission Implementing Regulation No. 2017/394	None
SE	General	None	None

34. **Staff dedicated to the authorisation process.** In France two authorities have been designated as competent authorities for the purposes of CSDR: AMF and Banque de France (BdF). According to the allocation of topics agreed between the two authorities, the initial authorisation is granted by AMF upon advice from BdF, and it is the same for passporting and link aspects. AMF dedicates two FTEs to the CSD authorisation, passporting procedure and supervision, and they receive the support of other teams within the AMF: the Data-Driven Supervision Division and the Legal Affairs Directorate. BdF staff members were jointly involved in the authorisation process.
35. DE stated that six FTEs were dedicated to the authorisation procedure of the CSD.
36. SE indicated that the Capital Market Law Department of its NCA was responsible for the authorisation procedure with the support of the supervisory team. The supervisory team is responsible for the on-going supervision of the CSD.
37. LU stated that 10,4 FTEs from two different divisions in CSSF and from Banque Centrale du Luxembourg (BCL) contributed to the authorisation process of the ICSD. LU highlighted that prior to CSDR implementation, the ICSD was supervised by CSSF as a bank under CRD/CRR framework and overseen by the BCL as a securities settlement

system (SSS) under the settlement finality directive and in accordance with the national law.

38. LV indicated that five experts from different departments contributed to the authorisation process: two dedicated FTEs from the FIMSD, two IT auditors, and one legal counsel, receiving the help of the authorities from host member states, as members of a dedicated college.
39. BE indicated that they have a group of more than 10 FTEs working on post-trade entities, and they were all involved in the authorisation process to perform various assessments depending on their focus and background. BE highlighted that they already had a long experience in supervising the ICSD prior to its authorisation under CSDR, from the oversight and banking perspective; with the implementation of CSDR they now supervise the ICSD under CSDR and continue to oversee it and supervise it from the banking perspective.
40. **Communication of supervisory expectations to the applicant CSD:** all NCAs have indicated having communicated their expectations through numerous meetings with the applicant CSDs, starting as of the adoption of CSDR (end of 2014/2015).
41. SE also indicated having transmitted its expectations to its supervised CSD through “injunctions” relating to certain requirements, specifying their interpretation of said requirements and informing the CSD of which further information should be provided for the purposes of the authorisation process.
42. FR indicated having conducted, together with the NCAs supervising the two other ESES¹¹ CSDs (BE, NL), a pre-assessment process to check both completeness of documentation in respect of, and compliance with, selected CSDR requirements conducted prior to the start of the official authorisation, between March and September 2017.
43. Four NCAs (BE, DE, FR, LU) have indicated having used one or several checklists to monitor the completeness of the information provided against Article 17 of CSDR.
44. LU stressed that they started presenting their checklist approach to the supervised ICSD in 2015 to convey their supervisory expectations. LU also indicated never going beyond what is required under CSDR but having brought issues to the PTSC agenda for interpretation as necessary and encouraged its ICSD to raise issues with European Central Securities Depositories Association (ECSDA), to ensure convergence between

¹¹ Euroclear Settlement of Euronext-zone Securities

NCA and between CSDs. LU and DE also indicated having had several joint meetings and discussions regarding the Clearstream group entities they have authorised.

45. Four NCAs (BE, DE, FR, LU) indicated having requested the applicant CSD to provide a self-assessment of compliance with CSDR requirements, including explanations on how the CSD can fulfil its regulatory obligations with the processes it has designed.
46. Although not under CSDR, BE conducted on-site visits prior to granting the authorisation, which usefully informed the process. Among the other NCAs, LU indicated that they did not carry out any formal on-site inspections during the authorisation process, since CSDR does not apply to a CSD until its authorisation. However, during the authorisation process, workshops on different CSDR topics were held on its supervised ICSD premises in order to facilitate the mutual understanding of interpretations and requirements. LV stated that in their view it was not necessary given (i) the pre-existence and well-functioning of the three CSDs that were to be merged to create a single CSD (ii) the fact that the merger effectively and legally occurred only upon the granting of the authorisation under CSDR.
47. On its supervised CSD structure, LV explained that the CSD results from the merger of the three CSDs that were in operation in LV, LT and EE. This merger occurred simultaneously to the granting of the authorisation under CSDR. While the head office of the new company has been established in LV (LV could not provide specific reason for the choice of Riga as location for the head office other than business decision made by the CSD based on legal, regulatory and tax analysis conducted with the support of external consultants) with two branches in LT and EE, LV indicated that none of the office can operate independently as staff are dispersed in the various locations and shared within the whole CSD (e.g. its operations and IT services are currently concentrated in Vilnius, while compliance and sales staff are distributed in the three offices). As for the SSSs, although they are legally independent from one another (without any link between them, but the participants can choose to participate in any of the SSSs) and governed by the respective national law of each location, they operate under the same rules of finality of transfers of orders, are supported by the same general system of algorithms, rules, procedures and a single technical system centralises the interactions with all of the CSD's participants.
48. LV indicated that given the legal and operating model to be adopted by the future CSD, they did not assess it as a company with a head office in Riga and two branches in Vilnius and Tallin but considered it as a matrix-type structure with three "offices" or locations. However, LV did not elaborate, nor communicate to the CSD, any specific expectation on how to comply with CSDR taking this multi-jurisdictional setup into account (such as in respect of specific operational risks linked to the distribution of staff in several countries or legal risks linked to operating in several jurisdictions). The main considerations brought to the attention of the PRC were: 1) that the CSD does not have a banking licence; 2) that all the CSDs were already operating, therefore no particular risk was envisaged with the new operating model.
49. **Use of information and intelligence collected through cooperation with other authorities involved in the authorisation process.** All NCAs indicated they consulted all authorities involved in the authorisation process, either at national level or at EEA level

(relevant authorities, host NCAs, group authorities as the case may be), and that they used information and intelligence collected through cooperation with other authorities when processing initial authorisation requests.

50. LV indicated having started engaging with authorities from the host Member States (EE and LT) through the establishment of an informal college of supervisors in 2015, which has been later transformed into a formal college of supervisors under Article 24(4) of CSDR.
51. The PRC takes also notes of the highly cooperative processes followed (i) by FR with the NCAs supervising the other ESES CSDs (BE and NL) throughout the whole authorisation process, (ii) by BE and LU though their numerous interactions for the authorisation of the Bridge, the interoperable link established between the two ICSDs and (iii) by LU and DE, to establish a common authorisation approach for the CSDs within the same group as well as dedicated workshops with the CSDs.
52. **Duration of the initial authorisation process.** Please see the timelines for each NCA in Table 4 below.

TABLE 6 –DURATION OF THE INITIAL AUTHORISATION PROCESSES

CSDs	Application Date	Declaration of completeness	Completeness phase (in month)	Initial authorisation date	Length of Art 17 Process (in month)	Art 55 CSDR Authorisation date for banking services	Overall length of the authorisation process for banking CSDs (in month)
FR	30/09/2017	02/11/2018	13m	16/04/2019	18m	n/a	n/a
DE	29/09/2017	22/07/2019	22m	21/01/2020	28m	24/08/2021	46m
CSSF/ CBL	29/09/2017	12/10/2020	36m	12/04/2021	42m	12/04/2021	42m
LV	07/04/2017	03/05/2017	1m	18/09/2017	6m	n/a	n/a
SE	22/09/2017	20/05/2019	20m	14/11/2019	25m	n/a	n/a
BE/EB	29/09/2017	09/07/2019	21m	04/12/2019	26m	04/12/2019	26m
Average duration for all EEA CSDs¹²			15m		22m		32m

¹² Based on ESMA data as reported by all NCAs.

53. Except for one NCA (LV), all NCAs have granted delays and extensions to the applicant CSDs. LU explained that its methodology was based on the interpretation discussed at PTSC that completeness could not be ‘reopened’ once declared, and therefore that “completeness means compliance”.
54. Based on the information presented in the table above, it seems that the authorisation process for CSDs in LU and DE took almost four years, although their NCAs had taken different approaches as DE decoupled the two procedures and granted authorisation under Article 17 of CSDR one year and a half before granting the authorisation under Article 55, while LU granted both authorisations at the same time. LU and DE explained that this was due to the need to clarify certain requirements applying to the provision of banking services and the time required for the implementation of the agreed interpretation by the CSDs.
55. **Assessment of risks related to links.** Table 5 below shows the number of links assessed by each reviewed NCA in scope of this peer review.

TABLE 7 – NUMBER OF CSD LINKS ASSESSED DURING THE AUTHORISATION PROCESS¹³

CSDs	links with EEA CSDs as notified to ESMA upon authorisation
BE	29
DE	15
FR	8
LU	32
LV	2 ¹⁴
SE	7

56. Two NCAs (FR and BE) indicated having designed a specific framework to assess the risks related to CSD links for CSDR purposes: (i) BE indicated that a template has been developed to assess the risks based on the CSDR requirements (also based on BE’s “Risk

¹³ According to the information provided by each NCA to ESMA upon authorisation of the respective CSD.

¹⁴ This number refers to links per entity i.e. Nasdaq CSD links with KDPW and CBL. From SSS perspective, there are five links, as KDPW is linked to all three SSS of Nasdaq CSD (IS, LV, LT) and CBL is linked to two SSS of Nasdaq CSD (LV, LT).

analysis framework for cross-border (I)CSD links” in place since 2006 under the CPMI-IOSCO Principles for Financial Market Infrastructures (PFMIs) Recommendation 20 on cross-border links) and upon which a line-by-line assessment of the relevant CSDR requirements was done of a compliance self-assessment by its supervised ICSD, and (ii) FR reported having used the template established by the Eurosystem to assess the links of its supervised CSD that were in place since 2005 and already reviewed against the Eurosystem User Assessment Framework in 2015. This experience was leveraged for the purposes of the CSDR authorisation, in the context of which FR indicated having conducted a full review of the links in place, with a risk-based approach.

57. Among the other NCAs, LU and SE conducted a line-by-line assessment of the relevant requirements, based on a self-assessment of compliance provided by the CSD, and DE reported that all requirements were assessed in a risk-oriented approach.
58. LV indicated that the two links under review for the purpose of the initial authorisation were already in place and operating prior to the authorisation process, and that in their view linked investor CSDs present similar risk as standard participants, with potential higher volumes of settlement instructions for which LV considers that its supervised CSD has good capacity to process. LV specified that they reviewed the assessments prepared by the supervised CSD and discussed related issues within the supervisory college.
59. **Assessment of risks related to interoperable links:** the only relevant interoperable link for the purposes of this peer review is the link set up between the ICSDs in BE and LU, called ‘the Bridge’. Given the different timing of the two authorisation processes, the interoperable link was not assessed simultaneously by LU and BE. LU indicated having used a dedicated checklist for the authorisation of the interoperable link covering CSDR and related RTS requirements to evidence compliance of applicant CSD with all requirements. On the specific assessment of compliance with CSDR settlement finality rules, the authorities confirmed having checked compliance with this requirement in their assessment and resulted from the direct application of the Bridge agreement itself, which provides for a unique set of settlement finality rules.
60. **Assessment of risks linked to branches included in the authorisation:** This was only applicable to LV. LV explained that due to the unique structure of its supervised CSD, according to which no branch can operate on its own, they did not assess the risks linked to each branch individually but assessed the CSD and all its branches as a whole. According to LV, the only branch-specific matters are limited to organisational aspects (role of key personnel, reporting lines, etc.), and aspects such as risk management, prudential matters, core CSD processes, IT infrastructure, general governance, etc. must be assessed from the whole CSD perspective. LV also repeatedly stated that the fact that the three pre-existing CSDs were well-functioning before their merger into a single CSD (which took place at the same time as the authorisation), which meant that most of its personnel had a long experience in CSD functioning, and that the fact that the CSD did not have a banking license both entailed limited risks.

Assessment of passport requests included in the authorisation application.

Please refer to the next section.

TABLE 8 – NOTIFICATIONS FOR NEW LINKS OR EXTENSION OF ACTIVITY DURING THE PR PERIOD:

CSDs	New links with EEA SSSs	New links with TC-CSDs	Extension of services
BE	None	2	None
DE	None	None	None
FR	None	None	None
LU	None	1	None
LV	2 ¹⁵	None	1 [new SSS]
SE	None	None	None

61. **Extension of authorisation to provide new services:** none of the reviewed NCAs has reported having designed specific procedure for this, they use or would use if needed their general authorisation procedure. During the PR period, only LV, went through such process for the operation of the IS SSS through the setting up of a new branch.

62. LV processed in 2019 an application for establishment of a new branch in IS (under Article 23 of CSDR), along with an application for extension of service (new SSS under Iceland law, under Article 19(1)(c) of CSDR). LV handled these two applications in a combined procedure, with the early involvement of Central Bank of Iceland into the process, via

¹⁵ per entity i.e. there were links with 2 CSDs (CBF and LuxCSD). From the SSS point of view there are 5 links (i.e. CBF is linked to 3 Baltic SSSs, and IS SSS is linked with LuxCSD and CBL).

exchange of information before formally joining the already existing supervisory college of its supervised CSD in 2020.

63. LV indicated that, as for the other two branches, due to the operational ‘matrix’ setup of its supervised CSD, the assessment could not be conducted at the level of a single branch but had to consider the CSD as a whole.
64. **Notification and assessment of new EEA CSD links under Article 19(5) of CSDR.** Article 19(5) of CSDR provides that CSD links that are not interoperable links referred to Article 19(1)(e) of CSDR shall not be subject to authorisation but shall be notified to the CSDs’ competent and relevant authorities prior to their implementation by providing all relevant information that allows such authorities to assess compliance with the requirements provided in Article 48 of CSDR. Only LV received such notifications for two new links during the PR period and reported assessing the risks relating to such links during the following R&E process conducted in respect of its supervised CSD (as no prior authorisation is required). LV’s view is that such links being standard links, they do not entail more risk to the CSD than any other standard participant in the CSD’s SSS, except for possible additional type of risk in terms of operational reliability (due to a potentially higher volume of instructions which CSD has, according to LV, the capacity to deal with).

Assessment

65. As regards the expectation that NCAs have established policies and procedures or a demonstrable supervisory framework to conduct the authorisation process under CSDR, in particular as to the cross-border aspects: all authorities have applied their general authorisation procedure and relating governance rules to the CSDR authorisation process. The PRC positively notes the establishment and use of CSDR-specific tools by four NCAs (BE, DE, FR, LU) to conduct the authorisation process efficiently, and in particular of detailed checklists to monitor precisely the completeness of the application files. The PRC also positively notes that three of the NCAs (BE, DE and LU) have designed and used specific checklists for cross-border aspects (links, passports). The PRC also considers as a good tool the self-assessment required by some NCAs (BE, DE, FR, LU) to the applicant CSD of its compliance against CSDR requirements, when it serves as a basis for an in-depth assessment by the NCA itself.
66. The PRC however notes that LV and SE did not design any specific tool to conduct this process.
67. As regards the communication by the NCAs of their supervisory expectations to the applicant CSDs in respect of cross-border aspects, the PRC positively views that all NCAs started early to hold meetings with the CSDs to discuss CSDR requirements and that most NCAs used a checklist approach to ensure all CSDR requirements were complied with. The PRC is concerned that LV might have underestimated the risks that a CSD having such a multi-jurisdictional structure can pose. Although the new CSD resulted from the merger of three fully-fledged and well-functioning CSDs and certain aspects of operations did not change (eg. client relationship management in each jurisdiction), those CSDs did not use to operate a single structure and the synergies created by the merger and

operation as a matrix were completely new. Additionally, the three pre-existing CSDs all operated on a domestic basis and not as an international infrastructure. Given the new legal and operational structure of its supervised CSD, the PRC would have expected LV to have elaborated more on what the CSD specifically needed to evidence to prove its compliance with CSDR (e.g. on the legal and operational risks stemming from staff being located in several jurisdictions).

68. As a general comment on the organisation of the authorisation process, the PRC notes the very long duration of the overall authorisation processes conducted by LU and DE, which could have been seen as having impacted the level-playing field between the two ICSDs (as the ICSD in BE, with a similar application date, was authorised under CSDR 17 months before the ICSD in LU).
69. On the expectation that NCAs process and use information and intelligence collected through cooperation with host NCAs and inform and consult the authorities in an effective and timely manner: the PRC is satisfied with the fact that the reviewed NCAs have consulted all of the authorities referred to in Articles 17, 19 and 55 of CSDR in an effective and timely manner. The PRC positively notes by the very early involvement of the host authorities by LV in the authorisation process of its supervised CSD and by the close cooperation between LU and BE in respect of the Bridge.
70. On the expectation that NCAs have thoroughly evaluated any potential risk to the CSD due to the activity of their supervised CSD branches (applicable only to LV), the PRC is rather concerned by the fact that LV relied a lot on the information and assessments provided by the applicant CSD and is not convinced by the combination of arguments according to which (i) due to the specific operational structure of the CSD, the CSD had to be assessed as a whole and (ii) the fact that as, prior to the merger, all offices of the CSD were well-functioning self-standing CSDs not raising any supervisory concerns so far, the new structure did not entail any specific new risk. Although the PRC welcomes the early engagement and numerous interactions with the CSD and with authorities from EE and LT, the PRC considers that the identification of risks and the assessment led by LV could have been better tailored to the complexity of its structure and its importance for the region. The PRC believes that the mere fact that the CSD was a completely new corporate structure resulting from the merger of three CSDs located in three different countries could have justified a more thorough assessment, including of the existing links, including for instance communicating specific supervisory expectations and conducting on-site visits in each office to observe how the new structure would function in practice.
71. The PRC recommends LV to assess the compliance of the CSD with CSDR requirements considering its unique operational structure and operational risks it might face or pose.
72. On the expectation that NCAs have assessed the measures put in place by CSDs to ensure that any potential risks resulting from the link arrangements such as credit, liquidity, organisational or any other relevant risks for CSDs are fully mitigated: the PRC is satisfied with the assessments made by most NCAs. The PRC noted that an important part of LV's

assessment was the fact that the links were pre-existing the authorisation procedure, without clearly evidencing its own assessment methodology.

73. Given the possibility of recurrence of notification of new links by the CSD they supervise, the PRC invites DE, SE and LV to design a specific tool or template for the CSD to provide the necessary information on the new link and to monitor such notifications, not necessarily waiting for the next R&E process to get the relevant information

74. **In relation to the only interoperable link in scope of this peer review**, the Bridge, the PRC is satisfied with the risk assessment performed by the authorities and notes that they have efficiently used the information and intelligence coming from assessments conducted under the Eurosystem framework (as the Bridge also qualifies as an eligible link for that purpose). The PRC also positively notes that BE and LU have assessed in a very cooperative way and with numerous interactions among them and with the CSDs, the measures set up by the CSDs to ensure full mitigation of any potential risks resulting from the operation of the interoperable link.

75. To summarise:

- BE: fully meeting expectations
- DE: largely meeting expectations
- FR: fully meeting expectations
- LU: largely meeting expectations
- LV: partially meeting expectations
- SE: partially meeting expectations

76. In terms of good practices, the PRC noted:

- the detailed checklists used by BE, FR and LU to ensure the completeness of the authorisation file assessment;
- the 'pre-assessment' performed by FR, focussing on selected crucial aspects of the authorisation file;
- the requirement by BE, DE, FR and LU of a self-assessment from the applicant CSD of its compliance with the CSDR requirements, complemented by an in-depth analysis of the provided information by the NCA itself;
- the fact that BE conducted investigations/on-site visits prior to granting the authorisation in order to use their output in the authorisation process; and
- the cooperation with other group authorities to organise and harmonise certain aspects of the authorisation process (DE, FR, LU).

4.1.2. Passporting Procedures

77. CSDR passporting procedure has been thought to ensure an appropriate level of safety in the provisions of certain services (notary and central maintenance services in relation

to financial instruments constituted under the law of another Member State) by CSDs in another Member State. In particular, the procedure established in Article 23 of CSDR provides that CSDs shall, where relevant, include in the information they transmit to the host NCA an assessment of the measures the CSD intends to take to allow its users to comply with the national law referred to in Article 49(1) of CSDR (i.e. the relevant parts of the host Member State national securities and corporate law).

78. Differently from all other passporting regimes set out under other EU financial regulation framework, the CSDR regime allows the host NCA to verify this and if necessary, to refuse to grant the requested passport. It should be noted that the interpretation of the CSDR passporting requirements of the CSDR have been among the most discussed ones by CSDs and NCAs.
79. For this peer review, the PRC assessed how NCAs (i) in their capacity as either home NCA or host NCA apply the passporting procedure under Article 23 (3) to (7) of CSDR in an effective and timely manner; (ii) in their capacity as host NCAs conduct an effective and timely assessment of the measures that CSDs from other EEA States intend to take to allow their users to comply with the NCA's national law referred to in Article 49(1) of CSDR.

Summary of findings

TABLE 9 –NUMBER OF PASSPORT REQUESTS PROCESSED AS HOME NCA IN SCOPE OF THE PEER REVIEW

Home NCA/CSD	Number of passport requests submitted during the authorisation process	Number of passport requests submitted after the authorisation process
BE	26 (excl. UK) (1 still pending)	1
DE	8	1
FR	27	0
LU	27 (1 pending)	0
LV	2	1
SE	4	2

80. As shown in the above table, most passport requests have been processed during the initial authorisation procedure. All NCAs reported having processed them under their general authorisation procedure and having strictly followed the procedure established under Article 23 of CSDR and the related supervisory convergence measures. One NCA (LU) declared having designed a more detailed specific procedure based on Article 23 of CSDR and related Level 3 measures, which includes in particular that, as home NCA, LU will inform the host NCA that the CSD will start providing cross-border service, in case of silence of the host NCA during three months after the transmission of the passport

request. In such case, BE also indicated having systematically reached out to the host NCA.

81. Three NCAs (BE, FR and LU) have designed and used a specific tool (dashboard) to monitor the status and characteristics of all the received passport requests.
82. **Request for legal opinion on the measures to comply with the law of the host jurisdiction:** as home NCAs, two authorities (DE, LU) indicated having asked the requesting CSD to provide one. LU indicated that they invited the CSD to develop a common template of legal opinion to improve the exhaustivity and to facilitate the review. BE indicated asking supervised ICSD to follow for each passport request a specific template to provide the information required under Article 23 of CSDR and that it is generally accompanied by a legal opinion. FR confirmed not systematically asking a legal opinion in the context of Article 23(3)(e) of CSDR but have recommended the CSD to get an independent legal opinion where the host NCA have raised questions on a passport request. LV did not require its supervised CSD to provide any legal opinion, on the basis that as the future branches were at that stage fully-fledged CSDs already operating in the host jurisdictions, and that they could rely on their knowledge of the local law.
83. **Assessment of conditions to transfer passport requests to host NCAs.** All NCAs indicated that during the peer review period they had decided to communicate to relevant host NCAs all the passport requests submitted to them. All NCAs indicated having assessed the adequacy of the administrative structure and of the financial situation of the CSD as a part of the general authorisation process under CSDR and checked that all the necessary information is attached to the application and assesses the information according to Article 23(3) (e) of CSDR. AMF also indicated having, together with BdF, assessed the measures the supervised CSD took or intended to take to allow its users to comply with the national law(s) referred to in Article 49(1) of CSDR and asked the CSD to develop them further.
84. As home NCAs, all NCAs processed passport requests according to the timeline established in Article 23 of CSDR. The PRC has identified only one case of delay for passport requests which are still pending for the ICSDs in LU and BE, however the delay is in relation to the same host jurisdiction and LU and BE have acted proactively to discuss with the relevant host authority and the continuity of provision of services in this jurisdiction is ensured in compliance with CSDR.
85. In their capacity as host NCAs, none of the NCAs indicated having been informed that the home NCA decided not to transfer a passport request to them. The table below shows the

number of passport requests submitted to each of them by the CSDs in scope of the peer review:

TABLE 10 –NUMBER OF PASSPORT REQUESTS PROCESSED AS HOST NCAs DURING THE PR PERIOD

Host NCA	Number of passport requests received during the PR period as host NCAs
BE	4
DE	10
FR	4
LU	7
LV	5
SE	1

86. **Procedure followed.** Only LU reported having formalised a specific procedure for this, while the other NCAs merely followed the steps defined in Article 23 of CSDR and related ESMA Q&As and Guidelines. SE indicated being working on formalising the assessment regarding Article 23 of CSDR in a process.
87. In the cases where the information received was deemed incorrect or incomplete by the NCAs in their capacity as host NCA, all host NCAs reached out to the relevant home NCAs to request additional information or clarification.
88. **Checks undertaken as host NCA when receiving a passport request:** All NCAs indicated having assessed the measures submitted by the requesting CSDs against the list of key relevant provisions of their national law which they have communicated to ESMA and is published on ESMA website according to Article 49(1) of CSDR. Five NCAs (BE, DE, FR, LU, LV) have indicated having a process in place in order to immediately inform

ESMA in case of major legal updates. One NCA (SE) last updated the list in June 2020 but does not have a process in place to monitor and update the list.

89. Two NCAs (DE, FR) have indicated as host NCAs systematically asking the requesting CSD to provide a legal opinion on the compliance of the CSD measures with their national laws.
90. BE noted that they did not have to specifically request these legal opinions as they were provided in all cases.
91. LU indicated never requesting explicitly a fully-fledged legal opinion, but systematically asked for the provision of an assessment of the measures referred to Article 23(3)(e) of CSDR.
92. LV stressed that as, that they did not identify any specific requirements in Latvian laws for CSDs (e.g. on how CSDs are supposed to execute corporate actions or to perform other activities) relevant for assessment referred to in Article 23(3)(e) of CSDR and therefore did not require applicant CSDs to provide a legal opinion on their compliance with Latvian laws.
93. Four NCAs (BE, FR, LU, LV) indicated they involve legal experts in the analysis of the assessment provided by the requesting CSDs.
94. SE reported that they have put limited time on such analysis due to resource constraints and the fact that under Swedish law, the areas covered by Article 49(1) of CSDR are not within Finansinspektionen's area of responsibility.
95. When a concern was identified, all NCAs indicated having liaised with the home NCA of the requesting CSD.
96. None of the NCAs had to handle cases where the CSD was contacted actively by the issuer and got information from the issuer that it had to comply either only with the national law of the issuer, or with both the "standard" law of the issuance and the national law of the issuer.
97. All passport requests received as host NCAs during the PR period were approved by the NCAs under review.
98. In terms of communication of the decision on the passport request, Article 23(6) of CSDR offers two options to host NCAs to approve the provision of services by the requesting CSD in their jurisdiction: either applying a 3-month 'silence means approval' rule or sending a letter explicitly approving the (a 'nihil obstat letter'). Contrary to LU, which indicated applying the 'silence means approval' rule, to save time in their internal procedures, BE, DE, FR, LV and SE indicated having chosen to send a 'nihil obstat' letter.

BE, DE and LV did however not apply this rule in all cases (each of them remained silent once).

Assessment

Application of the passporting procedure as home NCA

99. The PRC identified that except in one case (LU), the NCAs do not have policies and procedures (P&P) in place in this respect and generally apply strictly the procedure described in Article 23 of CSDR. Indeed, in general, the PRC often saw that even when NCA's indicated having defined specific P&P, the documents in place were more of a "working tool" type (dashboards, templates).
100. Nonetheless, the PRC positively notes that the reviewed NCAs managed to apply the passporting procedure in a timely manner.
101. The home NCA should not only be an intermediary between the requesting CSD and the host NCAs: the home NCA needs to check completeness of the request, in particular as regards the measures taken by the CSD to comply with the host Member State law, and the compliance with the conditions of transfer of the authorisation (the adequacy of the administrative structure and of the financial situation of the CSD).
102. The PRC notes that, except in the case of FR, the assessment made by the reviewed NCAs acting as home NCAs for the purpose of Article 23 of CSDR does not go much beyond the completeness check of the information provided by the CSD. The PRC understands that as these assessments were almost all made in the context of the general authorisation process, the adequacy of the administrative structure or the financial situation of the CSD they supervise had necessarily been checked in the broader context; however, for future passport requests the PRC invites the NCAs to perform a thorough assessment of these aspects in the context of each passport request.
103. Overall, the PRC considers that passport requests are processed rather swiftly and in accordance with the procedure detailed in Article 23 of CSDR. In terms of individual assessments, the PRC positively notes the specific procedures and/or monitoring tools set up by BE, FR and LU and would expect DE, LV and SE to consider setting up such tools.

Application of passporting procedure as host NCA

104. The PRC positively notes that the reviewed NCAs as host NCAs have applied the process set out in Article 23 of CSDR in a timely manner, although in the absence (except for LU) of formalised procedures relating to such assessment. Considering the potential recurrence of such process, the PRC invites all NCAs to define specific procedures and monitoring tools if they have not yet done so. On the way to communicate their decision on the passport request to the CSD, the PRC is satisfied that all NCAs have decided on one method (either 'silence means approval' or to send a 'nihil obstat letter' within the

prescribed deadline). BE, DE and LV should however be mindful to apply the chosen method consistently.

105. As regards the expectation that NCAs in their capacity as host NCAs conduct an effective assessment of the measures CSDs from other EEA States intend to take to allow their users to comply with the NCA's national law referred to in Article 49(1) of CSDR, the PRC positively notes all NCAs, except for SE, have a process in place to monitor and update the list of key provisions of their securities law, which serves as reference for requesting CSDs to provide a self-assessment and involve their legal teams in the analysis of the assessment submitted by the requesting CSDs. The PRC invites SE to set up a process to monitor the evolution of Swedish securities law in respect of this list of key provisions in cooperation with the relevant Swedish authorities to ensure it is continuously up-to-date.

106. Except with respect to SE which indicated not having carried them out, and LV, which although having reviewed the assessments made by the requesting CSDs, indicated having carried them on the basis that there is no requirement under LV law that would require a CSD to set up specific measures, the PRC is generally satisfied with the assessments made by the reviewed NCAs as host NCAs of the measures taken by the CSD to comply with their securities law.

107. The PRC invites LV to revisit their approach in this respect and base its review on a precise self-assessment by the requesting CSD of whether its systems and internal processes effectively comply with LV laws.

108. Accordingly, the peer review assessment of NCAs in their home authority role is as follows:

- BE: fully meeting expectations
- DE: fully meeting expectations
- FR: fully meeting expectations
- LU: fully meeting expectations
- LV: fully meeting expectations
- SE: fully meeting expectations

109. The peer review assessment of NCAs in their host authority role is as follows:

- BE: fully meeting expectations
- DE: fully meeting expectations
- FR: fully meeting expectations
- LU: fully meeting expectations
- LV: largely meeting expectations
- SE: not meeting expectations

110. In terms of good practices, the PRC noted that:

(i) as home NCAs,

- (a) design and use of a tool to follow closely the status of the passporting requests procedures (BE, FR, LU);
- (b) regular checks of the updates made to the ESMA CSD Register, to cross-check the information on passports (LU);
- (c) reaching out to the host NCA at the end of the three-month period to officially inform of the start of the provision of services by the requesting CSD (LU); and

(ii) as host NCAs,

- (a) designing a specific fully-fledged internal procedure to conduct the assessment of the passport request, including of the measures the requesting CSD intends to take in accordance with Article 23(3)(e) of CSDR (LU);
- (b) all NCAs decided on a method to communicate its agreement to the requesting CSD and its home NCA (either “silence means approval” or the sending of nihil obstat letter, as per Article 23(6) of CSDR).

4.1.3. Cooperation Arrangements

111. The PRC assessed whether NCAs in their home and/or host NCA capacity exchange information in the context of their cooperation arrangements on the supervision of a CSD’s cross-border provision of services in an effective and efficient manner and in compliance with the relevant standard forms, templates and procedures.

112. The following exchanges of information between home and host NCAs are envisaged under Article 24 of CSDR:

CSDR references	Information	Information flows
Art 24(2)	Periodic reports on activity in host MS, including for the purpose of collecting statistics	Home or host can request to CSD Upon request from home NCA, host NCA shall provide reports to home NCA
Art 24(3)	Identity of issuers and participants of each SSS operated by the CSD Any other relevant information concerning the activities of that CSD in the host MS	Upon request from host NCA to home NCA, home NCA must provide information to host NCA
Art 24(5)	Findings on possible breach by a CSD of its obligations	Host NCA can refer findings to home NCA and ESMA

	under CSDR when providing services in a host MS	
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113. When the activity of a CSD is assessed as substantially important for the functioning of the securities markets and the protection of investors in another Member State, this triggers additional cooperation requirements: first, according to Article 24(4), first paragraph, of CSDR, home and host NCAs have to establish cooperation arrangements between them; if the CSD's activity is of substantial importance in at least two Member States, according to Article 24(4), second paragraph of CSDR, the home NCA may decide to set up colleges of supervisors.

114. The reviewed authorities, as home NCAs of CSDs which are of substantial importance in more than two Member States, should all have set up some cooperation arrangements and considered the establishment of colleges of supervisors.

115. The PRC therefore also examined if the reviewed NCAs, as home NCAs to CSDs that have become of substantial importance for the functioning of the securities markets and the protection of the investors in at least one host Member State (i) have established effective and efficient cooperation arrangements with that host NCA; and (ii) when that CSD is of substantial importance in at least two host NCAs, function in an effective and efficient manner in terms of cooperation with the host NCAs either by setting up a college of supervisors or not.

Summary of findings

Information exchanges under Articles 24(2), (3) and (5) of CSDR, as home or host NCA

116. **Exchange of information under Articles 24(2), (3) and (5) of CSDR.** Only one NCA in its capacity as home NCA reported having in place arrangements for this purpose: LV have established a supervisory college agreement, which ensures cooperation and exchange of information related to its supervised CSD with the authorities from host Member States (EE, LT and IS). The other NCAs have not yet established any specific arrangements in this respect, but indicated that any request made under Articles 24(2), (3) and (5) of CSDR could be addressed through usual communication channels.

117. Two NCAs (FR, LU) explained that during the period covered by the peer review, their focus was not on the establishment of cooperation arrangements which can be established for authorised CSDs – it was mainly placed on the authorisation process. LU indicated having however the intention to launch cooperation after the authorisation process would have been completed (and this has effectively been done after the end of the PR period). FR also mentioned having waited for the stabilisation of passporting requests and of the substantial importance indicator process, to assess whether any exchange of information needed to be organised. As host NCAs, none of the NCAs has

requested to set up such arrangement, nor has received any request to set up such arrangement.

- 118. Establishment of a periodic reporting framework with CSDs on their activity in host MS under Articles 24(2) of CSDR.** As home NCAs, only two NCAs (BE, LV) reported having set up a periodic reporting framework with the CSDs they supervise. LV indicated that they request such information from the supervised CSD as part of the quarterly and annual statistic reporting schema implemented for the purpose of both CSDR supervision and the central bank's oversight needs. BE indicated that they had an oversight reporting in place with their supervised ICSD before CSDR, which is fully automated on a monthly basis with daily data breakdowns for periodic reporting on its activity, that a framework is in place to upload CSDR datasets (i.e. banking-type ancillary services), and that they are finalising requests for regular reporting such as on the information on the law under which securities issued by the ICSD are constituted.
119. Actual exchange of information between NCAs under Articles 24(2), (3) and (5) of CSDR during the review period. As home NCAs: LV regularly communicate information referred to in Articles 24(2) and 24(3) of the CSDR to the other CSD's supervisory college members.
120. Among the other NCAs, only LU mentioned having received requests so far under Article 24(3) of the CSDR (from IE and LI, the data has been asked to its supervised ICSD and transferred to NCAs in a timely manner).
121. No NCA has so far received nor sent any findings under Article 24(5) of CSDR.
122. SE explained that their risk-based supervisory approach is based on ESMA yearly indicators for relevant currencies and substantial importance (which show no deviation and also that no foreign CSD is at this stage of substantial importance in SE) and at this stage did not see the need to request the information referred to in Article 24 of CSDR.
123. As host NCAs, none of the reviewed NCAs has requested such information so far. LV indicated that in this respect, the information received through ESMA annual exercise on substantial importance and relevant currencies fulfils their needs. FR also referred to ESMA indicator on substantial importance which, once stabilised, could be used as a basis to structure the exchange of information in relation to the most relevant markets first (the PRC notes that FR has recently started engaging with other NCAs in this respect).
- 124. Trigger to request information under Articles 23(2) or 24(3) of CSDR.** Five NCAs (BE, DE, FR, LU, SE) mentioned that the detection of issues or inefficiencies, as part of the on-going supervision or in other circumstances e.g. high level of settlement fails, alerts or complaints from a participant or issuer or a related news item could trigger information requests and assessment of the need to establish specific arrangements. BE identified two triggers for requesting information: a significant issuance by a BE issuer in a passported CSD or significant holdings of securities by BE participants in passported CSDs, on which BE would not have a view via existing cooperation arrangements (see

below). DE indicated being satisfied with an event-driven approach rather than a fixed agenda, which according to them allows informal contacting and immediate reactions.

125. Two NCAs (FR, LU) added that a discussion between NCAs at ESMA level would be useful to harmonise and streamline the exchanges of information regarding cross-border services, allowing to leverage on the experience of other NCAs.

Cooperation arrangements in case of substantial importance under Article 24(4) of CSDR

126. **On the establishment of a college of supervisors under Article 24(4) of CSDR:** LV is the only reviewed home NCA that has established a supervisory college under Article 24 of CSDR. LV actually set up an informal college involving all the concerned authorities from LV, LT, EE as early as in 2015, which served as a platform for preparing the authorisation of the CSD. LV also invited the IS authorities to join the college very early in the authorisation of Iceland branch process. College members receive information (eg. incidents, threats to the CSD's solvency, etc.) and discuss significant events, and actions are agreed upon collectively. LV further explained that in the context of R&E process, LV's plans and methodology are discussed and results of review and evaluation are shared once a year with college members, any of which being able to volunteer to take part in supervisory tasks conducted by LV. In case of on-site visits, the local college member is usually invited to participate. According to LV, agreement has always been obtained by consensus and no issue has been encountered in the functioning of the college so far.

127. The other NCAs indicated having assessed the opportunity to set up colleges of supervisors but not having identified such need at present.

128. Five NCAs (BE, DE, FR, LU, SE) added that they already have some cooperative arrangements in place with other NCAs and that none of them had so far expressed any interest in setting up a supervisory college.

129. **On the establishment of cooperation arrangements other than colleges under Article 24(4) of CSDR:** as home NCAs, all NCAs have cooperation arrangements in place with certain host NCAs in relation to the considered CSD which feed in their supervisory practices, however, as shown in the table below, they almost in all cases still need to be assessed against the CSDR to identify gaps and/or to be updated to comply with the CSDR requirements, in particular as to the authorities participating in those arrangements. Article 24(4) of CSDR indeed requires those arrangements to include NCAs and relevant authorities from both the home and the host jurisdictions.

130. Reviewed NCAs reported incorporating the following cooperation arrangements in their supervision of the selected CSD:

TABLE 11—EXISTING COOPERATION ARRANGEMENTS IN SCOPE OF THIS PEER REVIEW

Home NCA	Relevant arrangement, Authorities involved	Scope	Updated to cover CSDR
BE	Euroclear group authorities	See above	Yes (Nov 2021)

	CBol	Oversight cooperation on settlement of IE securities in EB	Yes (Dec 2021)
	ECB/Multilateral Oversight Group	Compliance with the PFMI	No: no update foreseen under CSDR, but possible changes in its implementation depending on members' input
	the Bridge authorities (CSSF and BCL)	The Bridge	No (under consideration)
DE	EBA supervisory group college with NCAs and central banks of the supervised Clearstream group CSDs	SREP	No
FR	Euroclear group authorities (11 authorities from 5 EEA MS + UK): to cover the relationship of Euroclear SA as service provider and mother company of the Euroclear CSDs. Cooperation arrangement in place since 2005.	The 'ESA MOU': Multilateral cooperation with regard to shared services provided by the parent holding company of the Euroclear Group (l)CSDs (Euroclear SA), as service provider to the Euroclear Group entities	Yes (Nov 2021)
	ESES CSD cooperation arrangement, between ESES overseers and market supervisors (BE: NBB, FSMA; FR: BdF, AMF; NL : DNB, AFM)	Multilateral cooperation covering the ESES CSDs (Euroclear France, Euroclear Nederland and Euroclear Belgium) sharing a common rulebook (ie. in respect of EFR activities, services or IT systems shared with other ESES CSDs).	No
LU	EBA supervisory group college with NCAs and central banks of the	SREP	No

	supervised Clearstream group CSDs		
	the Bridge authorities (CSSF BCL and NBB)	The Bridge	No (under consideration)
LV	Nasdaq Supervisory college	Art 24(4) of CSDR	Yes
SE	Euroclear group authorities	See above	Yes

131. BE indicated they do not see the added value of setting up new cooperation arrangements for the supervision of its supervised ICSD, taking into account the fact that in their view NCAs which supervise local CSDs could not provide them with the most relevant input for the supervision of the ICSD and no NCA has requested the establishment of such arrangement. Furthermore, BE stressed the absence of any input or reaction following the sharing of the R&E report (although they acknowledge the fact that according to Article 60(1) of the CSDR information shared related only to the provision of banking services by the ICSD, which is of limited interest for the host NCAs).
132. BE, FR and SE referred to the MoUs in place at various levels for the supervision of CSDs of an EU group, in particular the MOU with the group service provider to group CSDs, highlighting that they complement the specific requirements applicable to competent authorities of the CSDs of that group, and considering that although the MoU with that service provider is not based on Article 24(4) of CSDR, it directly supports the supervision of the group CSDs under CSDR. Members of the MoU are not only CSDR NCAs but also include a third country competent authority.
133. Three NCAs (FR, DE, LU) mentioned considering the establishment of cooperation arrangements under Article 24(4) of CSDR: LU indicated that although having received very few requests for information from other NCAs and having no specific need nor critical volume of information and data available to justify a more formalised cooperation with host NCAs, it has prepared a standard MoU to be put in place with each of the concerned host NCAs (and has moved forward with this project after the end of the PR period). LU has also shown a proactive approach toward cooperation and engaged with NCAs also outside formal cooperation arrangements (e.g. with DE as part of its supervised ICSD authorisation). FR also indicated being in the process of determining the practical modalities and the actions to be undertaken with the relevant host NCAs where the activity of the local CSD is of substantial importance, and intending to trigger those actions in the context of the CSD R&E process.
134. As host NCAs, at this stage no cooperation arrangements has been established with the home NCAs of the CSDs that are of substantial importance in their jurisdictions.
135. BE indicated that it already receives the information it needs to supervise the activity of the two CSDs which are of substantial importance in BE through existing non-CSDR cooperation arrangement for the CSD in FR and as a member of the Eurosystem for the CSD in DE. FR, LU and SE indicated that so far, they did not identify any specific need nor critical volume of information and data available that would justify a more formalised cooperation. If this situation change, and they become aware of risks for their national

markets, they mentioned that they would assess the opportunity to formalise cooperation arrangements with the relevant home NCAs.

Assessment

136. As regards the expectation that NCAs in their home and/or host capacity exchange information in the context of their cooperation arrangements on the supervision of a CSD's cross-border provision of services in an effective and efficient manner and in compliance with the standard forms, templates and procedures:

137. **Cooperation as home NCA: exchange of information under Article 24 of CSDR:** the PRC notes that in respect of information exchanges under Article 24(2), (3) or (5) of CSDR, only LV has arrangements in place and only LV, BE (to one host NCA) and LU (to two host NCAs) have provided information to host NCAs. It therefore appears that except in the case of the CSD in LV, exchanges of information on cross-border services between home and host NCAs have so far been non-existent or minimal.

138. Although the PRC understands the arguments relating to the primary focus during the review period on the authorisation and passporting processes, and the use of other sources of information (such as ESMA yearly data on relevant currencies and substantial importance, or through oversight function), the PRC encourages NCAs to seize the opportunity offered by Article 24(2) and (3) of CSDR and start exchanging information between home and host NCAs.

139. **Cooperation as home NCA: arrangements under Article 24(4) of CSDR:** The PRC is of the view that Article 24(4) of CSDR requires home NCAs to establish formal cooperation arrangements with all concerned authorities (home relevant authorities, and host competent and relevant authorities).

140. From this standpoint, only LV, which has set up a supervisory college, can be assessed as fully compliant with this requirement. At this stage none of the other authorities in their capacity as home NCAs has established any formal cooperation arrangements with the host NCAs and relevant authorities from the jurisdictions where the CSDs they supervise are substantially important, as required under Article 24(4) of CSDR.

141. However, the PRC understands that there are arguments for this absence of such formal cooperative arrangements at the moment of the peer review (focus given to the authorisation phase, need to wait for a stabilisation of the cross-border activity landscape, existing cooperation and MOUs cover to a certain extent the CSDR requirements).

142. The PRC also positively notes that following the end of the PR period LU has started the negotiation of a MoU with its supervised ICSD's host NCAs and that BE has started engaging more actively with host NCAs on the R&E process. The PRC recommends BE,

DE, FR, LU and SE to establish the relevant cooperation arrangements as soon as possible.

143. The PRC assessed that even when those authorities have formalised cooperation arrangements prior to CSDR implementation and for other purposes than CSDR (e.g. for BE and LU for the Bridge, or a CSD group authorities at group level), in most cases they have not been updated to cover CSDR requirements. The PRC would therefore encourage NCAs to conduct a precise gap analysis against the CSDR requirements and update existing cooperation arrangements accordingly or start setting up cooperation arrangements specifically for the purposes of CSDR.

144. As regards the expectation that NCAs as home NCAs of substantially important CSDs in host countries function in an effective and efficient manner in terms of cooperation with other host NCAs, the PRC notes that only one college has been set up, for the CSD and its branches by LV and that the other NCAs, although highlighting good and efficient cooperation with host NCAs, have used so far only formal or informal channels pre-existing to CSDR, to communicate and exchange information.

145. The PRC positively notes the good cooperation existing, and often already formalised, in proper arrangements between the home NCAs of CSDs belonging to groups including several CSDs: BE, FR and SE cooperate with authorities supervising and overseeing other entities from a CSDs' group, DE and LU cooperate through the EBA college in respect of another group of CSDs. However, in most cases, such arrangements do not cover CSDR requirements, or only include a generic reference to CSDR and not to specific requirements, and do not include all authorities mentioned in Article 24(4) of CSDR. The PRC therefore recommends NCAs to rapidly review and update them as needed.

146. Although the PRC acknowledges that the setting up of cooperation arrangements and what they should entail in practice is up to each home NCA, it clearly stems from this peer review that more structured cooperation is needed between home and host authorities for the supervision of CSDs providing cross-border services. To that end, and beyond the cooperation arrangements that have to be negotiated under Article 24(4) of CSDR between home and host authorities, the college set up by LV appears as a good model for information exchange and discussion.

147. In addition, more colleges would help to ensure consistent and convergent supervision in a cross-border context with aligned supervisory responsibilities between authorities acting in their home or host authority capacity. This would also ensure synergies and avoid unnecessary administrative burden on the authorities involved (e.g. for the assessment of similar procedures), and provide supervisors with more tools to monitor risks (e.g. through timely information sharing) to ensure financial stability.

148. Furthermore, the PRC considers that, given the frequent outsourcing of various infrastructures, functions or processes between entities of the same group, and the making of strategic decisions at group level, cooperation and coordination appears to be even more important between authorities supervising CSDs belonging to the same group of companies. Good examples of such cooperation were given here by the cooperation

existing between LU and DE, or between FR, BE and the other authorities involved in the supervision of the CSD group operating in their jurisdiction, in particular during the authorisation phase, but which could also be advantageously used for the purpose of conducting their on-going supervision.

149. **Cooperation as host NCA: exchange of information under Article 24 of CSDR.** The PRC is not satisfied with the finding that none of the reviewed NCAs acting as host NCA requested any of the information available to them under CSDR in respect of the CSDs providing services in their jurisdictions.

150. The PRC understands that some informal cooperation based on ad hoc requests occurs but believes that, in addition to this, it would be beneficial for the supervision of cross-border activities in the EU to structure the cooperation between home and host NCAs, to allow NCAs in their capacity as host NCAs to have a precise view of the activities conducted by CSDs from other Member States in their jurisdictions. The PRC would like to encourage NCAs in their capacity as host authorities to request information to home authorities under Article 24(2) and (3) of CSDR, at least in respect of those CSDs that are of substantial importance for their jurisdictions.

151. Accordingly, the peer review assessment of NCAs in their home authority's capacity is as follows:

- BE: partially meeting expectations
- DE: partially meeting expectations
- FR: partially meeting expectations
- LU: largely meeting expectations
- LV: fully meeting expectations
- SE: partially meeting expectations

152. The peer review assessment of NCAs in their host authorities capacity is as follows:

- BE: partially meeting expectations
- DE: partially meeting expectations
- FR: partially meeting expectations
- LU: partially meeting expectations
- LV: partially meeting expectations
- SE: partially meeting expectations

153. In terms of good practices, the PRC notes that:

- LV involved the authorities from host countries at early stages, both in the authorisation and passporting processes, in a very close cooperation;

- BE, DE, FR, LU and SE cooperate with authorities supervising CSDs from the same group of companies, and for LU and BE, they cooperate rather closely for the purposes of supervising the interoperable link.

4.1.4. Ongoing Supervisory Activities

154. The PRC assessed whether home NCAs, i) have policies, procedures and a demonstrable supervisory framework which clearly set out how supervision is carried out in relation to the provision of cross-border services by CSDs, including through links and branches, and, where applicable, in relation to the operation of an interoperable link; ii) uses adequate criteria for a risk-based supervision of the provision of cross-border services including through links and branches and, where applicable, in relation to the operation of an interoperable link, iii) dedicate adequate operational resources (including IT systems and tools) to the ongoing supervision of cross-border services provided by CSDs including through links and branches and where applicable in relation to the operation of the interoperable link; iv) put in place systems or arrangements to monitor on a regular basis the activities related to the provision of cross-border services including by taking into account the issuers and participants from host Member States, the currencies used, and other relevant criteria, as well as the activity conducted through links, branches, and will share this information upon request with the NCAs from the host Member States; v) make use of ongoing supervision tools to regularly check that CSD services provided in host countries are carried out in compliance with the applicable rules, including prudential, organisational and conduct of business rules, and in line with the information provided in the notification sent from the home to the host NCAs; vi) embed in its ongoing supervision reporting or translation requirements from CSDs or other arrangements (e.g. translation tools, requests for assistance by host NCAs) to be able to monitor activities carried out in a different language.

Summary of findings

155. **Supervisory approach regarding cross-border services:** All six NCAs under review, in their home NCA capacity, conduct the CSD ongoing supervision in a holistic way considering the entire organisation, activities and services provided by the CSDs, without distinguishing between domestic and cross-border services. In the case of two NCAs (BE and LU) supervising the two ICSDs, they consider that any supervisory action they take addresses cross-border aspects since most of the ICSDs' activities are considered cross-border.

156. BE acknowledges that there are risks specifically related to cross-border services such as those that emerge from the set-up of a link with a local market. According to BE there are legal risks (eligibility, asset protection, finality assessment in the local market), operational risks (reconciliation with local custodian/CSD), credit and liquidity risks where relevant (e.g. in the case of the interoperable link between the two ICSDs). Therefore, BE agrees that, in some cases, the focus of ongoing supervision can be narrowed to target specific

cross-border aspects, such as the crisis procedure for the interoperable link between the two ICSDs.

157. According to LU, the focus for cross-border services may cover links with other CSDs (Article 48 of CSDR), the passporting of services to other EU countries (Article 23 of CSDR) as well as the cooperation between authorities in this regard (Article 24 of CSDR). LU indicated they performed the risk assessment for links during the authorisation phase. Changes to existing links are reported by the ICSD to the NCA for the purpose of the CSDR R&E and will be reviewed by the NCA in that context (so far no R&E has been conducted on the ICSD). For new links (non-interoperable ones), the ICSD needs to submit a specific notification showing how they comply with all of the relevant articles of CSDR and of the RTS on Prudential Requirements. Compliance of the new link is checked article by article. Among others, the NCA focuses on the assessment of legal and operational risks. LU pays attention that the ICSD applies a consistent approach when obtaining legal opinions for links, i.e. a legal opinion should cover an assessment of entitlements, law applicable to proprietary aspects, nature of rights of requesting CSD, possibility of encumbering securities and impact of insolvency proceedings (as required by the CSDR framework).
158. Regarding the branch set-up of the CSD it supervises, LV supervises all services and activities of the CSD as a whole. This is because according to LV, the CSD is organised with a matrix structure and none of the branches can function on a stand-alone basis as staff are dispersed in the various entities and shared within the whole CSD. For more details, please see the description of the CSD set-up in the section on Authorisation.
159. DE has assessed changes affecting CSD links as part of the CSDR R&E of its supervised CSD. Audits beyond R&E have not covered cross-border topics so far, however they may be covered in the future. FR has mentioned legal risks as being relevant when assessing the risks of the provision of cross-border services (for example, risks derived from the asset protection rules applicable to the receiving CSD, the securities eligibility, and the tax regimes of the different markets). Operational risk was also one of the examples of link-related risks provided by FR, which could materialize, for instance, through problems in the reconciliation process, or problems in the communication flows. FR also referred to their interaction with the CSD to enhance the supporting documentation of the passporting process and, more specifically, the assessment of the measures taken by the CSD to allow its users to comply with the respective national laws referred to in Article 49(1) of CSDR. Consequently, the legal services of the CSD have conducted an in-depth analysis of the above-mentioned measures for each of the 27 Member States and provided a new set of documentation. The revised notifications included the applicable rules in each Member State where the CSD intended to provide its services under Article 23 of CSDR,

and the respective measures taken by the CSD to ensure compliance with each rule. The assessment notably focuses on:

- i. Initial recording of securities in a book-entry system (bearer, registered, physical, electronically or dematerialized, immobilized or not);
- ii. CSD rights and obligations towards the issuers;
- iii. Features of the securities accounts maintenance;
- iv. CSD obligations towards the participants relating to an issuer insolvency;
- v. CSD obligations relating to the loss of a financial instrument;
- vi. CSD obligations relating to tax declarations.

160. SE has explained that the documentation regarding the set-up of links and cross-border activities were analysed at the authorisation stage. For links, assessed topics included which customers used the links and in which situations, different scenarios/set-ups of links, incidents, the cooperation on links within the CSD's Group and the future plans for the links. For cross-border provision of services, assessed topics included the set-up, procedure for legal assessments, the cooperation on cross-border services within the CSD's group, the extent of the services and the future plans for cross-border services. Since the CSD authorisation, SE communicated to the PRC that it has followed up this topic with the CSD and has taken part in the CSD's assessment of links and investor CSD services. SE has a preliminary plan to perform an analysis of the CSD's links and cross-border services during Q3 or Q4 of 2022.

161. **Risk based supervision of cross-border services and prioritisation of supervisory actions:** The six NCAs under review do not monitor specific risks related to cross-border services on an ongoing basis. NCAs rely on the CSDR annual R&E process as well as, in the case of CSDs with a banking licence (the two ICSDs in BE and LU and the CSD in DE), on the CRR/CRD annual supervisory review and evaluation process (SREP). These annual assessments cover in principle all types of risks, as well as the main changes that might have an impact on these risks. According to the NCAs, the monitoring tools available for the ongoing supervision have a risk reduction orientation and they enhance all CSD activities, domestic and cross-border. The NCAs do focus on key areas of supervisory attention, as listed below. Regarding aspects related to the CSD cross-border provision of services defined to be of particular supervisory focus and concrete supervisory activities in this regard, some NCAs (BE, FR, SE) mentioned the CSDR Article 23 process and the assessment of links.

162. For BE, major supervisory/oversight areas in respect of its supervised ICSD in 2020 were: governance and cyber risks. In 2021, key areas of supervisory attention included governance reform, cyber risks and fat-tail mitigation measures (liquidity shortfalls/uncovered credit losses). In the course of 2021, cooperation with other authorities at CSD

group level was set up again with current main focus on cyber risks. Other important topics covered in 2021 include long cash balances and an inspection on the credit limit framework in function of QLR (qualifying liquid resources).

163. BE has in place a process to monitor incidents and to communicate incidents related information to concerned authorities, where the incidents have a cross-border impact. The ICSD in BE categorises incidents based on the potential impact on the smooth provision of services and financial losses (bronze/silver/gold). BE clarified to the ICSD that they wanted to be provided with incidents based on the impact on the smooth provision of services. BE's incident monitoring is based on ad-hoc (immediate) reporting for silver and gold incidents, quarterly reporting for all incidents (including bronze), as well as yearly reporting for all incidents during the CSDR R&E. For silver and gold incidents an interim report is sent by the ICSD within 2 days (including preliminary root cause and actions taken), and a final report in less than 10 days.
164. BE has established a procedure for the annual R&E process according to Article 22 of CSDR. BE's identified areas of focus for the R&E go beyond those established by Article 41 of RTS on CSD Requirements to also include major changes reported by the ICSD and follow-up of post-authorisation outstanding matters (some come from the ongoing supervisory actions) as well as information on incidents. BE assesses all types of changes (by requiring the ICSD to report based on a broader understanding of major changes, e.g. how the ICSD handled Covid-19 related changes) instead of applying a limited interpretation of what constitutes substantive changes under CSDR. BE applies the annual process of R&E by producing a line-by-line assessment of compliance with the relevant CSDR requirements. In terms of outcome, BE prepares two R&E Reports: a general one and one on banking type ancillary services. In addition to the R&E Reports prepared as NCA and sent to other authorities for consultation, BE also drafts the report on behalf of the Eurosystem.
165. According to LU, as the ICSD it supervises was authorised only 18 days before the end of the peer review period, and the supervision under CSDR had just started, the initial focus was on reviewing the regular reports that are delivered by the ICSD as foreseen by the regulation: these reports target mainly credit and liquidity risks, and also include reports on the performance of the SSS and event-driven reports (e.g. reports on operational incidents resulting from operational risks, notifications to establish a CSD link, reports on breaches and/or potential risk of breaching intraday credit risk management). Should any of these reports reveal any negative impact on cross-border activities, LU would inform concerned authorities. As regards R&E, LU has started designing an internal process to evaluate the reports required by the regulation.
166. According to LV, the main focus each year (due to the simple operational model of the CSD they supervise) is operational risk management and business continuity, covering core CSD services and IT systems, including IT governance and IT outsourcing, system performance (availability), operational incidents, capital adequacy checks.
167. FR mentions two key areas of supervisory attention for 2020 in terms of CSD cross-border services, covering the processing of corporate actions and DVP links. FR prioritises

supervisory actions based on expert judgement of information it receives from all type of reports, on-site visits, document review and meetings with the supervised CSD.

168.DE refers to operational risk and capital adequacy as examples of focused assessment, in addition to the supervision of the remediation of audit findings.

169.SE mentions for 2020 a follow up on issues identified during the authorisation of the CSD under CSDR (such as governance, risk function and the compliance function and outsourcing to critical service providers), cyber security and planning for the first R&E. As for 2021 the execution of R&E was a key area of supervisory attention, governance, control functions, outsourcing and cyber security continued to be areas of attention.

170.According to BE, based on the outcome of the CSDR R&E and SREP assessments, and ongoing monitoring and interactions with the supervised institution, priorities are being defined for the supervisory plan. Internal reports from the ICSD's 2nd and 3rd line also serve as a source to prioritise supervisory actions. BE indicates that specific cross-border analysis can be prioritised (event-driven, risk-driven), such as operational risk management of the interoperable link, or cross border legal risks. (Cross-border) legal risks being currently an area of lesser focus in SREP, the topic is covered in the 2022 supervisory plan (in cooperation with the legal department) and the assessment outcome will be integrated in SREP 2022. In case of breaches of existing requirements, the ICSD internal control functions, as well as the external auditor, would have to inform the BE. Breaches can also be detected by BE based on its investigations/ inspections or reporting received. BE's annual SREP capital decision is based on a risk assessment covering the following aspects: Business Model & Profitability; Internal Governance and Risk Management; Credit Risk and Counterparty Risk; Market Risk; IRRBB; Operational Risk; Dividend Policy; Liquidity Risk.

171.LU mentioned that ad-hoc spot checks are done in case of matters identified via expert judgment. Also, LU maintains an open ear towards interested parties (host NCAs among others) and might become aware of cross-border issues via this channel. As the authorisation for its supervised ICSD was granted only in April 2021, the supervisory framework for CSDR is still under design and construction. According to LU, the risks to which the ICSD is or might be exposed are continuously assessed. This assessment includes a regular monitoring of defined financial and non-financial key indicators to detect material changes in the financial conditions and risk profile. The main criterion for expert judgement is the risk level perceived for the ICSD but also for the financial system stability. According to LU, even though the above descriptions focus on the experience of CSSF under CRR/CRD, the same style of work will be adopted for CSDR matters. LU mentions that, due to its international activity, the ICSD mainly delivers cross-border services (for example: issuance of XS securities, and settlement of a large list of eligible domestic and international securities within its securities settlement system) from Luxembourg to a large international range of institutional clients. The aim of supervisory work is to ensure the ICSD's compliance with all applicable regulatory norms at all times, which benefits domestic services as well as all cross-border services.

172.LV mentions that the detection of breaches is done by means of day-to-day monitoring tools, assessing available information and by means of the annual R&E process, which

takes the form of both desk and on-site assessment. Regarding the prioritisation of supervisory actions, LV's supervised CSD as a market infrastructure which is of substantial importance for four jurisdictions is by this very fact recognised as a supervisory priority with the implied aim that all CSD related matters should be dealt with quickly; should any significant matter come into the supervisor's focus (for example an incident report) it becomes a priority.

173. All six NCAs indicated that they prioritised their supervisory actions based on supervisory evidence, findings of audits and event-driven ad-hoc priorities. According to all NCAs, they follow up with their CSDs on findings from the authorisation process and R&E process.

174. **Use of monitoring tools:** All six NCAs indicated that they required CSDs to send periodic reports (ranging from monthly, quarterly to annual frequency) based on the CSDR requirements, including quantitative reporting (prudential, financial reporting, annual data based on Article 42 of the RTS on CSD Requirements for the R&E exercise, the annual indicators compiled by ESMA on the substantial importance of CSDs and the most relevant currencies in which settlement takes place) and qualitative reporting (minutes/papers of Board and Management bodies, CSD internal control and external auditor reports). NCAs also monitor settlement fails based on the voluntary settlement fails reporting to ESMA. In addition, NCAs have in place processes to monitor incidents based on reports from the CSDs. Five NCAs (DE, FR, LU, LV, SE) mentioned that they looked closely at system availability. One NCA (BE) provided evidence of a monitoring tool (originally developed for oversight purposes, but now extended with CSDR related reporting) it uses to analyse quantitative data allowing it to perform own calculations and analyses, and to develop dashboards/key metrics for the purpose of monitoring its ICSD's activities.

175. However, the majority of the NCAs subject to the peer review have not developed specific risk indicators on cross-border services or a process for measuring (scoring) risks related to the provision of cross-border services. In the demo of their monitoring tool, BE showed data on the securities holdings/ settlement activity via the links and the links were ranked in terms of volumes held/ settled, which is an example of a specific risk indicator on cross-border services (e.g. measure of interdependency with a linked CSD). LV mentioned the number of processed instructions as an indicator for the CSD operational risk (higher volumes would trigger the need for increased system capacity, which would feed into the identification of parameters for the system (settlement module) capacity test).

176. Regarding the process for assessing information received as part of their ongoing supervisory activities, all six NCAs refer to expert judgement involving business, legal and IT expertise, discussions with CSD senior staff (BE), interactions with the CSD three lines of defence on a continuous basis (BE), assessing the information against the respective CSDR and RTS provisions article by article (LU). Four NCAs (BE, DE, FR, SE) use IT tools for data analysis. Also reports received under the CRR/CRD supervisory stream are now scrutinised for elements relevant under CSDR (DE, BE, LU). LU and LV are in the process of building automated analytical tools for statistical information. LV views the CSDR data as purely statistical type of information, and they do not think that based on the data they can make supervisory related judgements. However, FKTK mentioned some risk indicators for assessing the CSD operational risk based on Article 42 of the RTS

on CSD requirements on the statistical data set (volumes of instructions and the data on settlement in commercial bank money).

177. None of the six NCAs has applied sample checks.

178. **Information and data in relation to CSDs' provision of cross-border services:** All six NCAs receive the annual statistical data as per Article 42 of the RTS on CSD Requirements, which, among others, includes data split by: country of the incorporation of the participant; country of incorporation of the issuer; settlement currency. However, none of the NCAs has developed indicators based on this data. NCAs also receive annual data for the substantial importance and relevant currencies indicators centralised by ESMA.

179. One NCA (BE), as both NCA and overseer/ relevant authority for its supervised ICSD, receives monthly reporting (based on daily data) covering statistics on securities deposits and settlement activity, including via links and the interoperable link between the two ICSDs, and other ancillary services e.g. triparty collateral management. Moreover, the ICSD in BE is subject to reporting requirements in the context of banking regulation. Cross-border services regarding securities deposits and settlement turnover can be identified as follows: Securities holding and settlement turnover via (interoperable) links (based on Depository id/name id), Securities deposits/settlement activity broken down by the local residence of participants (based on Participant country id), Securities deposits broken down by ISIN code (based on country of issuance id), Individual Top-20 participants' activity data is also available. BE is currently working to integrate the CSDR reports into their monitoring tool. Datasets are currently received on a regular basis, and a framework is in place to upload them in the supervisory tool, an automated end-to-end solution (like the one for oversight data) is not in place yet but under construction. Dashboards have also been developed for the CSDR reporting on banking type-ancillary services (for credit and liquidity risks). **Home NCAs addressing requests for information from host NCAs:** Out of the six NCAs, only two (BE and LU) have received requests for information from host NCAs regarding the cross-border services provided by CSDs.

180. BE shares information on the outcome of its supervisory activities with other authorities in the context of its cooperation arrangements, as well as on the outcome of the CSD R&E in line with CSDR. In case of a request for information/data from host NCAs, BE will analyse and see what can be shared taking into account related CSDR (or other) provisions. For the Irish NCA, BE has been providing regular aggregated statistical data on securities deposits and settlement turnover (with breakdowns such as DVP (delivery versus payment)/FOP (free of payment), internal/external/Bridge settlement, or type of service such as pure settlement or collateral management related transactions) in the context of its current cooperative oversight arrangement. At the request of the Irish NCA, BE also provides regular data on settlement fails with regard to Irish securities (with breakdown per type of security). In the context of the future oversight/supervision MoU with the Irish NCA, the Irish NCA has requested additional data: list of issuers of Irish securities; list of participants established in Ireland for the settlement of securities

(quarterly); reporting against capital requirements; information on incidents: system availability, overview of incidents with a breakdown by materiality.

181. LU has received a request from the NCA of Liechtenstein showing their interest of the identity of the Liechtenstein issuers and participants in LU's supervised ICSD. As there are currently no Liechtenstein issuers issuing in the ICSD, LU and the NCA of Liechtenstein decided that LU provides an annual report to the NCA of Liechtenstein on the Liechtenstein participants in the ICSD as per Article 24(3) of CSDR. The Czech NCA has reached out to the ICSD in order to establish periodic reporting in accordance with Article 24(2) of CSDR, which was supported by LU. However, as currently the ICSD as Issuer CSD is not providing core services in relation to any securities constituted under the Czech law, the ICSD only monitors admission and/or issuance of such securities on a monthly basis. Should the case arise in the future, the ICSD will use a quarterly report to LU to be transmitted to the Czech NCA accordingly. The Irish NCA has reached out to LU in order to establish a cooperation arrangement, which currently is handled under Article 24(3) of CSDR. In a first stage, LU provided them with a list of Irish participants in the system of the ICSD, as well as a list of Irish issuers having a "live" issue within the ICSD.
182. Upon its own initiative, LV passes on statistics concerning the relevant SSS to corresponding host competent and relevant authorities.
183. **Information related to CSD User Committees:** All six NCAs (BE, DE, FR, LU, LV, SE) check whether the CSD has established a user committee (UC) for each securities settlement system it operates. BE and LV also check whether the meetings of UC are conducted regularly, while LU has not yet had time to check this due to the recent authorisation of its supervised ICSD. BE and LV check whether UC members have discussed matters relevant for the CSD activities in their market and how the CSD has treated the outcome of such discussions. According to BE, there is a follow-up recommendation to its supervised ICSD's specific commitments towards its participants regarding the service level targets as required under RTS 392/2017 Article 70(3)-(6), given that, when setting these service levels, the UC has not been consulted. DE and FR follow discussions in UC by participating in UC meetings (quarterly). In France, there is also a BdF representative as member of the UC. SE requires the CSD it supervises to provide minutes of UC meetings.
184. **Supervising branches operation:** As the NCA of the only CSD with branches under CSDR, LV has checked if the CSD has implemented appropriate management of its established branches, including: (i) whether the branch has enough staffing resources to ensure the smooth provision of services in the host country, (ii) whether the branch is subject to same kind of internal control arrangements as the whole CSD, (iii) whether there is an appropriate escalation process for the branch related matters within the whole CSD structure, (iv) whether the IT systems of the branch are managed adequately. This is done by: assessing the organisational structure, interviews with selected staff members, assessing incidents during the R&E process, assessing the CSD internal control function (internal procedures, reports by control function, interviews during R&E process, assessing the CSD overall management during the R&E process, assessing the

organisation of the CSD IT policies and procedures, as well as the IT functionality and architecture in the interviews with IT senior managers.

185. **Suspension of participants from other Member States**: According to BE, during the period ranging from 4 December 2019 until 30 November 2020, disciplinary actions - suspension or termination of participants – were taken against two participants: one from Austria (withdrawal of banking license) and one from Luxembourg (non-compliance with the admission criteria). BE did not conduct an analysis of those cases. There were no suspension cases reported by DE, FR, LU, LV, and SE. According to LV, there was a case when a CSD participant's status was terminated due to the withdrawal of the credit institution's authorisation by the ECB; no analysis was required then.
186. **Addressing complaints about CSD cross-border services**: Five NCAs (BE, DE, FR, LU, and SE) have not received any such complaints. LV has received a complaint from a local bank in respect of the ICSD in BE and has contacted BE (NCA for ICSD); according to LV, it has not received BE's assessment.
187. **Language requirements and capabilities**: Three NCAs (BE, LU, LV) confirmed that there is no need to translate documents, since they are already provided by the CSDs in English. In the case of the CSD in LV, LV mentioned that some documents might be in the national languages of the jurisdictions where the CSD branches are established (which would not be an issue for the respective host NCAs), in particular applications from local issuers, however LV has not experienced cases when they have requested information and it was not available in English. Two NCAs (FR and SE) explained that most documents are in English, and, if needed, documents would be translated. DE mentioned that the exchange of documents with authorities from other Member States is in English.
188. **Organisational set-up and human resources**: According to five out of six NCAs (BE, DE, FR, LU, LV), the current resources are sufficient for the current scope of activities. As needed, resources from relevant departments are used with different backgrounds and work domains (economic/legal backgrounds, risk/institutional/financial analysts, IT experts). In case of need during periods of higher workload, internal mobility may be used. Only SE mentioned that resources dedicated to CSD supervision were not sufficient; this has been escalated internally but not solved for a while due to funding issues; according to SE, its funding issue has been solved recently.
189. BE has indicated that there are 3 CSDs in Belgium and that a total of 15 FTEs working on CSD supervisory activities across the NBB, out of whom 11 FTEs are working in the Post-Trade Group, resulting from the merging of the oversight function with CSDR supervision. BE has further specified that they also cover other entities than the ICSD (other CSDs, CCPs, their holding companies as the case may be, T2S, etc.) as well as policy groups (CPMI, MIPC, ESMA, etc.) in addition to the ICSD, in various roles (lead authority or not, supervision or oversight, etc.). BE has noted that the members of the team are appointed to perform different supervisory activities on operational risk, financial, institutional and risk analysis and that irrespective of their background or supervisory focus, they were all involved in the authorisation procedure of the ICSD as well in the performance of the CSDR R&E. BE stressed that its Post-Trade Group uses cross-team synergies and relies on different types of resources for an effective and efficient conduct of supervisory

activities. BE mentioned that, since operational risk is relevant for all market infrastructures, and financial institutions it has centralised the expertise for IT/cyber security in the IT Audit inspection team and the TIBER team (a special independent team performing risk management work on the prevention of cyber incidents). BE noted that its general supervisory strategy opts for one annual IT/cyber risk inspection of the ICSD which is conducted by members of IT Audit Group. BE also indicated that the outcome of inspections may serve as a relevant and beneficial input to the desk-based supervisory activities of the Post-Trade Group. BE provided a concrete example in this regard according to which the Post-Trade Group requested the Inspectors/Modelists to perform an inspection on the ICSD's collateral evaluation practices, the output of which served as input to the assessment of the topic in the context of the ICSD authorisation process under CSDR. The Post-Trading Group provided input to the modelists on specific CSDR requirements to be taken into account in the inspection.

190. Within LU NCA two teams are involved as regards CSDR related activities, the Financial Markets Infrastructure Division and the Banking Supervision Division. LU indicated that activities related to CSDR are allocated between the two Divisions, with the Financial Infrastructures Division conducting authorisation and policy related activities and the Banking Supervision Division conducting the authorisation of banking-type ancillary services, the authorisation of interoperable links as well as the supervision of CSDs. LU highlighted that until 30 August 2021 the supervision of the two CSDs in Luxembourg was split between the two Divisions with the Financial Markets Infrastructures Division supervising the local CSD and the Banking Supervision Division supervising the ICSD. LU indicated that based on the current challenges they face and with the aim to improve the efficient deployment of resources and to leverage on the extensive supervisory experience and expertise of banking analysts, since September 2021, all of LU's supervisory activities under CSDR are done by the Banking Supervision Division. However, LU stated that the current set-up is not rigid and they would consider adapting should the circumstances and supervisory challenges change in the future. LU explained that the two Divisions belong to two different Departments and are under the steer and lead of two different Board members. According to LU, the two Divisions cooperate closely in cases for example where there is a need to integrate supervisory experience to the related policy activities. LU reported that as regards available resources dedicated to the CSDR activities within its NCA set up, 3.5 FTEs are working in the Financial Markets Infrastructure Division and 3.9 FTEs (excluding the FTEs from Banque Centrale du Luxembourg (BCL) who are involved in liquidity topics) are working in the Banking Supervision Division. LU explained that BCL's involvement in LU NCA's supervisory activities of the ICSD concerns the provision of input in liquidity related work. In this regard, LU stated that 3 FTEs from BCL contributed to the authorisation process of the ICSD and currently 1 FTE is dedicated to the ICSD's supervisory activities (regarding liquidity topics) under the responsibility of the NCA in LU. LU emphasized that in particular during an authorisation process there is a close cooperation between the two Divisions with the application of full transparency in the flow of information between FTEs. LU also indicated that it continuously evaluates the need for additional resources based on the size, nature and complexity of the work and that, in this regard, it follows an approach where the effective deployment of existing resources comes as a priority before any consideration of increasing the number of FTEs. LU highlighted that in matters concerning the assessment of IT related topics i.e. the operational resilience measures put in place by the ICSD, its banking analysts are supported by a dedicated team, with the relevant expertise, notably the Supervision of

Information Systems (SUSI) team. LU indicated that, during the authorisation process of the ICSD, colleagues from SUSI were extensively involved in the assessment of IT related elements of the CSDR requirements. LU added that the other specialised teams are consulted in specific cases: for example, where the NCA in LU is consulted by the NCA in DE on the assessment of any change applied to the ICSD's AMA (Advanced Measurement Approach) operational risk model on the calculation of the regulatory capital requirement, a specialised team responsible for mathematical model evaluations within the banking department of the NCA in LU is consulted.

191. LV has indicated that there are two Departments (Financial Innovation Department/FID and Financial Instruments Market Supervision Department/FIMSD) and one Division (Licensing Division) involved in the CSDR related issues. FIMSD covers the supervision of the CSD, investment firms, and issuers including in the context of market integrity issues and is responsible for day-to-day supervision, dealing with all CSD related matters, including authorisation, passporting, supervision and enforcement. As regards the assessment of the CSD in the context of the CSDR R&E process, the cooperative work between the two involved Departments, FIMSD and FID, is presented to the LV's Supervisory Committee that is composed of the Head of the Departments and is chaired by a Board member. The main task of the Supervisory Committee is to discuss and challenge the presented findings ensuring a common approach to all supervisory sectors. LV indicated that the Supervisory Committee does not decide on the final outcome but mainly focuses on the next steps e.g. the launching of a legal action against the participant. One person out of twelve from the FIMSD deals with all CSD supervision aspects (while also covering policy work), with the exception of IT and information security matters. LV highlighted that, during the period 2017-2019 there were two experts involved in CSDR related activities. Thereafter only one expert has been in charge. LV notes that, where the four eyes principle needs to be applied, other FTEs from FIMSD are also involved. The Licensing Division deals with legal support, general management of licensing process, passporting process and enforcement, for which one legal advisor is involved. The Regulations and Policy Division is involved in prudential matters, financial recovery planning and government arrangements. The Credit Institutions Supervision Department is also involved in ad-hoc consultations on specific matters concerning risk assessment.

192. Within the NCA in FR, the Market Intermediaries and Market Infrastructures Supervision Directorate is in charge of the authorisation, passporting procedure and ongoing supervision involving two experts with a background in Business and Legal fields. On a case by case basis, these experts rely on the expertise of other teams (with background in IT, financial, legal and mathematics) within the FR NCA, notably the Data-Driven Supervision division and the Legal Affairs Directorate offering ongoing legal support through two experts dedicated to markets issues, as well as the Investigations and Inspections Directorate which is from time to time, not regularly, involved in controls/investigations. FR's ongoing supervisory activities of the CSD involves BdF across all levels: the supervision at national level is done in cooperation with BdF (monitoring the regular information and data provided by the CSD, ad-hoc qualitative information, changes in senior management, substantive changes), at the group level of the CSD. The dashboard to examine each CSDR requirement during the annual R&E has been designed by both FR NCA and BdF. BdF has the power to conduct on-site and off-site investigations and inspections according to CSDR; BdF may also act on behalf of the

FR NCA. The overall number of FTEs working on CSD supervision is 2 FTEs from FR NCA and 3 FTEs from BdF.

193. In DE the NCA has six staff members with different backgrounds (legal and economical) who are dedicated to CSD supervision. A dedicated team has been established and is responsible for the supervision of market infrastructures under the lead of the Head of Section. In principle, most supervisory topics are handled jointly by the NCA's colleagues (CSDR topics, SREP), while special topics such as the participation in working groups or committees, the conduct of all audit-related topics, especially follow-up activities, the surveillance of certain banking related topics are handled by single employees or smaller teams.

194. In the NCA of SE the Department on Infrastructure Supervision is responsible for the ongoing supervision of the CSD involving two experts who are supported by the same department specialising in operational risk. The supervisory work is also supported by the IT Supervision Department, the Legal Department and the Market Analysis and Policy Department. The Department of Capital Market Law is responsible for the CSD authorisation, passporting procedure and enforcement; the legal team in charge of the mentioned areas consists of two experts. The total FTE number covering CSD supervision is 1.7. SE has indicated that staff availability limits the capability to conduct on-site inspections in a proactive manner.

195. The table below presents the allocation of resources to the on-going supervision of CSDs.

TABLE 12 – NUMBER OF FTEs WORKING ON THE SUPERVISION OF CSDs

	BE	DE	FR ¹⁶	LU ¹⁷	LV ¹⁸	SE
Ongoing supervisory activities including Investigations and Inspections	15 ¹⁹	6	2	2.7	1.83	0.8
Enforcement activities	0	4	2	4 ²⁰	0.4	0

Assessment

196. Monitoring CSD cross-border activities provides an overview of the risks involved and serves as a basis for the prioritisation of further and more specific supervisory actions. As defined in the supervisory expectations set out in the mandate, home NCAs should have

¹⁶ 2 dedicated FTEs by AMF supported by 3 FTEs by BdF

¹⁷ Dedicated FTEs for the supervision of ICSD

¹⁸ The calculation is done on an annual basis. For instance, if two employees were involved and each of them spent 1 month per year, then this should be reflected as 2*1/12 FTEs. For LV, the number of FTEs is calculated on a cumulative basis from 2017-2021

¹⁹ There are 16 FTEs working on CSDs, but 15 FTEs taking into account activities with regard to policy, CCPs, CLS

²⁰ 4 FTEs in the Banking Department responsible for the supervision of the ICSD are involved in the enforcement activities if necessary

policies, procedures and a demonstrable supervisory framework which clearly set out how supervision is carried out in relation to the provision of cross-border services by CSDs, including through links and branches, and, where applicable, in relation to the operation of an interoperable link.

197. **Supervisory approach regarding CSD cross-border activities and risk-based supervision.** All six NCAs, in their home NCA capacity, conduct the CSD ongoing supervision in a holistic way considering the entire organisation, activities and services provided by the CSDs, without distinguishing between domestic and cross-border services. As regards the expectation that a home NCA uses adequate criteria for a risk-based supervision of the provision of cross-border services including through links and branches and, where applicable, in relation to the operation of an interoperable link, the PRC notes that, in general, the NCAs have defined main areas of supervisory focus, a common area for all NCAs is operational risk, while credit and liquidity risks are prioritised by NCAs in respect of the CSDs with a banking licence (the CSDs in BE, DE and LU). This is in line with the fact that a CSD per se is a critical financial market infrastructure, which should be subject to close and constant supervisory attention.
198. The PRC notes that NCAs rely on the CSDR annual R&E process as well as, in the case of CSDs with a banking licence (BE, DE and LU), on the CRR/CRD annual supervisory review and evaluation process (SREP). These annual assessments cover in principle all types of risks, as well as the main changes that might have an impact on these risks. The PRC notes that, according to the NCAs, these assessments take up a lot of resources on an annual basis.
199. The PRC acknowledges that, according to the NCAs, the monitoring tools available for the ongoing supervision have a risk reduction orientation and they are meant to enhance all CSD activities, domestic and cross-border. It appears that the NCAs prioritise supervisory actions based on expert judgement of the information they receive from CSDs, supervisory evidence, outcome of investigations and on-site inspections, findings of CSD internal and external audits and event-driven ad-hoc priorities.
200. The PRC also acknowledges that most of a CSD's operational, prudential and conduct of business requirements are relevant for both domestic and cross-border services. For instance, the PRC understands the position of the NCAs (BE and LU) supervising the two ICSDs that any supervisory action can be seen as addressing cross-border aspects since most of the ICSDs' activities are considered cross-border. One example in this respect is the one provided by BE: as settlement of securities constituted under a foreign law should be considered as a "cross-border" service, each analysis on credit, liquidity, operational aspects regarding internal settlement should be considered to cover cross-border aspects as well.
201. Another example concerns the branch set-up of the CSD in LV, where the PRC understands that none of the branches can function on a stand-alone basis as staff covering different functions are dispersed in the various entities and shared within the whole CSD. The PRC also acknowledges that the 4 SSSs (constituted under the laws of Latvia, Estonia, Lithuania and Iceland) operated by the CSD have the same rules of finality

of transfers of orders, are supported by the same general system of algorithms, rules, procedures and they operate in the same technological environment.

202. Nevertheless, the PRC would like to highlight that there are some aspects that are specific for cross-border services (e.g. in terms of monitoring the mitigation of additional risks, as well as in terms of having adequate information on the services provided on a cross-border basis, so that this information could be communicated to host NCAs). The PRC believes the focus of ongoing supervision can be narrowed to target specific cross-border aspects, such as settlement via links, servicing foreign issuers and foreign participants, holding assets in foreign jurisdictions, settlement services in non-national currency, financial instruments constituted under the law of another Member State.
203. The PRC positively notes that some of the NCAs (BE, FR, LU) recognised that there are specific risks related to cross-border services, such as risks stemming from links with other CSDs (Article 48 of CSDR), the passporting of services to other EEA countries (Article 23 of CSDR). In this respect, the PRC would like to outline the examples given by BE: legal risks (eligibility, asset protection, finality assessment in the local market), operational risks (reconciliation with local custodian/CSD), credit and liquidity risks where relevant (e.g. in the case of the interoperable link between the two ICSDs). Another good example is the one from LU that pays attention to how the ICSD applies a consistent approach when obtaining legal opinions for links, i.e. a legal opinion should cover an assessment of entitlements, law applicable to proprietary aspects, nature of rights of requesting CSD, possibility of encumbering securities and impact of insolvency proceedings (as required by the CSDR regulatory framework).
204. The PRC notes as a good practice the process to monitor incidents and to communicate incidents related information to concerned authorities, where the incidents have a cross-border impact (BE, LV). The PRC recommends to the other NCAs to put in place a similar process.
205. The PRC would like to mention as a good practice the prioritisation of a specific cross-border analysis (event-driven, risk-driven), such as operational risk management of the interoperable link, or cross border legal risks (BE). According to BE, (cross-border) legal risks being currently an area of lesser focus in SREP, the topic is covered in the 2022 supervisory plan (in cooperation with the legal department) and the assessment outcome will be integrated in SREP 2022.
206. The PRC positively notes the BE supervisory practices that identify areas of focus for the R&E going beyond of those established by Article 41 of the RTS on CSD requirements to also include major changes reported by the ICSD and follow-up of post-authorisation outstanding matters (some come from the ongoing supervisory actions) as well as information on incidents. In addition to this, the PRC notes as a good practice the BE supervisory focus on all types of changes (giving a broader scope to major changes, e.g.

how the ICSD handled Covid-19 related changes) instead of applying a limited interpretation of what constitutes substantive changes under CSDR.

207. The PRC welcomes the FR proactive approach based on the close interaction with CSD in respect of enhancing the supporting documentation of the passporting process and, more specifically, the assessment of the measures taken by the CSD to allow its users to comply with the respective national laws referred to in Article 49(1) of CSDR. As a good practice, the PRC notes that the assessment notably focused on:

- Initial recording of securities in a book-entry system (bearer, registered, physical, electronically or dematerialized, immobilized or not);
- CSD rights and obligations towards the issuers;
- Features of the securities accounts maintenance;
- CSD obligations towards the participants relating to an issuer insolvency;
- CSD obligations relating to the loss of a financial instrument;
- CSD obligations relating to tax declarations.

208. The PRC notes as good practice the FR monitoring of legal risks as being relevant when assessing the risks of the provision of cross-border services (for example, risks derived from the asset protection rules applicable to the receiving CSD, the securities eligibility, and the tax regimes of the different markets), as well as operational risk, which, according to the NCA, could materialise, for instance, through problems in the reconciliation process, or problems in the communication flows.

209. The PRC positively notes the establishment by LU of a procedure concerning the mapping of documents received from the ICSD. However, the PRC considers that the process is rather qualitative, and manual based. Similarly, the PRC positively notes the incident monitoring and assessment process of LU, as well as the follow-up of recommendations with the ICSD.

210. The PRC positively notes that the NCAs follow up with their CSDs on findings from the CSD authorisation process, CSDR R&E process and other investigations and on-site inspections.

211. The PRC welcomes that, in the demonstration of their data analysis tool, BE showed data on the securities holding/ settlement activity via the links, ranked in terms of volumes held/ settled, which is an example of a specific risk indicator on cross-border services (e.g. measure of interdependency with a linked CSD). However, the PRC concludes that the majority of the NCAs subject to the peer review have not developed specific risk indicators on cross-border services or a process for measuring (scoring) risks related to the provision of cross-border services.

212. Therefore, in terms of recommendations, the PRC encourages NCAs to develop specific risk indicators on cross-border services or a process for measuring (scoring) risks related

to the provision of cross-border services, which should be supported by analytical tools to assess risks.

213. As far as more specific recommendations are concerned, the PRC recommends LV to conduct more thorough R&E, not focusing only on outstanding issues or basic checks by the book. LV is recommended to give proper consideration to the risks to which the CSD may be exposed or which the CSD may pose, in particular considering the branch set-up through which the LV CSD provides services in three host countries. While the PRC acknowledges that the volumes of settlement instructions processed by the LV CSD (including through its branches), are lower than those processed by other CSDs whose authorities were subject to this peer review, and that the LV CSD has a different risk profile than those CSDs (given that the LV CSD does not have a banking licence), the PRC considers that LV should ensure a more thorough assessment and monitoring of the relevant risks for the branch set-up.

214. The PRC is of the opinion that LV has to consider increasing its proactivity in situations of sudden particular market events which could impact the smooth functioning of the CSD under its supervision, e.g. cyber incidents affecting trading venues and potentially other entities of the same group to which major operations are outsourced. The PRC also recommends LV to engage more with the authorities at the group level of its supervised CSD, covering information sharing on outsourced services.

215. LU is recommended to consider going one step lower for incident notification by the ICSD, as this would enable a closer monitoring of the issues. At the same time, less important incidents may not need to trigger the need to escalate to the Board of the NCA.

216. While the PRC acknowledges that supervision of cross-border provision of services is an integral part of the CSD supervisory framework, the PRC concludes that NCAs would need to include cross-border services as an area of focus in their supervisory activities, developing assessment criteria and supervisory expectations. In most cases, NCAs appear to have the relevant information and data, however without using it to assess cross-border services in particular. An active engagement and exchange of information on this topic with the CSDs as well as the host authorities and home authorities, as the case may be, should be put in place as part of the ongoing supervisory activities.

217. The PRC would recommend NCAs, in their capacity as host NCAs, to be more proactive and: a) encourage participants and issuers to report issues they may encounter; and b) ask home NCAs for information and data regarding CSD cross-border services based on the identified risks.

218. **Operational and organisational resources**. Regarding the expectation that a home NCA dedicates adequate operational resources (including IT systems and tools) to the ongoing supervision of cross-border services provided by CSDs, the PRC positively notes that

three NCAs (BE, FR and SE) have developed tools to support supervisory activities on CSD cross-border activities. In particular BE has a quite advanced tool in this respect.

219. The PRC acknowledges that DE, LU and LV have started the process of putting in place automated analytical tools for statistical information, and would like to encourage DE, LU and LV to speed up the process. The PRC does not consider it adequate that LV views CSDR data as purely of statistical nature in most cases, and that LV thinks that, based on the data, they cannot make supervisory-related judgements (i.e. a conclusion that the CSD might be in any kind of regulatory breach). Therefore, the PRC recommends LV to change the approach and use the data in a proactive way to identify areas of supervisory focus (e.g. based on the increase of settlement fails, the value and volume of settlement in commercial bank money).
220. **Use of monitoring tools.** As regards the expectation that a home NCA puts in place systems or arrangements to monitor on a regular basis the activities related to the provision of cross-border services including by taking into account the issuers and participants from host Member States, the currencies used, and other relevant criteria, as well as the activity conducted through links, branches, and will share this information upon request with the NCAs from the host Member States, the PRC notes that all six NCAs have indicated that they require CSDs to send periodic reports (ranging from monthly, quarterly to annual frequency) based on the CSDR requirements including quantitative reporting (prudential, financial reporting, annual data based on Article 42 of the RTS on CSD Requirements for the R&E exercise, the annual indicators compiled by ESMA on the substantial importance of CSDs and the most relevant currencies in which settlement takes place) and qualitative reporting (minutes/papers of Board and Management bodies, CSD internal control and external auditor reports). Reports received under the CRR/CRD supervisory stream are now scrutinised for elements relevant under CSDR (BE, DE, LU).
221. The PRC welcomes the LV practice of combining the CSDR R&E with an on-site inspection, and it considers this approach as being a good practice.
222. The PRC positively notes that all six NCAs monitor CSD settlement fails and that they also make use of the data centralised by ESMA in this respect and shared with the NCAs on an anonymised basis.
223. The PRC would like to mention as a good practice that NCAs have in place processes to monitor incidents based on reports from the CSDs. Four NCAs (BE, FR, LV, SE) mentioned that they looked closely at system availability.
224. The PRC identified also several good practices in respect of the on-going supervision of the BE ICSD as follows: a) the integration of the findings of investigations and on-site inspections in the CSDR R&E assessment (such practices reflect the expectations for the application of risk-based supervision), b) the use of a advanced tool to analyse quantitative data, enabling the monitoring of daily credit exposures, activity peaks, settlement efficiency, type of collateral used, domestic debt, c) the applied approach to

incidents reporting and substantive changes notifications for which the BE NCA goes beyond the CSDR requirements.

225.Regarding information and data in relation to CSDs' provision of cross-border services, the PRC notes that all six NCAs receive the annual statistical data as per Article 42 of the RTS on CSD Requirements, which, among others, includes data split by: country of the incorporation of the participant; country of incorporation of the issuer; settlement currency. However, as mentioned above, none of the NCAs has developed indicators based on this data. NCAs also receive annual data for the substantial importance and relevant currencies indicators centralised by ESMA.

226.Another expectation refers to the fact that, in addition to the monitoring work, a home NCA makes use of ongoing supervision tools (e.g. periodic engagements, reviews, sample checks etc.) to regularly check that CSD services provided in host countries are carried out in compliance with the applicable rules, including prudential, organisational and conduct of business rules, and in line with the information provided in the notification sent from the home to the host NCAs. The frequency and intensity of these activities is based on the nature, scale, and complexity of the CSD's cross-border activities. With regards to this expectation, the PRC notes that home NCAs use a holistic approach to the supervision of CSD services. Some NCAs (BE, FR) are more proactive when it comes to focusing on cross-border services.

227.**Home NCAs addressing requests for information from host NCAs.** Regarding the expectation that home NCAs will share information on CSD cross-border services upon request with the NCAs from the host Member States, the PRC notes that, out of the six NCAs, only two (BE and LU) have received such requests for information from host NCAs. The PRC understands that home NCAs share information on the CSDR R&E in line with CSDR. The PRC considers it a good practice that LV discusses preliminary findings from the CSDR R&E with the other members of the CSD supervisory College. The PRC also positively notes that BE shares statistical data with CBol regarding services provided by the ICSD it supervises in respect of Irish securities, LV passes on statistics concerning the relevant SSS to corresponding host CAs and RAs. As a general conclusion, the PRC notices that host NCAs rely on the home NCA supervision of CSD cross-border services.

228.**Language requirements and capabilities.** As regards the expectation that a home NCA embeds in its ongoing supervision reporting or translation requirements from CSDs or other arrangements (e.g. translation tools, requests for assistance by host NCAs) to be able to monitor activities carried out in a different language, the PRC notes that all six NCAs either receive information in their working language or have translation arrangements in place. Regarding the translation of documents, three NCAs (BE, LU and LV) have confirmed that there is no need to translate documents, since they are already provided by the CSDs in English. The PRC considers the expectation to be met.

229.Accordingly, the peer review assessment is as follows:

- BE: fully meeting expectations
- DE: partially meeting expectations

- FR: fully meeting expectations
- LU: partially meeting expectations
- LV: not meeting expectations
- SE: partially meeting expectations

4.1.5. Investigations and On-site Inspections

230. The PRC assessed whether and how home NCAs: (i) use effective supervisory tools such as investigations and inspections (and assistance therein by host NCAs if deemed necessary) depending on the scale and possible consequences of the identified or reported issues relating to the cross-border provision of services; these tools may also be used in the context of a proactive supervisory action on topics based on the elaboration of adequate criteria; (ii) require and oversee remediation by the CSD when shortcomings are identified; (iii) explain to the host a NCA the rationale of not opening an investigation or inspection following to a relevant request from the host NCA; (iv) in their home NCA or host NCA capacity cooperate closely with the host or home NCA in the performance of their duties provided for in CSDR in respect of on-site inspections of branches.

Summary of findings

231. **Process for conducting investigations and inspections covering the provision of cross-border services.** All six NCAs have a general process for conducting investigations and inspections, they do not have a dedicated process to prioritise and sample their investigations and inspections based on identified risks related to cross-border services.

232. BE has an annual supervisory work plan including supervision/oversight investigations and on-site inspections. In addition, BE provides input for its supervised ICSD's audit plan. According to BE, investigations can be triggered by:

233. Recurrent risk analysis (SREP, CSDR R&E, recovery plan);

234. Risk-based approach (input from ICSD's 2nd or 3rd line, new regulation/guidance, outstanding recommendations SREP or CSDR R&E);

235. Event driven (corporate governance, strategic decisions, projects).

236. According to all six NCAs, they use expert judgement to decide when and how to thoroughly examine a topic/issue.

237. Three NCAs (BE, FR, LU) have explained that, within their governance set up, there are teams of full-time employees specialised to conduct on-site inspections based on specific methodologies and procedures. This dedicated team is in the lead when conducting the

inspection and manages the NCA planning of the annual on-site inspections depending on available resources. The CSD supervisors can make recommendations regarding the topics for inspections. BE has highlighted that, given the systemic importance of its supervised ICSD, they manage to secure one on-site inspection per year per area (SSM/CSDR/IT audit). BE has also confirmed that CSD supervisors work closely with the specialised inspectors to define the scope of the inspection, also supporting them along the inspection procedure by providing relevant clarifications. Similarly, even though they have not yet organised an inspection of their supervised ICSD yet (given its recent authorisation under CSDR), LU has indicated that CSD supervisors would support the on-site inspection agents regarding CSDR expertise until they have built up the necessary know-how within their department.

238. BE has stated that other authorities with whom it has established cooperation arrangements are also providing input in its investigation activities (e.g. they can give input for the annual supervisory work plan) and during the on-site visit. BE provided an example of how it coordinates a thorough examination.

239. LV has indicated that it has a handbook for conducting on-site inspections, describing the general process common for all sectors (including how to prepare, how to conduct, how to communicate with market participants, letter templates). The LV lead supervisor for the CSD takes part in each on-site inspection, accompanied by an IT expert from LV where needed. An expert from the Bank of Lithuania was also invited to join the on-site inspections conducted in the Vilnius office of the CSD.

240. LV confirmed that routine investigations are carried out within the CSDR R&E process, with the main triggers being major changes, a new process or service. LV explained that they organised on-site inspections during the CSDR R&E, as this was considered more convenient and a more flexible way to make enquiries, compared to using formal letters to request information. Outside the CSDR R&E, investigations can be triggered by events that raise concerns (so far there has been only one such case triggered by an IT incident in April 2018).

241. FR indicated that no investigation or on-site inspection on cross-border services has been launched since no specific points of attention were raised regarding the cross-border activities and services of their supervised CSD during the period under review. That being said, in their view, the items related to cross-border activities would be addressed generally in the context of a control. Specific elements related to cross-border activities would be asked to the CSD in this regard.

242. SE has not carried out any investigation relevant for cross-border provision of services. Cross-border related aspects, i.e. changes related to links, were part of R&E.

243. DE has indicated that the first CSDR related audit is planned for 2022. Previous audits have focused on topics like IT, outsourcing and ICAAP as per the banking regulation. According to DE, the CSD is informed about the intended audit within the hearing (the hearing usually contains a draft of the order and therefore the main points of the audit) by the responsible supervisory department of the NCA (which is the FMI Supervision WA 22).

The CSD has the opportunity to comment on the draft. Afterwards, the CSD receives the official order and has the possibility to raise an objection. DE is closely working with the national central bank (BuBa), which mostly carries out the audits with the temporary participation of the DE NCA. According to DE NCA, the receipt of the audit report triggers the enforcement process. DE NCA always orders the preparation of an action plan with detailed information on the measures the CSD intends to take to mitigate the deficiency and the timeframe. Following that, they require the CSD to submit progress reports. DE NCA also uses the enforcement measure to order a capital add-on for certain risks until the finding is closed or the warning against the CSD Executive Board or single members of the Board. DE NCA has explained that the CSD is heard within every step of the audit and enforcement process. In the follow-up of the audit, the CSD is provided with the audit report and is heard regarding the findings. DE NCA can decide to cancel findings as not justified (and they did that already). Within the mitigation period, the CSD, the auditor and DE NCA are in constant exchange on the progress. The CSD can ask for an extension of the deadline if necessary.

244.LV has conducted three CSDR review and evaluations during: 11.02-20.06.2019, 02.03-31.05.2020, 10.03-31.05.2021.

245.Since 2019, BE has conducted: a) on-site inspections (ICAAP inspection in support of SREP assessment, Internal audit function, Collateral valuation, Operational capital requirements, Credit limits in function of available QLR, IT information asset management and penetration testing), b) investigations (Settlement finality & netting of exposures over the Bridge, Status update workstream planning for uncovered credit losses, Cyber resilience assessment including SWIFT CSP, governance/strategy, endpoint security, Securities lending activities, CSDR Review and Evaluation, Recovery Plan assessment, SREP -annual assessment of inherent risks and controls- including custody risks, Back-up Data Centre assessment).

246.According to LU, its supervised ICSD is already subject to CRR/CRD IV supervision which includes off-site and on-site supervision as per the banking EU and national regulatory framework. Various on-site inspections have been led in conjunction with the ongoing supervision such as: AML/CFT risk, credit risk, IT security risk, issuance functions, outsourcing governance.

247.DE has also referred to the SREP and CSDR R&E, while FR and SE have conducted a CSDR R&E.

248.The table below includes the number of investigations including reviews and evaluations under Article 22 of CSDR and on-site inspections conducted by the six NCAs in respect of the CSDs in scope of the peer review during the period covered by the peer review.

TABLE 13 – NUMBER OF INVESTIGATIONS AND ON-SITE INSPECTIONS

	Total investigations and/or on-site	Total investigations	Total investigations	Total investigations and/or on-site
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	inspections performed	and/or on-site inspections which covered the provision of cross-border services by CSDs including through branches and links (where applicable, interoperable links)	and/or on-site inspections with a specific focus on the provision of cross-border services by CSDs including through branches and links (where applicable, interoperable links)	inspections where host NCAs' assistance was requested/used.
BE	13	12	1	0
FR	0	0	0	0
DE	6 audits outside CSDR	0	0	0
LU	11 outside CSDR	0	0	0
LV	4	4	0	3
SE	0	0	0	0

249. **Follow-up in respect of investigations and on-site inspections:** Two NCAs (BE, LV) have provided concrete examples of how they have required and overseen remediation by the CSDs when they have identified shortcomings following investigations and on-site inspections. In the case of FR and SE, there were no investigations and on-site inspections during the period covered by the peer review. In the case of DE, given that its supervised CSD was authorised in January 2020, audits, assessing the compliance with CSDR topics were not conducted so far, this will start in 2022; previous audits focused on topics like IT, Outsourcing, ICAAP. During the period subject to the peer review, LU did not conduct any such investigations and on-site inspections in respect of its supervised ICSD, given the recent authorisation of the ICSD under CSDR, however they conducted investigations and on-site inspections under CRR/CRD IV.

250. BE has indicated that it maintains a procedure according to which an investigation/ on-site inspection findings are scored as critical, high, medium or low based on a set of elements (potential financial loss, operational resilience, systemic impact, reputation, regulatory breaches). BE has highlighted that inspectors' expert judgement plays an important role to the scoring process applying a balanced approach across all supervised institutions. BE has explained that in the cases where an inspection score/ finding has been assessed to be critical, a report reaches BE NCA's Board.

251. BE has noted that the on-site inspection process foresees that BE sends the draft report with the findings to the ICSD allowing the ICSD to react. Afterwards, BE sends the ICSD a letter with recommendations and deadlines to meet these recommendations. BE interacts with its supervised ICSD to ensure that the suggested action plan is feasible and follows up after implementation dates. According to BE, most of the times the ICSD complies and proceeds with the remediation in a timely manner. BE mentioned that soon

the Post-Trade Group would take part in an inspection following up on an inspection which was conducted two years ago.

252. BE and LV have identified shortcomings following investigations and on-site inspections, which cover cross border activities (either exclusively or not). BE and LV have required and checked remediation by the CSD when they have identified shortcomings. As mentioned above, in the case of FR and SE, there were no investigations and on-site inspections under CSDR, however the two NCAs used a remediation process for shortcomings identified during authorisation and R&E. In addition to the follow-up to the authorisation of the CSDs, DE and LU used a remediation process for shortcomings identified during the investigations and on-site inspections under the banking regulation.

253. **Requests from home NCAs to open an investigation/inspection:** Out of the six NCAs, in a home NCA capacity, only LV has received a request from a host NCA to open an investigation. After an IT related incident in April 2018, during the discussion in the CSD supervisory college, one college member recommended opening an official investigation process. The incident was related to the malfunctioning of IT hardware that affected all markets served by the CSD Group – it was a group broad incident, that affected the CSD in Latvia as well. LV agreed to open an investigation, which resulted in LV sanctioning its supervised CSD (public announcement²¹). More details are included in the section on Enforcement below.

254. **Cooperation between home NCAs and host NCAs in relation to CSD branches:** The only case that would fall in this category is the one of the CSD in LV. In respect of the cooperation with host authorities, after an IT related incident in April 2018, Bank of Lithuania recommended during the discussion in the CSD supervisory college to open an official investigation process, which the LV NCA agreed to do.

Assessment

255. As regards the expectation whether and how home NCAs use investigations and inspections (and assistance therein by host NCAs if deemed necessary) depending on the scale and possible consequences of the identified or reported issues relating to the cross-border provision of services, all six NCAs have a general process for conducting investigations and inspections. The PRC acknowledges that, even if they do not have a dedicated process for cross-border services, the general process can be used.

256. The PRC considers that BE and LV make effective use of supervisory tools such as investigations and on-site inspections. The PRC positively notes that BE makes use of recurrent risk analysis (SREP, CSDR R&E, recovery plan), applying a risk-based approach to define its supervisory plan (based on input from its supervised ICSD's 2nd or 3rd line, new regulation/guidance, outstanding recommendations from SREP or CSDR R&E) or taking into account event driven topics (corporate governance, strategic

²¹ [FKTK: Infringement at the Baltic States' single Central Securities Depository Nasdaq CSD SE due to an Incident in the data center \(FKTK.lv\)](#)

decisions, projects). In addition, BE made use of the annual IT risk assessment to cover its supervised ICSD, which is an initiative welcomed by the PRC.

257. The PRC notes that DE has conducted 'audits' in respect of its supervised CSD under the banking regulation (e.g. covering IT, outsourcing, ICAAP); however they have not conducted investigations and on-site inspections under CSDR yet. The same applies in terms of scope in the case of LU: they have conducted investigations and on-site inspections in respect of the ICSD they supervise under the banking regulation (e.g. covering AML/CFT risk, credit risk, IT security risk, issuance functions, outsourcing, governance), however not under CSDR yet. The PRC positively notes that LU has performed an IT assessment under CRR which also covered settlement services.

258. The PRC notes that two NCAs (FR and SE) have not yet made use of investigations and on-site inspections covering CSD cross-border services.

259. As a good practice, the PRC notes the use by LV of on-site inspections to gather information as part of the CSDR R&E process.

260. As another good practice, the PRC notes that issues spotted during the recurrent risk analysis by BE are used to trigger targeted investigations and on-site inspections, as well as the other way around, findings during investigations and on-site inspections feed into the CSDR R&E and the SREP.

261. The PRC was provided with examples of how the NCAs required and oversaw remediation by the CSDs when the NCAs identified shortcomings following the authorisation process (all six NCAs), following CSDR R&E (all NCAs except for LU as its supervised ICSD was authorised in Q2 2021 and no R&E was conducted during the peer review period), following investigations and on-site inspections under CSDR (BE and LV).

262. The PRC positively notes the BE procedure according to which an investigation's findings are scored as critical, high, medium or low based on a set of elements (potential financial loss, operational resilience, systemic impact, reputation, regulatory breaches).

263. The PRC concludes that LV uses supervisory tools such as investigations and inspections (and assistance therein by host NCAs when deemed necessary), however these tools do not follow a risk-based approach and they are not used proactively to identify or explore possible risks and problems. Given the importance of its supervised CSD for three foreign jurisdictions, the PRC recommends LV to develop criteria to be applied by LV to select the

topics for investigations and inspections, including a focus on cross-border services and related risks (e.g. operational risks related to branches, legal risks).

264. The PRC recommends DE supervisors not to over-rely on the outsourced audits, but to also conduct their own supervisory work and to ensure that the audit methodology contains enough specific focus on the CSD cross-border services and relevant risks.
265. Regarding the cooperation with host NCAs, the PRC considers that LV has demonstrated good cooperation with the host NCAs and relevant authorities in the performance of their duties provided for in CSDR, and welcomes the set-up of the CSD supervisory college by LV. The PRC positively notes that LV has conducted an on-site inspection further to a relevant request from a host NCA and LV has also involved the respective host NCA in the on-site inspection. The PRC positively notes that authorities with whom BE has established cooperation arrangements can provide input for the BE annual supervisory work plan, which may cover aspects related to cross-border services. The PRC notes as a good practice that LU shares findings with DE in the context of cooperation arrangements.
266. The NCAs' procedures provide for inter-departmental cooperation when conducting on-site inspections. The NCAs (BE, LV) that have conducted investigations and on-site inspections covering CSD cross-border services show good inter-departmental cooperation by using teams with different analytical and technical skills, with the difference that BE allocates more human resources than LV.
267. Regarding the expectation that investigations and on-site inspections are also used in the context of a proactive supervisory action on topics based on the elaboration of adequate criteria, the PRC notes that only two NCAs (BE and LV) have conducted investigations besides R&E, with the difference that BE was more proactive, while LV was more reactive. The PRC acknowledges the NCAs' views that there was no trigger for investigations/ on-site inspections, given also the in-depth assessment performed during the authorisation stage, as well as the annual frequency of the R&E exercises. Nevertheless, the PRC recommends LV to be more proactive in their monitoring activities, including when it comes to market developments that may have an impact on the CSD activity. The PRC recommends all NCAs to conduct thematic investigations/ on-site inspections with a focus on cross-border services, however the PRC also understands that, currently, the CSDR R&E takes a lot of resources.
268. As regards the expectation that NCAs in their home NCA or host NCA capacity cooperate closely with the host or home NCA in the performance of their duties provided for in CSDR in respect of on-site inspections of branches, based on the information from the six NCAs, the only case that would fall in the scope of this supervisory expectation is the case of the CSD supervised by LV as home NCA. The PRC notes that, after an IT related incident in

April 2018, Bank of Lithuania recommended during the discussion in the CSD supervisory college to open an official investigation process, which LV agreed to do.

269. Accordingly, the peer review assessment is as follows:

- BE: fully meeting expectations
- DE: largely meeting expectations
- FR: partially meeting expectations
- LU: largely meeting expectations
- LV: largely meeting expectations
- SE: partially meeting expectations

4.1.6 Enforcement Measures

270. The PRC assessed whether NCAs: (i) in their home authority capacity have taken measures to prevent the CSD from infringing its obligations under CSDR and that has taken or at least considered some form of enforcement or administrative sanctions against identified infringements; ii) in their host NCA capacity cooperate in the enforcement and sanctioning activities with the home NCAs in relation to services provided in their territory by communicating relevant information in clear, structured, coherent and secure manner to the home NCA.

Summary of findings

271. **Home NCAs' enforcement process:** All six NCAs (BE, DE, FR, LU, LV, SE) have in place governance arrangements for the enforcement process, as well as internal policies and procedures.

272. As regards administrative sanctions, BE has noted that it has established a policy according to which guidance is provided when to initiate a case setting out the elements for consideration. BE indicated that it has established an internal procedure as regards the reporting of a case to the Auditor-prosecutor, providing relevant guidance to the supervisory departments with the aim to ensure consistency, while allowing specifics per department /per sector. Administrative sanctions are imposed by a dedicated Sanctions Committee, after an adversarial procedure.

273. The BE guidance also covers the (i) clustering and (ii) base penalty amounts per cluster and per severity level, applicable to determine the penalty amounts for the institutions subject to supervision where the BE NCA, as the competent sanctioning authority, decides to impose a sanction on these institutions. The ICSD in BE is ranged in a cluster. A dedicated note by BE NCA sets out an indicative list of breaches of law subject to

supervision where administrative sanctions are available that are included in the Sanction Policy (this also includes the ICSD).

274. In its internal procedure BE specifies that information stemming from inspection feeds the file for sanctioning. According to its internal procedure, BE at the level of its Board reports to the Auditor-prosecutor providing a complete file with the finding of the relevant investigation and any other element to be included therein. BE highlighted though that according to its procedures, actions for remediation always come first before the activation of the sanctioning procedure.
275. BE also referred to an enforcement case via cooperation with other authorities regarding the potential unsecured credit exposure on the interoperable link between the two ICSDs.
276. In its capacity as host NCA, BE does not have any examples of its cooperation being required by a home NCA for a case involving administrative sanctions.
277. LU has indicated that its enforcement procedure has been put in place by its Legal Department. LU noted that the procedure involves a series of steps. As a first step, after the on-site inspection or in the course of off-site supervision when the Supervision Department detects findings which would likely trigger the application of enforcement measures, the Executive Board is informed which in turn instructs the Supervision Department to initiate an investigation. LU noted that the enforcement representative of the Supervision Department, a legal expert who supports the Department's work, is involved at this stage in order to ensure that a certain level of formalism is respected. LU indicated that if potential breaches are identified at the end of the investigation stage, LU addresses a letter of intent to the entity the drafting of which is supported by the Supervision Department's enforcement representative. This letter first sets potential breaches and intended administrative measures/sanctions against the entity by explicitly mentioning the CSDR provisions that have been breached as well as those that define the scope of the administrative measures i.e. Article 61 and Article 63 of CSDR. The letter also invites the entity to present in writing its observations on the points raised by LU within a reasonable period of time which cannot be shorter than 8 calendar days.
278. LU has explained that, as a further step of its enforcement procedure, when the entity's response is received, the Supervisory Department performs an analysis of the information received and in case it concludes that a breach has taken place, a draft letter of the final decision is prepared which explicitly mentions the observations raised by the entity. In this letter LU states its final decision reasoned in fact and in law mentioning the rights of appeal including deadlines.
279. LU has stated that, as a final step, the draft letter of the final decision is discussed by LU's Enforcement Committee which is composed of LU management (Board members), the involved Supervision Department (in charge of the investigation, letter of intent and draft letter of the final decision) and the Legal Department which is in charge of: i) organising the Enforcement Committee, ii) writing the minutes of discussions as well as iii) ensuring consistency across different supervision teams. Further to this discussion, the final decision is taken by LU's Board members, and the Legal Department communicates the

final decision to the entity and channels to the Communication Department the relevant communication to the public through the NCA's website.

280. LU has emphasised that its enforcement procedure mainly aims to hold all people involved in the process responsible, accountable and independent in their decision-making process. In this context, the process allows no overlap in terms of responsibilities. For this reason and in order to keep its independent role throughout the process, the Legal Department does not intervene during the investigation of the case by the Supervisory Department.

281. LV has explained that they have an enforcement and sanctioning procedure and process in place based on: a) the Administrative Procedure Law (legal principles for the decision making process); b) Article 17.1 of the Law on the Financial and Capital Market Commission (criteria); c) Articles on sanctions in the Financial Instruments Market Law (types of sanctions and amounts of penalties), Guidelines for imposing sanctions approved by the NCA's Board (principles for calculation of the sanctions).

282. LV has described the enforcement and sanctioning process, covering four main steps: 1) the initial examination (including discussions with the market participant on the facts; internal discussions and the analysis of the facts; assessment of the grounds for initiating the administrative process); 2) the initiation of the administrative procedure (including the collection of evidence and the drafting of a proposal for decision); 3) decision-making process (including the right to be heard; the LV NCA's Board decision; the publication of the sanction); 4) after the decision (rights to appeal in the Court or dispute within the LV NCA; monitoring of the implementation of the measures). The LV NCA's departments and structures involved are in this order: Financial Instrument Market Department (FMID), Supervisory Committee, Licensing Division, Licensing and Sanctions Committee, the Board.

283. In the case of FR, the General Secretary forwards the inspection report to the FR NCA's Board (prosecution authority), which decides whether to send the case to the enforcement committee; the latter has power to sanction or to decide on the settlement of the case. The FR NCA's Board has the choice to close the case (if for example the shortcomings are not very significant or if the evidence of the offense is insufficient) or to decide on a sanction. In the latter case, the Board notifies a "statement of objections" to the person concerned and the file/report is sent to the Enforcement Committee. In this regard, the FR NCA incorporates a court (Enforcement committee), that has the power to sanction any natural or legal person that has been the object of an investigation or an inspection²². The FR NCA may refer any breach to comply with the laws or regulations to French courts²³. The NCA in FR also has the power to conclude enforcement cases by entering into settlement (public) with a willing counterpart, where a firm agrees to pay a certain amount of money (decided via negotiation), and to rectify any wrongdoings²⁴. Via this settlement procedure, the FR NCA may also order the cessation of all breaches of obligations

²² Article L. 621-15 of the MFC

²³ Article L. 621-14 of the MFC

²⁴ Article L. 621-14-1 of the MFC

imposed by laws or regulations or by professional rules and any other breach likely to jeopardise investor protection or the orderly functioning of the market.

284. FR has explained that, as from the notification of the grievance, the CSD has the right to take knowledge and copies of the file. It also has the right to provide its written comments to the president of the Sanctions Commission. It can be represented by a lawyer or any other person of its choice. A rapporteur (person in charge of the instruction of the file) can hear the CSD at the initiative of the CSD before drafting its report. During the session before the court, the CSD may present its defence, after the rapporteur explained orally its report and after the President of the FR NCA Board argued to support the notified grievances.

285. SE Supervisory Department provides input to the enforcement process (results of investigation). The SE NCA's general counsel and his staff (this internal body is called "Samråd juridik") decides whether to proceed with a sanction process. The matter is dealt with by the Legal Department. The decision on an enforcement measure (sanction) is taken by the Board of the SE NCA. The prioritization is based on materiality and significance. SE has defined criteria to decide whether to proceed with enforcement, such as: the kind of breach, how extensive the breach is, what consequences it had. According to SE's enforcement policy the CSD has the right to be heard during the enforcement process. SE sends a request for an opinion to the CSD and informs the CSD that the CSD should send in their opinion in writing.

286. In DE, the CSD Supervision Division at the DE NCA (Financial Market Infrastructures Division) can refer matters to the Sanctions Division (Administrative Offence Proceedings Division), which examines the facts based on the available information and obtain further information if necessary. The person/institute concerned is then heard, and thereby informed about the fine proceedings and given the opportunity to comment on the facts of the case, to seek legal counsel. After evaluation of the feedback and, if necessary further requests for information, the Sanctions Division itself decides whether an infringement of law occurred or not and it also determines the amount of the fine. Higher hierarchy levels at the DE NCA are informed about the decision, depending on the relevance of the case. The Sanctions Division can only impose fines, however the CSD Supervision Division (following a similar process as the one described above) can take other measures such as capital surcharges and removal of a CSD Board member.

287. **Identification of breaches regarding the provision of cross-border services:** Four NCAs (FR, DE, LU and SE) have not identified any breaches related to the CSD provision of cross-border services and have not launched any enforcement cases against the CSDs they supervise. BE and LV, in their capacity as home NCAs, have identified breaches of the existing requirements regarding the provision of cross-border services by the CSDs. BE has not launched any enforcement case, while LV did launch an enforcement case, in which an administrative procedure was initiated and led to a sanction of the CSD for breach of Article 45 of CSDR and Article 78 of the RTS on CSD Requirements. According

to LV, a public warning was chosen because of the insignificant impact on settlement instructions in that case.

288. Monitoring by host NCAs of the activities of CSDs which provide cross-border services in their jurisdiction and identification of breaches: None of the six NCAs (BE, DE, FR, LU, LV and SE), in their capacity as home NCAs, has received a notification from a host NCA that the latter has clear and demonstrable grounds for believing that the CSD infringes its obligations under CSDR (as per Article 24(5) of CSDR).

289. None of the six NCAs (BE, DE, FR, LU, LV and SE), in their capacity as host NCAs, monitors the activities of CSDs which provide cross-border services in their jurisdiction. Five NCAs (BE, DE, LU, FR, SE), in their capacity as host NCAs, have not identified any breaches of the applicable CSDR requirements.

290. **Cooperation of host NCAs with Home NCAs in the enforcement and sanctioning activities:** All six NCAs (BE, DE, FR, LU, LV and, SE) in their capacity as host NCAs, are willing to cooperate in the enforcement and sanctioning activities conducted by the home NCAs in relation to cross-border services provided by CSDs in their jurisdiction. No such requests were received during the period subject to the peer review.

Assessment

291. As regards the expectation that NCAs in their home authority capacity have taken measures to prevent the CSDs from infringing their obligations under CSDR and that they have taken or at least considered some form of enforcement or administrative sanctions against identified infringements, the PRC notes that four NCAs (FR, DE, LU and SE) have not identified any breaches and have not launched any enforcement cases against the CSDs they supervise. BE and LV, in their capacity as home NCAs, have identified breaches of the existing requirements regarding the provision of cross-border services by the CSDs. BE has not launched any enforcement case. LV has launched one enforcement case.

292. The PRC positively notes that all six NCAs (BE, DE, FR, LU, LV, SE) have in place governance arrangements and procedures/ policies for the enforcement process. At least based on the procedures, the PRC notes that all six NCAs have a sound and streamlined enforcement process, which allows for the right to be heard.

293. The PRC notes as a good practice that, according to the procedures of all six NCAs, actions for remediation come first (e.g. the follow-up letter used by FR after an inspection report or the use of injunction letters in the case of LU). At the same time, the PRC considers that, based on the severity of the infringements, NCAs may wish to consider the sanctioning process notwithstanding whether remediation is achieved or not, for punishment/ deterrence purposes.

294. According to the procedures, five NCAs (BE, DE, FR, LU and SE) use dedicated Sanctions/Enforcement Committees/Divisions for processing enforcement cases. In LV's

case, even if there is no independent assessment, the PRC considers that the process works well, in a timely fashion and it allows for the right to be heard, as demonstrated in the concrete case when it was used.

295. As regards the expectation that NCAs in their host authority capacity cooperate in the enforcement and sanctioning activities with the home NCAs in relation to services provided in their jurisdiction by communicating relevant information in a clear, structured, coherent and secure manner to the home NCA, none of the six NCAs have received such requests from home NCAs during the period subject to the peer review. The PRC understands that, in their capacity as host NCAs, all six NCAs are willing to cooperate in the enforcement and sanctioning activities conducted by the home NCAs in relation to cross-border services provided by CSDs in their jurisdiction. At the same time, the PRC acknowledges that home NCAs need to follow a due process based on the national

296. The PRC notes that none of the six NCAs, in their capacity as host NCAs, monitors the activities of CSDs which provide cross-border services in their jurisdiction.

297. Accordingly, the peer review assessment of the NCAs in their home capacity is as follows:

- BE: largely meeting expectations
- DE: largely meeting expectations
- FR: largely meeting expectations
- LU: largely meeting expectations
- LV: fully meeting expectations
- SE: largely meeting expectations

4.2 Assessment and Recommendations Tables

298. The following tables set out the peer review's assessment grade for each NCA under review for the areas assessed. In each case, NCAs are assessed as fully compliant, largely compliant, partially compliant or non-compliant. The assessment is reflected in two different tables: the first table relates to the assessment of expectations of NCAs in their home authority capacity and the second table relates to the assessment of expectations of NCAs in their host authority capacity.

TABLE 14 – ASSESSMENT OF NCAS IN HOME CAPACITY

	BE	DE	FR	LU	LV	SE
Authorisation activities	Green	Yellow	Green	Yellow	Orange	Orange
Passporting procedures	Green	Green	Green	Green	Green	Green
Cooperation arrangements	Orange	Orange	Orange	Yellow	Green	Orange
Ongoing supervisory activities	Green	Orange	Green	Orange	Red	Orange
Investigations and Inspections	Green	Yellow	Orange	Yellow	Yellow	Orange
Enforcement measures	Yellow	Yellow	Yellow	Yellow	Green	Yellow

TABLE 15 – ASSESSMENT OF NCAS IN HOST CAPACITY

	BE	DE	FR	LU	LV	SE

Passporting procedures						
Cooperation arrangements						

Fully meeting expectations	Largely meeting expectations	Partially meeting expectations	Not meeting expectations
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4.2.1. Recommendations by the PRC

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

TABLE 16 – RECOMMENDATIONS

Topic	NCA / Recommendation	Follow up
Authorisation activities	<p>LV- To assess the compliance of the CSD with CSDR requirements considering its unique multi-jurisdictional structure paying more attention to the risks that can be borne by each branch based on the fact that none of them can operate in a stand-alone mode.</p> <p>DE, SE, LV- Given the possibility of recurrence of notification of new links by the CSD they supervise, to design a specific tool or template for the CSD to provide the necessary information on the new link and to monitor such notifications.</p>	Open
Authorisation activities	DE, SE, LV- Setting up a process to receive some relevant information on new links without delay, not necessarily waiting for the next review and evaluation process to get this information.	For consideration
Passporting procedure	DE, LV, SE- To consider setting up specific process and/or monitoring tools for the individual assessments of the passporting requests.	For consideration
Passporting procedure	<p>BE, DE, LV- To maintain consistency regarding the way to communicate their decision on the passport request to the NCA of the requesting CSD (regarding the chosen method of sending a letter of approval instead of applying the silence means approval approach).</p> <p>SE- To set up a process to monitor the evolution of Swedish securities law in respect of the list of key provisions in cooperation with the relevant Swedish authorities to ensure it is continuously up-to-date.</p>	Open

	<p>SE, LV- In their host NCA capacity, to carry out more thorough assessments of the measures taken by the CSD to comply with their securities law.</p>	
Cooperation arrangements	<p>BE, DE, FR, LU, SE- In their home authority capacity, to consider establishing arrangements for information exchange with host NCAs under Article 24 (2) of CSDR and periodically give due consideration to the benefits of setting up colleges of supervisors.</p> <p>BE, DE, FR, LU, LV, SE- In their host authority capacity, to consider requiring information on the main characteristics of the activity of the CSDs providing activities in their jurisdiction. For the CSDs the activities of which are of substantial importance for the functioning of the securities markets and the protection of investors in their jurisdiction, NCAs need to set up information exchange arrangements specifically for CSDR purposes.</p>	For consideration
Cooperation arrangements	<p>BE, DE, FR, LU, SE- Under Article 24 (4) of CSDR, as home authorities, to establish formal cooperation arrangements with host NCAs and relevant authorities from the jurisdictions where the CSDs they supervise are substantially important.</p> <p>In cases where they have formalised cooperation arrangements prior to CSDR implementation and for other purposes than CSDR, to conduct a precise gap analysis against CSDR requirements and update existing cooperation arrangements accordingly or start setting up cooperation arrangements specifically for the purposes of CSDR.</p>	Open
Ongoing supervision	<p>DE, FR, LU, SE- To put in place a process to communicate incidents related information to concerned authorities, where the incidents have a cross-border impact.</p> <p>DE, FR, LU, LV, SE- To establish a process for measuring (scoring) risks related to the provision of cross-border services and to put in place a risk-based approach. Establishing risk indicators based on quantitative data may feed into the risk scoring aimed at addressing cross-border issues.</p> <p>LV- As regards the CSDR R&E, LV should:</p> <p>a) make sure that it can demonstrate that the complete set of documents it receives from the CSD (under Article 22 of CSDR and Articles 40 to 43 of the RTS on CSD Requirements) to perform its review and evaluation, is properly assessed, with the application of a four eyes principle.</p>	Open

	<p>b) under Article 22(7) of CSDR, extend the content of the information addressed to the relevant authorities, in order to better reflect the complete review and evaluation package. In terms of presentation, the information addressed to the relevant authorities in application of that article also needs to include a follow-up part, covering all the shortcomings identified in previous information addressed to the relevant authorities.</p> <p>c) keep track of compliant elements not only of shortcomings, as part of the CSDR R&E.</p> <p>LV - To increase its proactivity in situations of sudden particular market events which could impact the smooth functioning of CSD, e.g. cyber incidents affecting trading venues and potentially other entities of the same group to which major operations are outsourced.</p> <p>DE, LU, LV- To speed up the process for putting in place a data analysis IT tool for CSDR data. LV to change the approach and use the data in a proactive way to identify areas of supervisory focus (e.g. based on the increase of settlement fails, the value and volume of settlement in commercial bank money).</p> <p>FR, BE, DE, LU, LV, SE- To conduct thematic reviews focusing on cross-border services, however the PRC also recognises that, currently, the CSDR R&E is a burdensome and resource intensive requirement.</p>	
<p>Ongoing supervision</p>	<p>LU- To consider going one step lower for incident notification by the ICSD, as this would enable a closer monitoring of the issues. At the same time, less important incidents may not need to trigger the need to escalate to the NCA's Board.</p> <p>FR, BE, DE, LU, LV, SE- as host authorities may consider being more proactive in respect of monitoring of the activities of CSDs that provide cross-border services in their jurisdiction and: a) encourage participants and issuers to report issues they may encounter; and b) ask home NCAs for information and data regarding CSD cross-border services.</p>	<p>For consideration</p>
<p>Investigations and on-site inspections</p>	<p>LV – Given the importance of the CSD for three foreign jurisdictions, to develop criteria for the selection of the topics for investigations and inspections, including the more exact relation with cross-border services and related risks (e.g. operational risks related to branches, legal risks).</p> <p>DE – To not over-rely on the outsourced audits, but also conduct its own supervisory work and ensure that the audit</p>	<p>Open</p>

	<p>methodology contains enough specific focus on the CSD cross-border services and relevant risks.</p> <p>BE, DE, FR, LU, LV, SE – To conduct thematic investigations/ on-site inspections with a focus on cross-border services, however the PRC also recognises that, currently, the CSDR R&E is a burdensome and resource intensive requirement.</p>	
Enforcement measures	<p>BE, DE, FR, LU, SE – Based on the severity of the infringements, NCAs may wish to consider the sanctioning process notwithstanding whether remediation is achieved or not, for punishment / deterrence purposes.</p>	For consideration

4.2.2. Cross-cutting issues and recommendations

300. The PRC notes that ESMA is considering the independence of NCAs as part of a separate and more focused exercise²⁵.

301. In respect of the engagement of NCAs and their capacity to achieve high quality supervisory outcomes, including the adequacy of their resources and governance arrangements, in particular regarding the effective application of CSDR, the PRC notes that four NCAs (BE, DE, FR, SE) have developed tools to support supervisory activities on CSD cross-border activities. The PRC would like to encourage DE, LU and LV to speed up the process of building automated analytical tools for CSD statistical information. The PRC concludes that the LV supervisory set-up is not appropriate given the importance of its supervised CSD for four jurisdictions (LV, LT, EE and IS) and notes that currently more resources could be dedicated to the supervision of the CSD (only one supervisor also engaged in policy work).

302. The PRC has identified cross-cutting issues related to the application of a risk-based approach to the supervision of CSD cross-border services. The majority of NCAs need to establish a process for measuring (scoring) risks related to the provision of CSD cross-border services and to put in place a risk-based approach with a clearer focus on CSD cross-border services. Establishing risk indicators based on quantitative data may feed into the risk scoring aimed at addressing cross-border issues. ESMA may undertake supervisory convergence work on this topic.

4.3 Good Practices

303. The PRC identified good practices with regard to NCAs' supervision of cross-border activities of CSDs as presented in the table below. It should be mentioned that these

²⁵ See report <https://www.esma.europa.eu/document/report-independence-national-competent-authorities>.

activities/methods/processes might look slightly different in practical terms, depending on the nature and scale of the services provided by the CSDs concerned.

TABLE 17 – GOOD PRACTICES

Topic	Good Practices identified by the PRC in relation to NCAs
Authorisation activities	a. Establishing and working on detailed checklists so to ensure the completeness of the authorisation file and the in-depth assessment. (BE, FR, LU) b. Performing a pre-assessment focusing on selected crucial aspects of the authorisation file. (FR) c. Requiring a self-assessment from the applicant CSD of its compliance with CSDR requirements, complemented by an in-depth analysis of the provided information by the NCA itself. (BE, DE, FR, LU) d. Performing inspections during the authorisation phase and using inspections' output for the purposes of the authorisation. (BE)
Passporting procedure	In their home NCA capacity: a) Designing a specific procedure and a tool to closely monitor the status of passporting requests. (BE, FR, LU) b) Regularly consulting updates made to the ESMA CSD Register. (LU) c) In case of silence from the host NCA, reaching out to the host NCA at the end of the three-month period to inform it of the start of the provision of services. (LU) In their host NCA capacity: d) Designing a specific fully-fledged internal procedure to conduct the assessment of the passport request, including of the measures the requesting CSD intends to take in accordance with Article 23(3)(e) of CSDR. (LU) e) Consistently applying a method to communicate their decision to the requesting CSD and its home NCA (either "silence means approval" or the sending of nihil obstat letter, as per Article 23(6) of CSDR).
Cooperation arrangements	In their home NCA capacity:

	<ul style="list-style-type: none"> a) Establishing informal cooperation with group authorities during the authorisation period, to harmonise the processes. (BE, DE, FR, LU, SE) b) Formalising cooperation with NCA supervising the interoperable link. (LU, BE) c) Involving the authorities from host countries or of CSDs belonging to the same group of companies at early stages both in the authorisation and passporting processes in a very close cooperation. (LV) d) Setting up colleges of supervisors where appropriate. (LV)
On-going supervision	<ul style="list-style-type: none"> a. Mapping of documents received from the CSD based on types of risks. (LU) b. Establishing of incident monitoring and assessment process as well as the follow up of recommendations with the CSD. (LU) c. Discussing preliminary findings from the CSDR R&E with members of the CSD Supervisory College. (LV) d. Combining the CSDR R&E with an on-site inspection and integrating the findings of investigations and on-site inspections in the CSDR R&E assessment. (LV) e. Having in place a process to monitor incidents and to communicate incident related information to concerned authorities, where the incidents have a cross-border impact. (BE, LV) f. Specific cross-border analysis can be prioritised (event-driven, risk-driven), such as operational risk management of the interoperable link, or cross border legal risks. (BE) g. The approach to incidents reporting (LV, BE) and substantive changes notifications going beyond the CSDR requirements. (BE) h. Using a advanced tool to analyse quantitative data, enabling the monitoring of the daily credit exposures, activity peaks, settlement efficiency, type of collateral used, domestic debt. (BE) i. Applying a proactive approach to the passporting process as regards the assessment of the measures taken by the CSD to allow its users to

	<p>comply with the respective national laws referred to in Article 49(1) of CSDR. (FR)</p> <p>j. Monitoring of legal and operational risks (for example, risks derived from the asset protection rules applicable to the receiving CSD, the securities eligibility, and the tax regimes of the different markets, risks that could materialize, for instance, through problems in the reconciliation process, or problems in the communication flows). (FR)</p>
Investigations and on-site inspections	<p>a. Sharing findings with the NCAs supervising CSDs within the same group in the context of cooperation arrangements. (LU)</p> <p>b. Using on-site inspections to gather information as part of the CSDR R&E process. (LV)</p> <p>c. Conducting an on-site inspection further to a relevant request from a host NCA and involving the respective host NCA in the on-site inspection. (LV)</p> <p>d. Issues spotted during the recurrent risk analysis are used to trigger targeted investigations and on-site inspections, as well as the other way around, findings during investigations and on-site inspections feed into the CSDR R&E and the SREP. (BE)</p>
Enforcement measures	Actions for remediation come first (all six NCAs).

Annex 1 – Mandate



ESMA 42-111-6081
CSD Supervision Pee

Annex 2 – Questionnaire



CSD peer review
questionnaire.pdf

Annex 3 – Statement from Latvijas Banka

Statement accompanying the publication of the General Report on the ESMA CSD Peer Review

Latvijas Banka* shares the objectives of the ESMA CSD Peer Review and is grateful for the opportunity to assess its practice and compare it to the one followed by other national competent authorities, with a view to enhancing supervision of a critical market infrastructure.

Nonetheless, Latvijas Banka remains concerned about the assessment made by the Peer Review Committee (PRC) of the area of ongoing supervision.

Latvijas Banka disagrees with the conclusions made by the PRC that Latvijas Banka had not considered the risks posed to its supervised CSD. In Latvijas Banka's view the PRC report does not specify the risks applicable to the CSD that have been left out of Latvijas Banka's consideration.

In Latvijas Banka's view, the PRC's concerns are more likely to be related to the practice used by Latvijas Banka to formalise its assessment, i.e. the PRC believes that Latvijas Banka has not followed the practice of producing a line-by-line assessment report. In this regard, Latvijas Banka has already introduced changes in its practice. However, in our view, it is not proportionate to conclude that risks have not been considered, as Latvijas Banka has been able to provide other evidence of the risks being taken into account in addition to formalised line-by-line assessment reports. Therefore, in Latvijas Banka's opinion, the outcome of the PRC's assessment is not proportionate.

* The Financial and Capital Market Commission (Finanšu un kapitāla tirgus komisija, FKTK) before its integration into Latvijas Banka as of 1 January 2023