

Peer Review on the supervision of depository obligations

Peer Review report

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List of Terms and Acronyms

AIFMD	Alternative Investment Fund Managers Directive
AuC	Assets under custody
AuM	Assets under management
BoI, IT	Banca d'Italia
CBol, IE	Banc Ceannais na hÉireann
CNB, CZ	Česká národní banka
CSSF, LU	Commission de Surveillance du Secteur Financier
EC	European Commission
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
FTE	Full-time equivalent. One FTE is equivalent to one employee working full time
LFR	Long-form report
Mandate	The Mandate for this peer review as approved by ESMA's Board of Supervisors
Methodology	ESMA Peer Review Methodology (ESMA42-111-4966)
NAV	Net asset value
NCA	National Competent Authority
PRC	Peer Review Committee
SAQ	Self-assessment questionnaire
SFSA, SE	Finansinspektionen
SLA	Service level agreements
UCITS	Undertakings for Collective Investment in Transferable Securities
VaR	Value at risk

1 Executive Summary

The European investment management industry has grown in nature, scale and complexity over the past decade with net assets of UCITS and AIFs growing from €9.5tn in 2012 to approximately €23.4tn as at end 2024¹. Given its scale and maturity, this sector will play a key role in the development of the Savings and Investment Union (SIU) which aims to create better financial opportunities for EU citizens and companies by connecting savings with productive investments.

Depositaries play a pivotal role in the investment management ecosystem and in the protection of investors and the orderly functioning of this market. They are entrusted with providing several significant services, including safekeeping and oversight duties and cash flow monitoring. Depositaries' importance only increases in financial markets characterised by significant volatility and technological change. There is also evidence of an acute concentration of depositaries in many Member States, potentially increasing systemic risk in jurisdictions where a small number of depositaries oversee and safeguard a substantial amount of assets.

Therefore, a convergent approach amongst designated National Competent Authorities (NCAs) for the supervision of this sector is key. Through this Peer Review, ESMA aims to promote robust supervision of depositary obligations, which is essential for the effective implementation of the UCITS and AIFMD frameworks, supporting investors' protection, a well-functioning market and financial stability.

As such, in April 2024, the Board of Supervisors (BoS) approved the launch of a Peer Review on the supervision of depositary obligations, in line with the ESMA 2024 Work Programme.

Assessment areas

The Peer Review assessed NCAs supervisory and enforcement practices with regard to depositary obligations, with a particular focus on:

- I. the oversight obligations of the depositary pertaining to (i) valuation and (ii) the UCITS or AIFs' compliance with the investment restrictions and leverage limits set out in the applicable laws and offering documents;
- II. the safekeeping obligations of the depositary and in particular the due diligence required for the delegation of the safekeeping functions to third parties and adherence to the asset segregation rules throughout the entire custody chain;
- III. the obligation of the depositary not to delegate functions other than safekeeping to third parties, without prejudice to the possibility of entrusting third parties with the performance of supporting tasks.

¹ [EFAMA handbook 2025](#).

Through a questionnaire, on-site visits, and outreach to stakeholders, the Peer Review assessed NCAs against the supervisory expectations in these areas as set out in the Peer Review mandate. These expectations aimed to consider the efficiency and effectiveness of NCAs' supervision and enforcement, including the adequacy of their supervisory approach and the frequency, type and timeliness of supervisory intervention.

Jurisdictions assessed

The Peer Review targeted five relevant jurisdictions in the EU based on the following objective criteria: (a) the size of the investment management market and level of depositary activity and (b) a balanced geographical distribution.

As a result, the following NCAs were selected for the Peer Review, in order to compare and assess their supervisory practices related to depositary obligations.

TABLE 1 - NCAs ASSESSED IN THE PEER REVIEW

Country code	Country	Competent Authority	Acronym
CZ	Czechia	Czech National Bank	CNB
IE	Ireland	Central Bank of Ireland	CBoI
IT	Italy	Banca d'Italia	Bol
LU	Luxembourg	Commission de Surveillance du Secteur Financier	CSSF
SE	Sweden	Finansinspektionen	SFSA

Overall findings

The PRC observed differing approaches toward depositary supervision by the five NCAs under review. While the PRC acknowledge that all reviewed NCAs have processes and procedures in place regarding the supervision of depositary obligations, there are significant differences in how these are applied in practice.

The PRC consider the supervisory approach of the CNB (CZ) to be broadly robust. For three NCAs (IE, IT, LU) the PRC identified several strong supervisory practices across assessment areas while also noting a number of shortcomings which are further detailed in the report. While the PRC did identify processes and procedures for depositary supervision by the SFSA (SE), it sees merit in an overall scale up of supervisory assessments intrusiveness and intensity.

The European depositary market is characterised by an acute concentration of significant entities which safeguard a substantial number of assets on behalf of their clients. Indeed, of the assessed NCAs, the top five depositaries for UCITS and AIFs account for between 67% and 100% of all assets under custody in the respective jurisdictions. Such a sharp concentration can

give rise to concerns of overexposure to a small number of entities which could increase systemic risk should these entities face unexpected financial or operational difficulties.

All NCAs stated that their approach to depositary supervision is risk-based, where resources are directed to the highest priority risks and entities in the market. However, the PRC noted distinct variances in elements of NCAs' risk-based approaches, including the length of on-site supervisory cycles and therefore the different frequency and type of supervisory activities. Therefore, the PRC has issued a recommendation encouraging all NCAs to reconsider the regularity of their risk based supervisory cycle to ensure the highest impact entities are subject to intrusive supervisory activities more frequently.

The supervisory resources that NCAs assigned to depositary supervision varied significantly and were generally correlated to the assets under custody and number of depositaries in each jurisdiction. However, as presented in Figure 5², when these absolute figures are normalised to allow for equal comparison, the PRC identified a relatively smaller number of resources, particularly in the SFSA (SE).

In consideration of NCAs' entire supervisory processes, the PRC are of the view that two NCAs (in CZ, LU) demonstrated effective and robust supervisory procedures to review depositaries valuation and investment restrictions and leverage limit oversight obligations. This was primarily due to the depth of on-site supervisory reviews and associated follow up, including monetary sanctioning of depositaries on observed deficiencies. These NCAs utilised detailed on-site controls plans with clearly defined regulatory requirements, which facilitated comprehensive assessments³. For two other NCAs (in IE and IT), the PRC notes that both have well-established supervisory frameworks which, while addressing a number of important elements of a depositary's valuation and investment restrictions and leverage limit obligations would benefit from clearer expectations on the level and effectiveness of depositary controls that is consistent with the outcome of due diligence/risk assessment of the fund manager. Despite the SFSA (SE) issuing a questionnaire to depositaries as part of their desk-based supervisory process, the PRC is of the opinion that the questions, both initially and where applicable in the follow up during on-site visits, were rather general in nature and lacked the same depth associated with other NCAs' approaches.

Regarding investment restrictions and leverage limit controls, the PRC observed that the CSSF (LU) allows depositaries to provide ex-post first-level controls on a delegation basis despite their oversight obligations concerning the same activities. The PRC did not identify such supervisory practices across the other four NCAs and markets covered (CZ, IE, IT, SE) and therefore invites the CSSF (LU) to reassess its supervisory approach on this matter.

In relation to the supervision of depositaries due diligence obligations on safekeeping and asset segregation, the PRC observed that the CBol (IE) does not require its depositaries to maintain

² Page 16.

³ However, in consideration of the findings and assessment for the CSSF (LU) under paragraphs 102 & 121, this NCA was deemed as largely meeting expectations.

first-level accounts where the safekeeping function is delegated. This practice diverges from that of the other four NCAs and markets covered (CZ, IT, LU, SE). The PRC did not find evidence for in-depth supervisory assessments by the CBol (IE) concerning the compatibility of their unique custody model with applicable EU rules following the 2020 legislative amendments and therefore encourages them to do so.

The PRC welcomes the comprehensive assessments by the CSSF (LU) on due diligence obligations on safekeeping and asset segregation. The CSSF's (LU) on-site control plan investigated via sample testing, walkthroughs and interviews (i) due diligence on sub-custodians and (ii) account structures and statements of delegates to ensure depositary clients' assets are clearly identified. The PRC supports that two NCAs (in CZ, IT) also demonstrated thorough assessments regarding the verification of the proper segregation of client assets through samples reviews of written procedures, policies and contracts. However, the PRC noted the absence of focus on the due diligence of sub-custodians for these two NCAs. While the SFSA (SE) assessed depositaries on their due diligence obligations in relation to safekeeping and asset segregation through a desk-based questionnaire, this was general in nature and was not followed up with any on-site inspection.

The PRC observed some deficiencies with respect to the supervision of possible delegation arrangements across most NCAs. With the exception of the CNB (CZ), who performed supervisory assessments and verified no use of third parties in relation to depositary oversight functions, all other NCAs reported significant use of third parties in a cross-border context with entities in other EU jurisdictions and/or third countries. While these NCAs undertook supervisory assessments on possible delegation arrangements during the review period, the evidence provided to the PRC indicated that the relevant arrangements, activities, contracts/SLAs and sample reports were not sufficiently reviewed and challenged in relation to compliance with the applicable rules as further specified in the ESMA Q&As. As a result, the PRC are concerned with the significant build-up and use of third-party entities and their activities which may encroach on the UCITS and AIFMD rules that do not allow for the delegation of depositaries oversight responsibilities and therefore leave some material supervisory risks unaddressed.

Overall assessment

TABLE 2 - ASSESSMENT OF NCAs

	CZ	IE	IT	LU	SE
Oversight					
Valuation obligations					

Investment restrictions/leverage limits					
Safekeeping					
Due diligence obligations on safekeeping/asset segregation					
Delegation arrangements					

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

The PRC recommends relevant NCAs to enhance their approach to depositary supervision, so that risks inherent in their activities are adequately identified, assessed and mitigated.

In particular, the PRC expects that all assessed NCAs consider implementing more frequent and intrusive engagement to higher impact entities and therefore move closer to a true risk-based supervisory approach.

The PRC expects the CBol (IE), Bol (IT), CSSF (LU) and SFSA (SE) to more thoroughly assess, through the review of sample reports, Key Performance Indicators (KPIs), contracts/SLAs and on-site inspections at large service providers to ensure that depositary oversight functions are not delegated and are in line with the criteria outlined in the ESMA Q&As⁴ on this matter.

The PRC recommends that the SFSA (SE) strengthens their overall approach to depositary supervision. This includes undertaking more in-depth desk-based and on-site inspections and issuing recommendations and follow-up reports that instruct supervised entities/the market to address identified shortcomings.

Good practices

In general, the PRC positively notes the supervisory activities performed by the CNB (CZ) to assess whether depositaries were undertaking their oversight and safekeeping obligations in

⁴ [ESMA Q&As on the application of the AIFMD, Section VI, Q&A no. 10](#) and [ESMA Q&As on the application of the UCITS Directive, Section X, Q&A no. 2](#).

compliance with the applicable UCITS and AIFMD frameworks. The PRC invites all NCAs to consider these practices in their supervisory approach.

In addition, the PRC identifies a number of specific good practices, including (i) the review of compliance and internal audit reports and (ii) the cross checking between the breach reports received by fund managers and depositaries.

While the peer review covered five NCAs, all NCAs in the EU could consider the findings, recommendations and good practices set out in this report in the context of their supervisory framework.

2 Introduction

1. This report presents the main findings of the Peer Review on the supervision of depositary obligations, under two supervisory expectations, oversight and safekeeping, comprised of two underlying sub expectations for oversight: (i) valuation oversight, (ii) investment restrictions & leverage limits oversight, and two for safekeeping (i) due diligence obligations on safekeeping/asset segregation and (ii) delegation arrangements.
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 depositary market in the jurisdictions in scope and on the relevant NCAs' supervisory approaches, (iii) Section 4 presents the Peer Review findings and assessment, (iv) Section 5 details recommendations and the assessment table (v) Section 6 details good practices and (vi) the annexes (1 & 2) enclose the mandate that formed the basis of the Peer Review, and the questionnaire sent to the NCAs in scope.

2.1 Background

3. Peer Reviews are a key tool to promote consistent and effective supervisory practices across the EU.
4. The European investment management industry has grown in nature, scale and complexity over the past decade with net assets for UCITS and AIF products growing from €9.5tn in 2012 to approximately €23.4tn as at end 2024.
5. Depositaries are institutions that are appointed by investment funds/managers and are entrusted with providing a number of services, in particular safekeeping and oversight duties as well as cash flow monitoring. They play a pivotal role for the protection of investors, a well-functioning market and financial stability. They are therefore subject to a well-defined regulatory framework.
6. The Undertakings for Collective Investment in Transferable Securities (UCITS) Directive⁵ and the Alternative Investment Fund Managers Directive (AIFMD)⁶ set out the specific

⁵ [Directive 2009/65/EC \(hereinafter UCITS L1\).](#)

⁶ [Directive 2011/61/EU \(hereinafter AIFMD L1\).](#)

rights and obligations of depositaries when providing services to investment funds. In addition, the Commission Delegated Regulations⁷ further detail the rules applicable to depositaries. Finally, ESMA has developed Q&As⁸ which promote common supervisory approaches across the Union.

7. Depositaries' importance to the investment management ecosystem only increases in financial markets characterised by significant volatility and technological change. There is also evidence of an acute concentration of depositaries in many Member States and throughout the Union, potentially increasing systemic risk in jurisdictions where a small number of depositaries oversee and safeguard a substantial amount of assets.
8. Therefore, a convergent approach amongst designated National Competent Authorities (NCAs) for the supervision of depositary obligations is essential for the effective implementation of the UCITS and AIFMD frameworks, supporting investors' protection and a well-functioning market.
9. Against this background, the BoS approved the launch of a Peer Review on depositary obligations and approved the mandate⁹ in April 2024 in line with the 2024 ESMA Annual Work Programme. In January 2024, the BoS confirmed the composition of the Peer Review Committee (PRC), initially approved in May 2022 following a call for candidates. The Peer Review was conducted in accordance with Article 30 of ESMAR¹⁰ and the Methodology¹¹.

2.1 Scope of the Peer Review

10. The Peer Review assessed NCAs supervisory and enforcement practices on the depositary obligations related to oversight, safekeeping and delegation arrangements. In particular, the Peer Review focused on the following areas:
 - I. the oversight obligations of the depositary pertaining to (i) valuation and (ii) the UCITS or AIFs' compliance with the investment restrictions and leverage limits set out in the applicable laws and offering documents;
 - II. the safekeeping obligations of the depositary and in particular the due diligence required for the delegation of the safekeeping functions to third parties and adherence to the asset segregation rules throughout the entire custody chain;
 - III. the obligation of the depositary not to delegate functions other than safekeeping to third parties, without prejudice to the possibility of entrusting third parties with the performance of supporting tasks.

⁷ [Commission Delegated Regulation \(EU\) 2016/438 \(hereinafter UCITS L2\)](#) and [Commission Delegated Regulation \(EU\) No 231/2013 \(hereinafter AIFMD L2\)](#), including Article 3 of UCITS L2 and Article 92 of AIFMD L2 related to the general requirements for oversight duties.

⁸ [ESMA34-43-392 Q&As on the Application of the UCITS Directive \(europa.eu\)](#) and [ESMA34-32-352 Q&As on the Application of the AIFMD \(europa.eu\)](#).

⁹ Enclosed in Annex 1

¹⁰ [ESMAR](#).

¹¹ [ESMA42-111-4966 Peer Review Methodology](#).

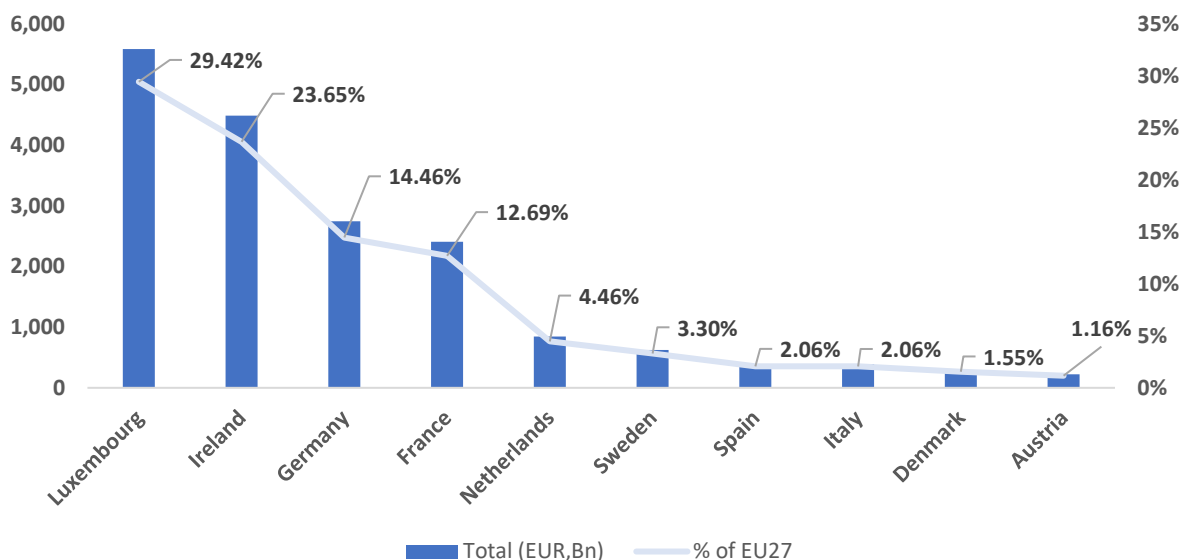
11. The Peer Review assessed the efficiency and effectiveness of NCAs' supervision and enforcement, including the adequacy of their supervisory approach and the frequency, type and timeliness of supervisory intervention.
12. To evaluate that the supervisory and enforcement approach of NCAs was commensurate to the nature, scale and complexity of the depositaries in their jurisdictions, the Peer Review considered whether NCAs had appropriate supervisory processes in place (documented and evidenced in supervisory practices) and implemented them effectively to assess if depositaries adequately comply with their oversight, safekeeping and delegation responsibilities under AIFMD and the UCITS Directive.
13. Across these areas, and in accordance with ESMAR, the PRC also reviewed:
 - I. the degree of independence of designated NCAs¹² and their capacity to achieve high-quality supervisory outcomes, including the adequacy of their resources and governance arrangements, in particular regarding the effective application of the legal requirements that fall within ESMA's remit;
 - II. the capacity of designated NCAs to respond to market developments;
 - III. the effectiveness and the degree of convergence reached in the application of Union law and supervisory practice, including regulatory and implementing technical standards, guidelines and recommendations, and the extent to which the supervisory practice achieves the objectives set out in Union law; and
 - IV. the application of best practices developed by NCAs that might be of benefit for other NCAs to adopt.

2.2 NCAs under review

14. The Peer Review targeted five of the most relevant jurisdictions in the EU based on the following objective criteria: (a) the size of the investment management market and level of depositary activity and (b) a balanced geographical distribution.

¹² See further: <https://www.esma.europa.eu/document/report-independence-national-competent-authorities>

Figure 1. Total net assets of UCITS and AIFs (adjusted for the top 10 EU27 jurisdictions)



Source: EFAMA, Quarterly Statistical Release Q2 2024.

15. As depicted in Figure 1, Luxembourg (29.42%) accounted for the highest share of total net assets of UCITS and AIFs in the EU27 as of Q2 2024, followed by Ireland (23.65%), Germany (14.46%), France (12.69%), Netherlands (4.46%), Sweden (3.30%), Spain (2.06%), Italy (2.06%), Denmark (1.55%) and Austria (1.16%). Together, Luxembourg and Ireland comprise over 50% of the net assets in the EU27 for UCITS and AIFs. Sweden and Italy also have large and well-established investment management markets. In addition, the Czech market (0.16%) is well developed, of significant size within the region and is characterised by both cross-border and retail investor dynamics.
16. As a result, the PRC selected CZ (Czech National Bank), IE (Central Bank of Ireland), IT (Banca d'Italia), LU (Commission de Surveillance du Secteur Financier) and SE (Finansinspektionen) to be included in the mandate and subsequently approved by the BoS, as listed in Table 3 below. This selection ensured a representative sample of the investment management market and a well-balanced geographical distribution throughout the EU.

TABLE 3 - NCAS ASSESSED IN THE PEER REVIEW

Country code	Country	Competent Authority	Acronym
CZ	Czechia	Czech National Bank	CNB
IE	Ireland	Central Bank of Ireland	CBol
IT	Italy	Banca d'Italia	Bol
LU	Luxembourg	Commission de Surveillance du Secteur Financier	CSSF
SE	Sweden	Finansinspektionen	SFSA

2.3 Process of the Peer Review

17. The Peer Review was carried out by the PRC identified in the mandate and composed of experts from NCAs and from ESMA staff and chaired by a senior ESMA staff member.
18. As a basis of the assessment, in May 2024, the PRC addressed a questionnaire (in Annex 2) to the NCAs in scope. The PRC also conducted on-site visits to these NCAs, met with stakeholders and analysed samples of supervisory files to enhance its understanding of the NCAs' supervisory approaches.
19. The period under review covers 1 January 2021 to 31 December 2023. The review period was set at three years by the PRC to ensure the availability of data and supervisory case files which were relevant to the assessment of NCAs' supervisory approach toward the oversight and safekeeping obligations of depositaries. This allowed the PRC to better understand the overall supervisory cycle of NCAs regarding the supervision of depositaries, including the different proactive and reactive actions that NCAs may take.
20. The PRC reported its findings to the BoS, for its adoption, after consulting the Investment Management Standing Committee (IMSC) and the Management Board (MB).
21. The mandate identifies supervisory expectations against which NCAs have been assessed for each of the assessment areas. Considering these expectations, the PRC made a qualitative assessment¹³ of whether, for each of the assessment areas, an NCA is: (i) fully meeting expectations, (ii) largely meeting expectations, (iii) partially meeting expectations or (iv) not meeting expectations. The summary of findings and assessment for each area is included in Section 4. The assessment table for all NCAs and the areas for improvement identified (recommendations) are set out in Section 5. Good practices identified in each assessment area are presented in Section 6.
22. The PRC would like to thank all the assessed NCAs for their open and constructive engagement in this Peer Review.

¹³ According to paragraph 55 of the ESMA Peer Review Methodology.

3 General information

23. This section highlights a number of important data points and sets out background information on the supervisory approaches in the jurisdictions in scope.

Number and concentration of depositaries

24. The number of depositaries under the supervision of NCAs varied significantly in the five jurisdictions under review, as displayed in Table 4.

TABLE 4 – NUMBER OF DEPOSITARIES UNDER NCA SUPERVISION OVER THE REVIEW PERIOD (NCA DATA)

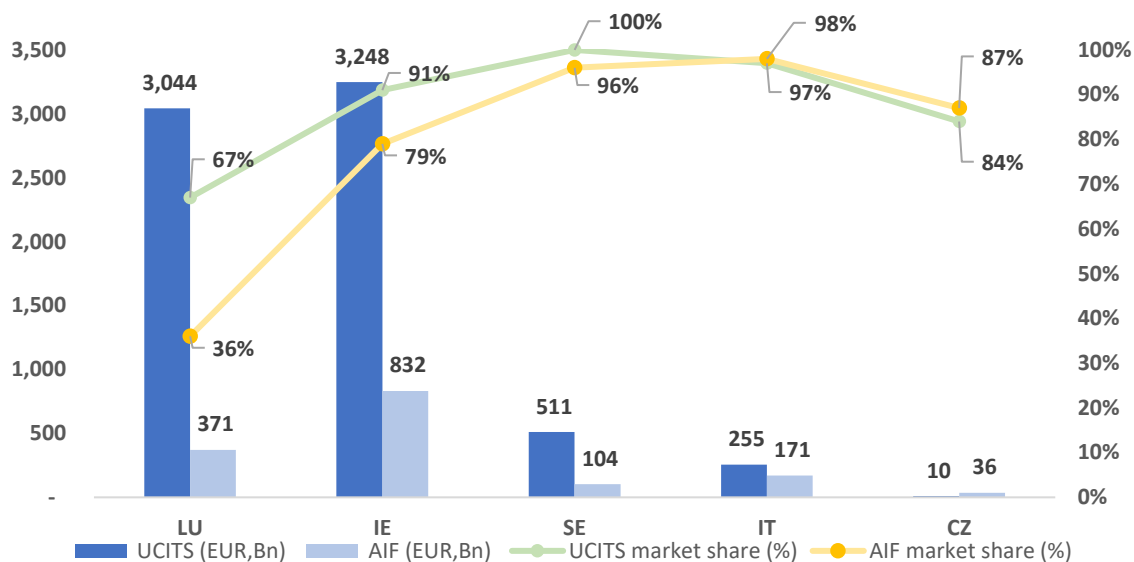
NCA/Country	2021	2022	2023
CNB (CZ)	8	9	9
CBol (IE)	27	29	27
Bol (IT)	6	6	6
CSSF (LU)	60	60	59
SFSA (SE)	8	10	10

25. On the basis of data provided by NCAs in response to the questionnaire, the PRC observed an acute concentration of depositaries in all jurisdictions under review. As outlined in Figure 2 below, the top five depositaries for UCITS and AIFs in each jurisdiction hold a significant percentage of the total market share in all jurisdictions.

26. The concentration of assets was particularly acute for UCITS, where the top five depositaries oversee and safekeep a substantial amount of assets across all jurisdictions, ranging from 67% for firms supervised by the CSSF (LU) to 100% for firms supervised by the SFSA (SE). Therefore, the PRC highlights the reliance on a relatively small number of entities in overseeing and safekeeping a substantial amount of assets in the EU investment management sector and therefore their systemic relevance.

27. These figures highlight the necessity for robust and consistent supervision of depositary obligations by NCAs across the EU to protect investors and ensure the proper functioning of this market.

Figure 2. Depositary concentration (combined assets under custody and market share¹⁴ of the top five largest UCITS and AIF depositaries)



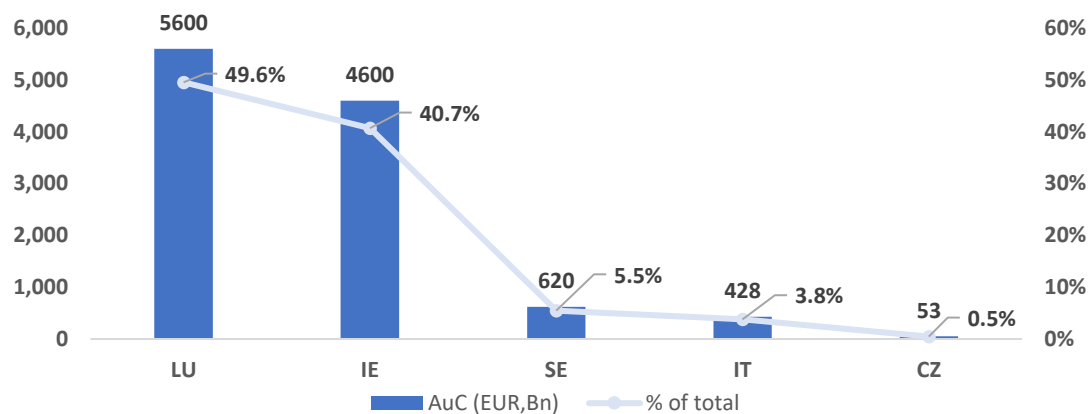
Source: NCA questionnaire responses, data as of Q4 2023

Assets under Custody

28. There are significant differences in the assets under custody (AuC) of depositaries for the NCAs under review, as depicted in Figure 3. Together, depositaries under the supervision of the CSSF (LU) (49.6%) and the CBol (IE) (40.7%), which are the jurisdictions with the highest value of assets under custody for investment funds in Europe, accounted for over 90% of the total assets under custody of the reviewed NCAs. This was followed by the SFSA (SE) (5.5%) Bol (IT) (3.8%) and CNB (CZ) (0.5%). In terms of the evolution of assets under custody, all depositaries in these jurisdictions registered an uptick in 2023 following a drop in market valuations in 2022 (Figure 4).

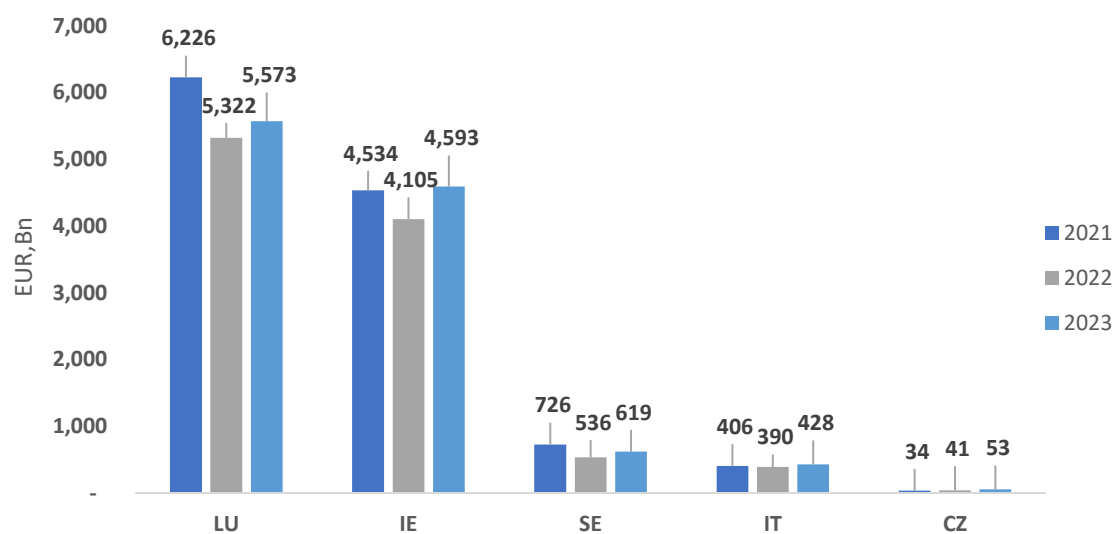
¹⁴ Defined as the combined assets under custody of the top five depositaries in a jurisdiction relative to the total amount of assets under custody reported in that jurisdiction.

Figure 3. Assets under Custody (AuC) of in scope NCAs and % of total



Source: NCA questionnaire responses, data as of Q4 2023.

Figure 4. Evolution of assets under Custody (AuC) of in scope NCAs over the review period



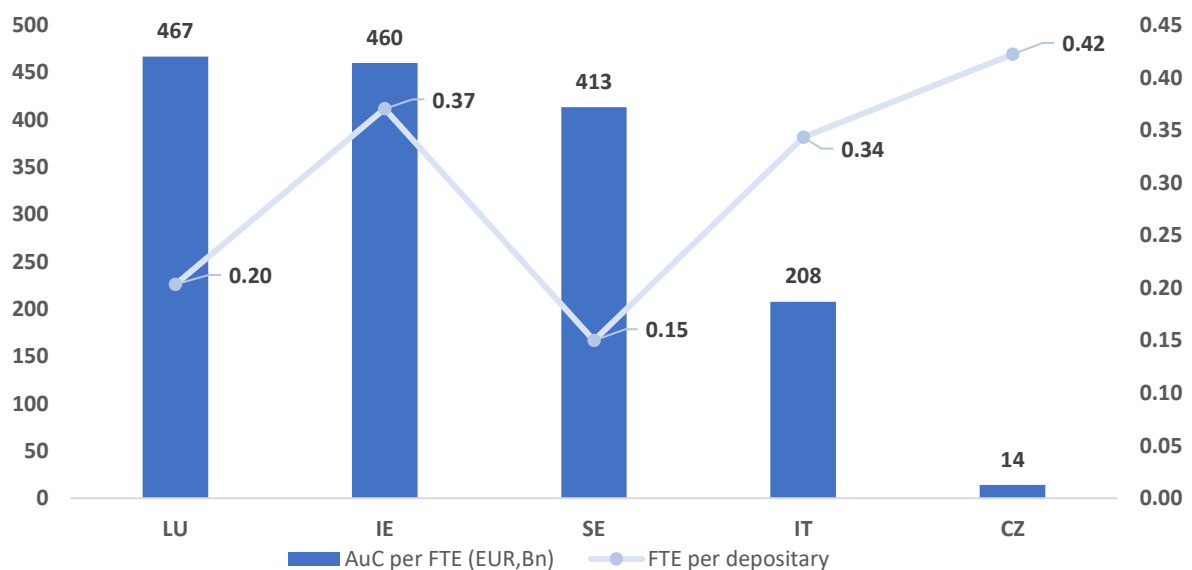
Source: NCA questionnaire responses, data as of Q4 2023

NCAs' supervisory resources

29. In terms of supervisory resources allocated to depositaries, the PRC noted a high degree of variance between NCAs.

30. As the largest markets, CSSF (LU) and CBol (IE) had the corresponding highest number of resources for depositary supervision at 12 and 10 respectively¹⁵, followed by CNB (CZ) (3.8), Bol (IT) (2.06)¹⁶ and SFSA (SE) (1.5).
31. However, when these absolute figures are 'normalised' to allow for equal comparisons, the picture is different, as depicted in Figure 5. This graph provides an overview of NCAs' resourcing arrangements, using metrics such as AuC and the number of entities under supervision to provide a common basis to compare approaches.
32. Using the AuC per FTE metric, which represents the amount of assets under custody under the supervisory responsibility of one FTE, some NCAs' (in LU, IE, SE) resources are outliers when compared to Bol (IT)¹⁷ and CNB (CZ) who have significantly less AuC under the responsibility of each FTE. Equally, when resources are assessed in proportion to the number of supervised entities in a jurisdiction, the CNB (CZ), Bol (IT) and CBol (IE) have more FTE assigned to depositary supervision than the CSSF (LU) and SFSA (SE). For example, the CNB have 0.42 FTE for each depositary in their market versus 0.15 FTE for SFSA. This equates to a 2.8 times discrepancy between the two NCAs.

Figure 5. Supervisory resources of in scope NCAs



Source: NCA questionnaire responses, data as of Q4 2023

Risk-based approach to supervision and inspection cycles

33. All NCAs stated that their approach to depositary supervision is risk-based, where resources are directed to the highest priority risks and entities in the market. Most NCAs

¹⁵ Expressed in terms of a full-time equivalent (FTE) based on a 40h week.

¹⁶ In practice, this figure may overstate the position as resources can also be employed in tasks other than those related to depositary activity.

¹⁷ This should be read in conjunction with the information in footnote 16.

consider both quantitative and qualitative information in their risk-based supervisory processes, including the results of previous assessments and metrics such as AuC/AuM, the number of funds and the number of investors. However, the PRC noted distinct variances in elements of NCAs' risk-based approaches, including the length of on-site supervisory cycles and therefore the different frequency and type of supervisory activities.

34. Under the CBol's (IE) risk based supervisory framework (PRISM¹⁸), entities are ranked (using relevant metrics) based on their ability to impact financial stability and investor protection. These entities receive the highest level of supervisory focus, through periodic and formalised engagement plans. The intensity and frequency of yearly engagements (desk-based) with depositaries depends on their impact rating. On-site inspections of depositaries range in frequency from every two years for high-risk entities to ad-hoc thematic inspections for lower impact entities.
35. The CNB (CZ) utilises a risk scoring tool to categorise entities supervisory importance across a number of risk factors and subsequently to determine its supervisory planning, which also incorporates the results of previous on-site inspections. Depositaries are subject to an on-site inspection cycle of five years, unless there are new requirements or extraordinary events in the interim period.
36. The Bol (IT) risk-based approach involves off-site supervision teams gathering relevant information on a yearly basis to assess risks in depositaries (using relevant metrics) and then proposes those which should go forward for on-site inspection. An on-site inspection can also be triggered by a relevant/ad-hoc event or is normally performed if four years have lapsed since the last inspection, depending on the resource availability of a separate centralised inspection unit.
37. During the review period, the SFSA's (SE) risk-based approach was informed by a yearly exercise which identified and ranked risks in relation to the stability and functioning of the financial system, to investor protection and sustainability. Depositary risks were included in the assessed risks for the Markets division, where fund supervision sits. However, the intensity and frequency of supervision on specific risk areas and entities was not formally established and was determined by the priorities and overall resource availability of the fund supervision department.¹⁹ Generally, the PRC is concerned about overall level of focus on depositary supervision in the Swedish market. The limited supervisory resources within this NCA may be considered as a contributing factor.
38. The CSSF's (LU) risk-based approach is centred on the use of a three-step process to determine which depositaries are subject to supervisory review. First, the off-site supervision team issues a yearly self-assessment questionnaire (SAQ)²⁰ to gain an overall picture of an entity's compliance with regulatory obligations. This is composed of quali-

¹⁸ [PRISM | Central Bank of Ireland](#).

¹⁹ In 2024, SE introduced a new classification system which ranks entities in terms of their supervisory importance and aids in developing a supervisory engagement model based on that ranking. This system envisages an inspection cycle ranging from annually to every second year, depending on a depositary's risk categorisation.

²⁰ From year end 2022, the SAQ was replaced by a Depositary Long-Form Report (LFR).

tative information and quantitative data. Following this, the on-site team performs inspections (starting with the largest depositary banks) on all depositary obligations to verify the SAQ/LFR submissions. On-site inspections typically follow a five-year supervisory cycle, while allowing for the possibility of ad hoc inspection. Finally, the off-site team follows up on the on-site findings which forms the basis for desk-based assessments together with the SAQ.

39. Importantly, the PRC notes that the general targets in terms of on-site inspection cycles referred to above are not always met in practice. The PRC considers that this might be in some cases due to limited supervisory resources. The frequency of on-site supervisory activity performed and overall coverage achieved (in terms of % of supervised entities subject to such inspections) varied significantly among NCAs.
40. Most NCAs reported conducting both regular desk-based and on-site supervision of depositaries obligations over the review period. The PRC are of the view that supervision should be informed by a risk-based, data-driven and outcome-focused approach. To this end, the PRC sees merit in a supervisory approach that incorporates both desk-based and on-site supervisory processes that drive and inform each other as part of NCAs' overall supervision cycle.
41. Overall, the PRC notes that each NCA under review had a risk-based supervisory process in place, albeit with significant variations. Based on the information provided, most NCAs (in CZ, IE, IT, LU) have established supervisory cycles for depositaries' on-site inspections, which are driven by their risk-based framework. Nevertheless, the PRC is concerned with the length of the supervisory cycle applied by NCAs, particularly to the most impactful²¹ depositaries, in each jurisdiction. This is both as the supervisory cycle established by the NCAs in the review period were overall lengthy and because in practice (in some cases) the established cycle was also not met in practice. Given the acute concentration of depositaries and the dominance of a relatively small number of entities and therefore their systemic relevance, the PRC sees merit in a more frequent inspection cycle for these entities. This is further considered in the assessments provided in Section 4.

NCAs' use of enforcement in depositaries' supervision

42. Regarding enforcement practices²², during the review period, the PRC observed that while three NCAs initiated and/or concluded enforcement actions on depositaries (in CZ, IT, LU), two NCAs (in IE, SE) did not undertake any enforcement actions on depositaries. The CNB (CZ) imposed two monetary sanctions on two depositaries and initiated a third sanction (hence taking enforcement actions with respect to 1/3 of their supervised market, evidencing their strong enforcement practices). The CSSF (LU) issued five enforcement letters and initiated another enforcement case, each with a monetary sanction attached. The Bol (IT) issued one monetary sanction on a depositary. Among those

²¹ Determined by relevant (non-exhaustive) risk factors such as assets under custody, complexity of assets serviced and organisational structure of the depositary.

²² Defined as monetary sanctions on a supervised entity, in this case depositaries and distinct from other supervisory actions such as mitigation programmes, recommendations and letters.

that engaged in enforcement work, the CSSF(LU) used this tool in several cases, however, the bar for engaging in enforcement actions appeared rather high to the PRC. In some of the sample cases discussed, the PRC would have seen merit in taking enforcement actions given the type, nature and severity of the breaches (including significant investor detriment in some cases). This NCA is therefore invited to consider further strengthening its enforcement practices by reassessing the calibration of its enforcement matrix. The PRC view the lack of enforcement actions by the CBol (IE) and the SFSA (SE) as an area for improvement.

43. The PRC is of the view that intrusive supervision should be accompanied by credible enforcement action to deter non-compliance. The PRC invites NCAs to make more effective use of the enforcement tool when issues are identified in the supervision of depositaries, so to convey impactful messages to the supervised entities on supervisory authorities' expectations. This is further considered in the assessment in Section 4.
44. Finally, the PRC notes that the review period covered significant events and that all NCAs demonstrated their capacity to perform ad hoc supervisory work during periods of market stress, e.g. during the COVID pandemic or the Russian invasion of Ukraine.

4 Peer Review findings

45. The following sections contain a summary of the Peer Review findings.
46. The Peer Review assessed NCAs against the specific supervisory expectations detailed in the Peer Review mandate and set out below. While there is some overlap due to the similarity in supervisory practices across the expectations, the PRC endeavoured to distinguish between specific elements of supervisory work for each expectation as reflected in the findings and assessment.

4.1 Oversight Obligations

4.1.1 Valuation oversight

Summary of findings

47. The PRC considered how NCAs undertake supervision of a depositary's obligation to ensure appropriate and consistent valuation procedures are established, effectively implemented, and periodically reviewed in relation to the units of the UCITS/AIF. The PRC assessed whether NCAs had a demonstrable supervisory approach to assess depositaries compliance with requirements of UCITS Directive and AIFMD²³. This included (i) the level of supervisory activity (ii) the issues reviewed, documents analysed and scrutiny applied, and (iii) follow-up actions to address identified weaknesses.

²³ Articles 92 & 94 of AIFMD L2; Articles 3 & 5 of UCITS L2.

Level of supervisory activity, and issues / documents reviewed and related scrutiny – desk-based supervision

48. Four NCAs (in CZ, IE, IT, LU) reported conducting regular desk-based supervision of depositaries valuation-related obligations over the review period. For SFSA (SE), reviews took place based on responses to a number of questions posed by the SFSA (SE) through a questionnaire. While depositaries were asked to describe how processes and procedures are implemented, these questions appeared to be rather general in nature.
49. For two NCAs (in IE, IT), these reviews consisted of annual meetings with relevant staff of entities covering multiple aspects of the depositary business and operations, including gathering updates on significant changes in process, systems, structure, issues and challenges within supervised entities' organisation. For the BoI (IT), annual meetings were held in person and supplemented with an annual self-assessment questionnaire (SAQ)/reports. In the case of the CBol (IE), these meetings were held remotely due to COVID, whereas meetings held with depositaries are typically a combination of in-person (on-site or at CBol's offices) and hybrid meetings. The agendas are set taking into account supervisory knowledge and the CBol's (IE) Depositary Supervision team drives the agenda and questioning. For the CNB (CZ) meetings with supervised entities occurred ad-hoc, depending on materialised issues and providing updates on inspection actions.
50. Four NCAs (in IE, IT, LU, SE) receive and review reports from the depositary's internal audit function and also receive and review reports from the compliance function. Conversely, the CNB (CZ) do not typically receive nor review such reports.
51. The CNB's (CZ) approach to desk-based supervisory activities is predominately focused on quantitative data monitoring and analysis. This NCA requires depositaries to submit significant findings related to asset valuation and NAV calculations through the NCAs dedicated IT tool²⁴. This tool is used to provide information on the depositary market on a quarterly basis. In addition, analytical software ingests data from both depositaries and fund managers. Moreover, desk-based reviews consist of following up on the remediation of findings identified from prior on-site supervision. While updates are received on remediation actions on a quarterly basis, the CNB (CZ) do not receive evidence on the actions being taken by depositaries. The CNB (CZ) confirmed that they focus more on on-site supervision as they consider this as the most efficient way to supervise depositaries.
52. For the CSSF (LU), desk-based supervision is driven by the results of an annual information gathering exercise in the form of a SAQ report and follow up to remediation actions following on-site inspections.
53. For three NCAs (in CZ, IT, LU), the PRC did not see evidence during the review period of in-depth proactive desk-based supervision, for example through the review of relevant documentation. Rather, two of these NCAs (in IT, LU), put reliance on entities self-identifying issues through the SAQ, which may then initiate supervisory activity.

²⁴ SDAT.

54. The SFSA (SE) conducted a one-off questionnaire-based exercise which encapsulated their entire desk-based supervisory process. In this context the SFSA (SE) requested and reviewed documentation relevant to the supervision of valuation related obligations. However, this approach lacked certain elements to be considered an in-depth supervisory assessment as questions were of a general nature and did not enquire specifically about processes and controls applicable to asset classes. The PRC did not see evidence that the SFSA (SE) undertook additional desk-based supervisory activities, during the review period.
55. For the CBol (IE), the PRC found that it typically performed desk-based assessments (including PRISM engagement meetings) utilising the following documents: valuation oversight related documentation, including policies and procedures related to the NAV oversight process, those governing the due diligence process of the fund manager, internal audit submissions and breach/error logs.
56. However, the CBol's (IE) expectations with respect to the adequacy of depositaries' valuation oversight remained unclear. There was generally no clear evidence as to how the outcome of desk-based supervision provided comfort to the CBol (IE) that depositaries were adequately undertaking their valuation-related oversight obligations. Notwithstanding the above, the PRC notes this NCA's detailed agendas and minutes of meetings with depositary staff which included, inter-alia, (i) questions regarding the depositary's valuation oversight processes and (ii) walkthroughs of NAV reviews, error detection and escalation procedures.
57. All NCAs (in CZ, IE, IT, LU, SE) receive reports on NAV calculation errors from either the depositary or fund manager. In instances where the fund supervision team received the error notification, the PRC generally found that communication channels between depositary and fund supervision teams were rather informal for four NCAs (CZ, IT, LU, SE)²⁵.
58. For three NCAs (in CZ, IT, SE) the PRC did not see evidence for detailed or formally established processes for informing the on-site inspection planning / scoping process based on the outcome of desk-based supervision. The PRC are of the view that a circular process of supervision, where desk-based reviews inform on-site inspections and vice versa is the most preferable model for supervision.

Level of supervisory activity, and issues / documents reviewed and related scrutiny – on-site supervisory work

59. All NCAs reported conducting on-site supervisory activity of depositaries valuation-related obligations.
60. In terms of scope of such activities, the CBol's (IE) on-site inspections focused on NAV oversight, including the NAV review schedule, error/breaches logs, checklists, procedure documents and sample NAV packs.

²⁵ The Bol (IT) reported that as part of the updating of its Supervisory Manual in February 2025, the exchange of information between the supervision of the Fund Managers and Depositary banks directorates has been formalised.

61. For the SFSA (SE), on-site supervisory work consisted of following up on the initial questionnaire, including reviewing procedures specific to asset classes or hard-to-value assets, monitoring of third-party valuation providers, monitoring of NAV calculation and due diligence on the valuation processes of fund managers.
62. For the Bol (IT), the scope of on-site inspections conducted over the review period encompassed depositary oversight requirements on the valuation of shares and controls on asset valuation.
63. For two NCAs (in CZ, LU), on-site inspections assessed whether depositaries had implemented adequate controls to perform their valuation oversight obligations effectively. This included inter-alia, a general evaluation of depositaries internal processes and of the design of depositary controls which is complemented by an assessment of their effectiveness through risk-based samples.
64. In terms of depth of such activities, on-site supervisory activities for valuation-related obligation varied across selected NCAs. For two NCAs (in CZ, LU), the PRC observed structured and thorough on-site assessments which included in-depth reviews of the design of depositaries NAV and asset valuation controls and an assessment of their effectiveness through sample checks. In addition, the PRC notes that both NCAs have clear control plans for their on-site inspections with references to the relevant regulatory requirements to be assessed. While also noting the Bol's (IT) on-site supervision evaluated depositary controls and challenged fund managers real estate asset valuations, the PRC did not see evidence that this was to the same magnitude or extent as the other two NCAs (in CZ, LU) in relation to the entirety of valuation-related controls²⁶.
65. For the SFSA (SE), the PRC did not see evidence of how supervisory assessments were performed on depositaries premises, beyond asking broad, relatively high-level questions²⁷. This may be due to the NCA not defining its own internal expectations of what is expected of depositaries to demonstrate compliance with their valuation-related obligations.
66. The CNB (CZ) puts an emphasis on the depositary to check the procedures of the fund manager for the appointment of the external valuer and to check if the external valuer is authorised to provide this service. Moreover, this NCA monitors depositaries for potential conflicts of interest with the fund manager.
67. The PRC notes that during the review period the CBol (IE) focused more on governance aspects (which are comprehensive) of a depositary's valuation oversight obligations rather than an in-depth review of their controls and an assessment of their effectiveness and adherence to the applicable rules. In prior years, sample testing was performed and an assessment was made in relation to the effectiveness and adherence to the applicable rules.
68. With respect to the review of contractual arrangements between depositaries and fund/managers, these are reviewed on a sample basis by three NCAs (in CZ, IT, LU)

²⁶ The Bol (IT) noted that real estate funds were deemed most critical and therefore prioritised for assessment.

²⁷ As outlined in paragraph 54

either desk-based or as part of the on-site inspections, whereas the other two NCAs (in IE, SE) do usually not review them.

Follow up to identified weaknesses

69. In terms of follow up actions to address issues identified, for four NCAs (in CZ, IE, IT, LU) the PRC observed consistent practices to notify depositaries of identified issues following on-site supervisory reviews and to issue/request remedial actions to address the deficiencies. While two NCAs (in IE, LU), establish these remedial actions and associated timelines with specific goals, two other NCAs (in CZ, IT) expect depositaries to formulate their own remediation plans and timeline for completion which then require the approval of the NCA. The Bol (IT) assess and challenge the remediation plan prior to approval. Although the CSSF (LU) performs a follow-up on the remediation of its findings, it does not enquire into the rationale for such deficiencies and as such, may not be fully identifying root causes or potential systemic issues. Moreover, the sample cases assessed indicated that the CSSF (LU) could have been more proactive in its monitoring of the implementation of the remedial actions. The PRC sees room for improvement in this respect.
70. For the SFSA (SE), the PRC did not see evidence of notification to the depositary of the findings of an on-site inspection, however they do consider whether or not to prepare an external report following the conclusion of an on-site inspection.

Divergence on the frequency of valuation controls

71. Finally, the PRC observed that for three NCAs (in IE, LU, SE), the frequency of depositary controls varies significantly across market participants, even for daily dealing UCITS, as depicted in Figure 6. This may be due to unclear internal expectations on the minimum frequency required, a lack of in-depth supervisory assessments or insufficient challenge by NCAs in respect of this particular point. As shown in figure 6, for the other two NCAs (in IT, CZ) there was no variation in the frequency of valuation checks with daily checks reported. In this context, the Bol (IT) expects depositaries to review the NAV prior to publication (or no later than four days after the NAV publication for UCITS) and the CNB (CZ) requires depositaries to recalculate the NAV prior to publication.

Figure 6. Frequency of valuation checks (lowest and highest frequency) by the top five depositaries for daily dealing UCITS²⁸



Source: NCA data, 2024

Assessment

72. The obligation for depositaries to ensure appropriate and consistent valuation procedures are established, effectively implemented, and periodically reviewed is critical in safeguarding investor protection, providing transparency to the market as well as mitigating risks to which investment funds might be exposed. Therefore, it is important that NCAs have a demonstrable and effective supervisory approach which assesses the extent to which depositaries are complying with these obligations.
73. This section relates to the assessment of NCAs' supervisory practices on depositaries valuation-related obligations. However, the PRC takes the opportunity to also highlight some general observations with regard to NCAs supervision arrangements and asks NCAs to consider them across all assessment areas.
74. Overall, while the PRC notes that all NCAs (in CZ, IE, IT, LU, SE) have supervisory processes in place, it has also identified a number of shortcomings in NCAs' supervisory approaches to depositaries valuation related obligations.
75. Firstly, the PRC is of the view that three NCAs (in CZ, IT, LU) demonstrated limited engagement with depositaries' valuation obligations from a desk-based perspective. The PRC reasons that regular desk-based supervision can facilitate an evaluation of the adequacy of a depositary's overall control environment as it relates to their valuation oversight obligations. This approach would also allow for the timely identification of issues and subsequent mitigation actions, particularly in the context of the relative infrequent on-site inspections cycle of the largest depositaries, as highlighted in Section 3.
76. With respect to the SAQ/annual report used by the Bol (IT), the PRC notes that it does not have a granular template, which can result in different degrees of information being

²⁸ Figure 6 depicts the minimum and maximum frequency of reported valuation checks by the top 5 depositaries in each NCAs selected market. For IT and CZ, the minimum and maximum values are the same and refer to daily checks.

provided across various operational areas which may hinder a comprehensive and granular assessment of the adequacy of depositary controls including, as it relates to valuation oversight, due diligence on fund managers and delegate service providers as well as periodical controls performed on asset valuation and NAV calculation. The PRC invites this NCA to consider issuing more granular templates which capture the most pertinent aspects of a depositary's organisation and control environment. This would mitigate the reliance on entities providing sufficient information through voluntary disclosures.

77. Regarding the SAQ/LFR reviews by the CSSF (LU), the PRC is of the view that the strong reliance on self-assessments in a (Y/N) format provided by supervised entities may risk reducing the effectiveness of desk-based supervision. However, the PRC positively notes that the SAQs/LFRs have recently evolved to include more descriptive elements and evidence. The PRC appreciates that this NCA continuously updates the SAQs/LFRs based on learnings from the previous year and tests the veracity of the information through on-site inspections. The improved SAQs/LFRs are a more effective supervisory tool for understanding the depositary market and practices. The PRC therefore encourages this NCA to use this information to improve its proactive desk-based supervision²⁹.
78. The PRC welcomes that the CBol (IE) has taken steps to assess valuation obligations during desk-based supervision. At the same time, it sees scope to improve the existing supervisory practices further by incorporating more granular assessments and analysis of depositary controls and their associated effectiveness.
79. Despite the SFSA (SE) issuing a questionnaire to depositaries as part of their desk-based supervisory process, the PRC were concerned to find that the questions, both initially and where applicable in the follow up, were rather general in nature and lacked depth. This is despite the well-established investment management market in Sweden and the maturity of the UCITS and AIFMD frameworks.
80. The PRC sees room for three NCAs (in CZ, IT, SE) to further strengthen the link between desk-based and on-site supervision where identified areas of concern at the desk-based level inform on-site inspections.
81. The PRC observed thorough on-site supervisory processes for two NCAs (in CZ, LU), which assessed depositaries valuation-related controls and their effectiveness in-depth. For two NCAs (in IE, IT), on-site inspections during the review period generally lacked the same level of granularity, particularly with regard to the assessment and effectiveness of controls, while the SFSA (SE) appeared to only perform high-level supervision which was evidenced by the broad and relatively limited questions of the depositary and displayed insufficient challenge. For the Bol (IT), it should be noted that elements of their on-site inspections reflected granular findings specifically related to depositary controls concerning real estate valuations. However, as detailed above, the PRC did not see evidence in sample reports provided that this was replicated across all valuation-related controls³⁰.

²⁹ The evolution of the SAQ/LFR process applies to each subsequent supervisory expectation.

³⁰ As outlined in paragraph 64.

82. The PRC are of the view that on-site inspections are an integral component of the overall supervisory process that can facilitate a comprehensive assessment of a depositary's overall risk environment and verify the accuracy and implementation of valuation policies and procedures in practice. Therefore, the PRC see an opportunity for two NCAs (in IE, IT) to revise the scope of their on-site inspections to include more in-depth assessments of a depositary's controls and their effectiveness.
83. Although the PRC acknowledges the well-established risk-based supervisory approach implemented by the CBol (IE) and the importance of assessing governance-related aspects, it is of the view that there would be merit in performing more in-depth supervisory assessments on matters relating to valuation oversight, notably on large entities, most of which have not undergone such assessments during the peer review assessment period.
84. The PRC encourages the SFSA (SE) to develop a supervisory process that addresses the depositaries valuation-related obligations in sufficient detail, demonstrates challenge to identified issues and a comprehensive follow-up process which includes issuing final reports and remediation actions to firms.
85. In consideration of NCAs' entire supervisory processes, the PRC is of the view that two NCAs (in CZ, LU) demonstrated the most effective and robust supervisory procedures to review depositaries valuation oversight obligations, primarily due to the depth of on-site supervisory reviews and associated follow up, including monetary sanctioning of depositaries on observed deficiencies. While both NCAs could improve the level of proactive in-depth desk-based reviews, the PRC notes the wealth of information collected and assessed on an ongoing basis, including through SAQs/LFRs by the CSSF (LU) and data ingestion and analysis by the CNB (CZ). For two other NCAs (in IE and IT), the PRC notes that both have well-established supervisory frameworks which, while addressing a number of important elements of a depositary's valuation-related obligations would benefit from clearer expectations on the level and effectiveness of depositary controls that is consistent with the outcome of due diligence/risk assessment of the fund manager.
86. The PRC positively notes that most NCAs (in CZ, IE, IT, LU) issue detailed findings and recommendations to depositaries following on-site inspections. The PRC sees merit in the SFSA (SE) issuing recommendations and follow-up reports that instruct supervised entities/the market to address identified shortcomings. For the CNB (CZ), the PRC sees merit in systematically requesting evidentiary proof from the depositary to conclude that a remediation action has been closed.
87. With respect to the review of contractual arrangements between depositaries and funds/managers, the PRC invites two NCAs (in IE, SE) to consider reviewing them as part of their overall supervisory approach, at least on a sample basis, as done by the other three NCAs (in CZ, IT, LU).
88. The PRC notes the CNB's (CZ) approach to the verification of external valuers and the assessment of independence and potential conflicts of interest.

89. The PRC positively notes the regular review of internal audit reports and compliance reports by four NCAs (IE, IT, LU, SE) which allows these NCAs to gather valuable insights into the control framework and compliance culture of the supervised entities. This is relevant also for the assessment areas in Section 4.1.2 - 4.2.2 below

90. In light of the above, the peer review assessment is as follows:

- CZ: fully meeting expectations
- IE: largely meeting expectations
- IT: largely meeting expectations
- LU: fully meeting expectations
- SE: partially meeting expectations

4.1.2 Investment restrictions and leverage limits oversight

91. The PRC considered how NCAs undertake supervision of a depositary's obligation to ensure appropriate processes are implemented to monitor a UCITS/AIF's compliance with investment restrictions and leverage limits set in the applicable laws³¹ and UCITS/AIF's offering documents³². Also in this assessment area, the PRC assessed whether NCAs had a demonstrable supervisory approach which included (i) the level of supervisory activity (ii) the issues reviewed, documents analysed and scrutiny applied, and (iii) follow-up actions to address identified weaknesses.

Summary of findings

Level of supervisory activity, and issues / documents reviewed and related scrutiny –desk-based reviews

92. Regarding desk-based supervision, the PRC notes that to a large extent the same practices and corresponding PRC analyses apply to investment restrictions and leverage limits as for valuation obligations for all NCAs (see Section 4.1.1)

Level of supervisory activity, and issues / documents reviewed and related scrutiny – on-site supervisory work

93. The CBol (IE) focused primarily on governance aspects during the review period (which are comprehensive) of a depositary's investment restrictions and leverage limit obligations, with less evidence of in-depth review of their controls and an assessment of their effectiveness. While PRISM engagements and on-site walkthroughs were performed, there was no documented evidence that granular assessments were performed on the adequacy of depositaries controls with applicable regulations. This NCA performed one on-site inspection on this topic during the review period and added that this was due to

³¹ For example, Articles 49 to 57 of UCITS L1.

³² Article 95 of AIFMD L2; Article 6 of UCITS L2.

a shift in supervisory priorities which resulted in more focus on custody and safekeeping aspects of depositaries obligations during the review period.

94. The Bol (IT) performed on-site inspections to assess depositaries investment restrictions and leverage limit obligations. This NCA covered areas such as (i) the initial investment rules set-up (ii) control workflows and (iii) breach resolution and follow-up processes. With respect to depositary review of the fund managers control environment, the focus was primarily on ensuring alignment of investment rules in the IT systems of the depositary and fund manager. There was less emphasis on verifying depositaries assessment of fund managers' internal control frameworks and investment strategies in order to determine whether the depositary has an adequate level of oversight in place.
95. Two NCAs (in CZ, LU), have detailed control plans for their on-site inspections with references to relevant regulatory requirements which included in-depth reviews and verification of the design of depositaries investment restriction and leverage limit controls and an assessment of their effectiveness through sample checks. During the on-site inspections performed, these NCAs verified that the depositary performed a risk assessment on the nature, scale and complexity of the fund managers internal control framework and investment strategy in order to determine the level of depositary controls. In order to gain assurance that depositaries implemented these controls proportionately, both NCAs checked areas such as investment rules set-up, breach identification and remediation through sample testing.
96. The CNB (CZ) additionally expects depositaries to perform controls with respect to compliance with best execution rules and the economic viability of transactions. For real estate funds marketed to retail investors, this NCA consider as a good market practice that depositary controls are performed ex ante. In this context, the CSSF (LU) has issued a market circular which states that AIF depositaries are expected to review draft documentation prior to any transaction taking place for illiquid assets in the fund to ensure the eligibility of the investment with the prospectus.
97. For the SFSA (SE), the PRC did not see evidence of how supervisory assessments were performed on depositaries premises, beyond asking broad, relatively high-level questions (in line with the aforementioned questionnaire). This may be due to the NCA not defining its own internal expectations of what is expected of depositaries to demonstrate compliance with their investment restrictions and leverage limit obligations.
98. With respect to the review of contractual arrangements between depositaries and fund/managers, these are reviewed on a sample basis by three NCAs (in CZ, IT, LU) either desk-based or as part of the on-site inspections, whereas two NCAs (in IE, SE) do not review them.

Other relevant supervisory approaches to investment restrictions and leverage limits

99. In terms of reporting on investment restrictions and leverage limit breaches, the PRC observed that all NCAs (in CZ, IE, IT, LU, SE) receive these reports from either the depositary or fund manager. In instances where the fund supervision team received the

error notification, the PRC generally found that communication channels between depository and fund supervision teams were informal for four NCAs (CZ, IT, LU, SE)³³.

100. While investment and leverage limits are to be checked by the fund manager internally and externally by the depository, two NCAs (in CZ, SE) developed IT tools to monitor investment and leverage limits on a regular basis. The CBol (IE) is currently in the process of developing a similar tool. In the case of the SFSA (SE), these automated checks focus on legal limits and therefore do not cover contractual limits. Depositories are required to report to the SFSA (SE) on breaches/findings. These reports are reviewed by the NCA and follow-up action are taken, where required. However, there is no process to reconcile the findings of these automated checks by the SFSA's (SE) systems with the depository's submissions. The SFSA (SE), confirmed that the main function of this tool was for fund supervision. In contrast, the depositories under the CNB's (CZ) supervision are obliged to report significant breaches of investment restrictions and leverage limits. Any findings are collected in the dedicated supervisory IT tool, where identified significant breaches reported by fund managers are also collected. This allows the CNB (CZ) to conduct cross checks.
101. The CBol (IE) allow depositories to use client attestations for some complex funds or rules (e.g. VaR). Where depositories use client attestations with relevance to the calculation of VaR, the CBol (IE), expect depositories to (i) check that the VaR metric received from the fund manager is lower than the maximum expected threshold outlined in the sub-fund's documents; (ii) monitor VaR figures in accordance with relevant regulation and fund documentation and (iii) ensure due diligence and ongoing oversight procedures include periodic reviews of VaR, securitisation, and limits applicable to underlying investments.
102. The CSSF (LU) allows fund managers to delegate the performance of ex-post first level investment restrictions and leverage limit checks to the same legal entity that is appointed as depository. The CSSF (LU) stressed the functional and hierarchical separation within the depository between the performance of the tasks performed on a delegation basis and its oversight activities. Moreover, the CSSF (LU) stated that it always requires the fund manager to perform the ex-ante checks itself and implement additional controls to ensure the delegation of the ongoing checks by the depository adheres to relevant rules and standards.

Follow up to identified weaknesses

103. In terms of follow up actions to address issues identified the PRC observed the same practices as those outlined in paragraphs 69-70

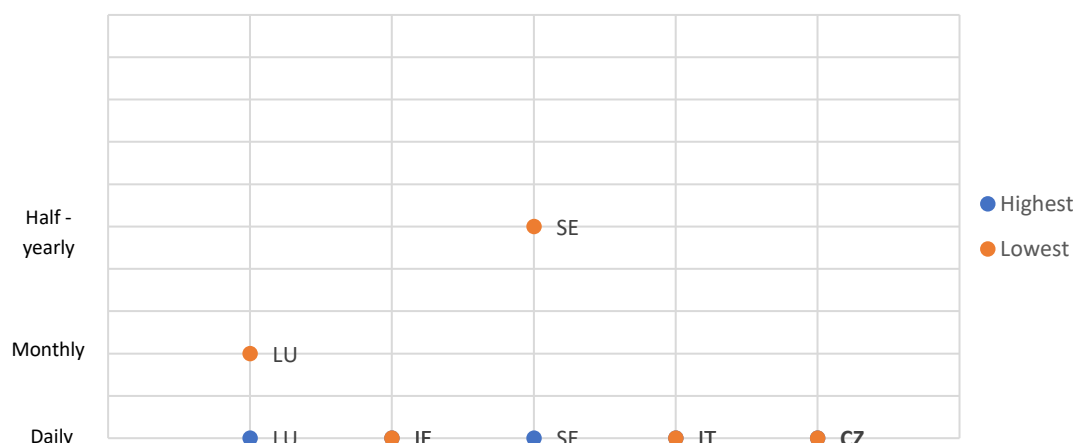
Divergence on the frequency of investment restrictions and leverage limit controls

104. Finally, the PRC observed that for two NCAs (in LU, SE), the frequency of depository controls varies across market participants, even for daily dealing UCITS, as depicted in Figure 7. This may be due to unclear internal expectations on the minimum frequency

³³ The Bol (IT) reported that as part of the updating of its Supervisory Manual in February 2025, the exchange of information between the supervision of the Fund Managers and Depository banks directorates has been formalised.

required, a lack of in-depth supervisory assessments or insufficient challenge by NCAs in respect of this particular point.

Figure 7. Frequency of investment/leverage limit checks (lowest and highest range) by the top five depositaries for daily dealing UCITS³⁴



Source: NCA data, 2024

Assessment

105. The obligation for depositaries to ensure appropriate and consistent investment restrictions and leverage limit procedures are established, effectively implemented, and periodically reviewed is critical in safeguarding investor protection, providing transparency to the market as well as mitigating risk by limiting excessive exposure to certain assets.
106. Overall, while the PRC notes that all NCAs (in CZ, IE, IT, LU, SE) have supervisory processes in place, it has also identified a number of shortcomings in NCAs' supervisory approaches to depositaries investment restrictions and leverage limit obligations.
107. While the CBol (IE) has taken some proactive steps to assess investment restrictions and leverage limit oversight obligations during desk-based supervision, three NCAs (in CZ, IT, LU) demonstrated limited desk-based engagement with depositaries in this area. The PRC is of the view that a desk-based supervisory approach, where NCAs review depositaries written processes, procedures and risk and control self-assessments can facilitate an evaluation of the adequacy of a depositary's overall control environment as it relates to their investment restrictions and leverage limit oversight obligations. This approach would also allow for the timely identification of issues and subsequent mitigation actions, particularly in the context of the relative infrequent on-site inspections cycle of the largest depositaries, as highlighted in Section 3.

³⁴ Figure 7 depicts the minimum and maximum frequency of reported investment restriction and leverage limit checks by the top 5 depositaries in each NCAs selected market. For IE, IT and CZ, the minimum and maximum values are the same and refer to daily checks.

108. For the SFSA (SE), despite the issuance of a questionnaire to depositaries as part of their desk-based supervisory process, the PRC were concerned to find that the questions, both initially and where applicable in the follow up, were rather general in nature and lack depth. This is despite the well-established investment management local market and the maturity of the UCITS and AIFMD frameworks.
109. The PRC sees scope for the CBoI (IE) to supplement its existing supervisory practices by incorporating more granular assessments and analysis of depositary controls and their associated effectiveness.
110. The PRC sees room for three NCAs (in CZ, IT, SE) to further strengthen the link between desk-based and on-site supervision where identified areas of concern at the desk-based level inform on-site inspections.
111. The PRC observed thorough on-site supervisory processes for two NCAs (in CZ, LU), which assessed depositaries investment restrictions and leverage limit controls and their effectiveness in-depth. For two NCAs (in IE, IT), on-site inspections generally lacked the same level of granularity, particularly with regard to the assessment and effectiveness of controls.
112. While the PRC acknowledges the risk-based approach followed by the CBoI (IE), it is of the view that in particular entities of large size (and market share) should be subject to more frequent on-site inspections covering the performance of their investment and leverage limit oversight.
113. The SFSA (SE) appeared to only perform high-level supervision which was evidenced by the broad and relatively limited questions of the depositary on this topic and displayed insufficient challenge.
114. The PRC is of the view that on-site inspections are an integral component of the overall supervisory process that can facilitate a comprehensive assessment of a depositary's overall risk environment and verify the accuracy and implementation of policies and procedures in practice. Therefore, the PRC sees an opportunity for two NCAs (in IE, IT) to revise the scope and frequency of their on-site inspections to include regular and more in-depth assessments of a depositary's controls and their effectiveness.
115. The PRC encourages the SFSA (SE) to develop a supervisory process (both desk-based and on-site) that addresses investment restrictions and leverage limit oversight obligations in sufficient detail, demonstrates challenge to identified issues and includes a comprehensive follow up process which includes issuing final reports and remediation actions to firms.
116. While the PRC positively notes that most NCAs (in CZ, IE, IT, LU) issue detailed findings and recommendations to depositaries following on-site inspections, there would be merit in the SFSA (SE) issuing formal recommendations and follow-up reports that instruct supervised entities/the market to address identified shortcomings.
117. In consideration of NCAs' entire supervisory processes, the PRC is of the view that the CNB (CZ) demonstrated the most effective and robust supervisory procedures to review depositaries investment restrictions and leverage limit oversight obligations, primarily

due to the depth of on-site supervisory reviews and associated follow up, including monetary sanctioning of depositaries on observed deficiencies. While this NCA does not proactively undertake in-depth desk-based reviews, the PRC positively notes the wealth of information collected on an ongoing basis through data ingestion and analysis. An example of this is the cross checks performed by this NCA between the breach reports of fund managers and depositaries. These reports are analysed by supervisors to identify any potential issues or risks to the depositary in meeting their obligations in relation to investment restrictions and leverage limits. This information is also shared with supervisors of fund managers. The PRC is of the view that this supervisory approach represents a beneficial use of regulatory data which provides the NCA with a holistic overview of emerging issues in the depositary market and facilitates an efficient exchange of information with the supervisors of fund managers, given their dual reporting obligation. Moreover, the PRC notes that this NCAs' consideration that ex ante controls on real estate funds is a positive practice that may enhance investor protection, improve transparency and mitigate risk in the jurisdiction.

118. The PRC considers the SFSA's (SE) use of an automated system to monitor investment and leverage limits as an innovative approach to supervision. However, bearing in mind the absence of reconciliations or cross-checks against the findings made by the depositary and the NCA's limited resources, this approach may not be effective or efficient for the purposes of assessing whether the depositary complies with its control obligations.
119. For two other NCAs (in IE, IT), the PRC notes that both have well-established supervisory frameworks which, while addressing a number of important elements of a depositary's investment restrictions and leverage limit oversight obligations, would benefit from clearer expectations on the level and effectiveness of depositary controls that is consistent with the outcome of due diligence/risk assessment of the fund manager.
120. The CBol's (IE) supervisory approach to allow depositaries of some complex funds or rules (e.g. VaR) to use client attestations raises some concerns. The PRC are of the view that NCAs should ensure depositaries perform their own controls and not put a reliance on attestations provided by the fund/manager it controls. While depositaries under the supervision of the CBol (IE) perform controls as outlined in paragraph 101, the PRC is of the view that there is merit in the CBol (IE) performing further supervisory assessment to ensure depositary oversight arrangements in this regard are sufficient to comply with their control obligations.
121. The CSSF (LU) conducted comprehensive on-site supervisory reviews. However, the PRC is of the view that a supervisory approach which allows the legal entity that is appointed as depositary to simultaneously provide ex-post first-level controls on investment restrictions and leverage limits on a delegation basis appears problematic. The PRC did not see this supervisory practice across the other four NCAs (CZ, IE, IT, SE) and therefore invites the CSSF (LU) to reassess its supervisory approach on this matter to ensure depositaries are not performing activities on a delegation basis with respect to matters covered by their oversight obligations.
122. With respect to the review of contractual arrangements between depositaries and fund/managers, the PRC invites two NCAs (in IE, SE) to consider reviewing them as

part of their overall supervisory approach, at least on a sample basis, as done by the other three NCAs (in CZ, IT, LU).

123. In light of the above, the peer review assessment is as follows:

- CZ: fully meeting expectations
- IE: largely meeting expectations
- IT: largely meeting expectations
- LU: largely meeting expectations
- SE: partially meeting expectations

4.2 Safekeeping Obligations

4.2.1 Due diligence for the delegation of safekeeping functions to third parties including the segregation of client assets

124. The PRC considered how NCAs supervise whether depositaries have implemented adequate processes and practices to comply with their due diligence obligations with respect to the delegation of safekeeping functions to third parties including the segregation of clients' assets.³⁵ The PRC assessed whether NCAs had a demonstrable supervisory approach to assess depositaries compliance with requirements of UCITS and AIFMD, including (i) the level of supervisory activity (ii) the issues reviewed, documents analysed and scrutiny applied, and (iii) follow-up actions to address identified weaknesses.

Summary of findings

125. As part of the initial authorisation procedure for new depositaries, four NCAs (in CZ, IE IT, LU) require depositaries to submit relevant documentation on safekeeping functions, including details on due diligence obligations. The PRC did not see evidence that the SFSA (SE) had a similar authorisation procedure in place, which may also impact the other assessment areas under review.

Level of supervisory activity, and issues / documents reviewed and related scrutiny –desk-based reviews

126. Regarding desk-based supervision, the PRC notes that to a large extent the same practices and corresponding PRC analyses apply to depositaries due diligence obligations for the delegation of safekeeping functions as for valuation obligations (see Section 4.1.1). Notwithstanding, there were additional elements related to this assessment area which are described below.

³⁵ Articles 98 & 99 of AIFMD L2; Articles 15 & 16 of UCITS L2.

127. The CBol (IE) supplemented their regular supervisory approach by issuing an ad-hoc questionnaire to depositaries on delegated custody safekeeping and engaged with depositaries and sub-custodians (both in the EU and third countries) as to whether they were performing their ongoing due diligence. This included questions on how depositaries ensure (i) access to books and records of financial instruments held in custody and (ii) its delegates maintain comprehensive procedures, controls and operational capabilities in respect of the custody safekeeping activity delegated. Before the EU legislative amendments in 2020, it was a common market practice in this jurisdiction to maintain records and accounts only directly at the level of the sub-custodian. The PRC notes that the CBol (IE) does not require the maintenance of first-level accounts by the depositary in cases where custody is delegated. The practices observed in this respect were an outlier compared to the other assessed NCAs.
128. The CNB (CZ) undertook a thematic review which examined depositaries approaches to the recording of clients' assets on a sample basis and specifically examined a sample of contracts to determine the type of accounts used for recording assets.
129. For two NCAs (in CZ, IE), these supervisory activities resulted in a number of subsequent actions, including follow-up questions and informing supervisory plans for the CBol (IE) and communication to the market, via a circular, containing guidance on how to ensure the segregation of client assets for the CNB (CZ).
130. For two NCAs (in IT, LU), the PRC did not see evidence of in-depth proactive desk-based supervision, outside of work undertaken at the authorisation stage, for example through the review of relevant documentation. Rather, these NCAs put reliance on entities self-identifying issues through the SAQs/LFRs, which may then initiate supervisory activity.

Level of supervisory activity, and issues / documents reviewed and related scrutiny – on-site supervisory work

131. Four NCAs (in CZ, IE, IT, LU) conducted on-site inspections covering the topic during the review period³⁶, whereas the scope and frequency of these inspections varied.
132. The CSSF (LU) kept a detailed control plan which investigated, inter alia, via sample testing, walkthroughs and interviews (i) due diligence on sub-custodians (ii) account structures and statements of delegates to ensure depositary clients assets are clearly identified.
133. For two NCAs (in CZ, IT) inspections focused primarily on the segregation of client assets through sample reviews of written procedures, policies and contracts, without assessing in-depth whether depositaries undertake due diligence on the custody chain. This was evidenced by a lack of review of due diligence reports. The CBol (IE) assessed the appropriateness of custody oversight processes and procedures, performed sample

³⁶ Additionally, the CBol (IE) is currently performing a thematic review across a number of depositaries and fund administrators assessing their governance arrangements in ensuring (a) appropriate due diligence and risk assessments are being performed, (b) ongoing oversight of third-party service providers are robust and (c) contracts and Service Level Agreements (SLAs) are in place.

testing of due diligence reports and reviewed how the depositary is kept aware of custody-related issues on an ongoing basis. Finally, the SFSA (SE) did not conduct on-site inspections on this topic during the review period.³⁷

134. Four NCAs (in CZ, IE, IT, LU) review the reconciliation processes of depositaries during the on-site inspections. Regarding the frequency of reconciliations between the accounts of the depositaries and their sub-custodians, two NCAs (in IE³⁸, LU) expect daily reconciliations for UCITS, while the CNB (CZ) requires daily to weekly, and the Bol (IT) accepts monthly reconciliations. The PRC did not see sufficient evidence that the SFSA (SE) reviewed the reconciliation frequency of depositaries with their sub-custodians in-depth.
135. The same four NCAs (in CZ, IE, IT, LU) did not perform cross checks of assets held with sub-custodians directly with these entities. Sample checks of the reconciliation process between the depositaries and sub-custodians are conducted based on information received directly from the depositary. The PRC observed that the SFSA (SE) did not perform any cross checks with sub-custodians, neither directly nor through information received from the depositaries.
136. Four NCAs (in CZ, IE, IT, LU) reviewed SLAs/contracts between depositaries and sub-custodians as part of their on-site inspections, whereas the SFSA (SE) did not do so.
137. Three NCAs (in IE, IT, LU) have supervisory expectations regarding legal opinions on the adequacy of the insolvency laws in third countries, whereas the PRC did not see evidence that the SFSA (SE) had defined any such expectations. The CNB (CZ) advised that as assets are not held in third countries, they do not have explicit expectations. Three NCAs (in IE, IT, LU) expect depositaries to obtain legal opinions on custody risk in third countries. The Bol (IT) additionally requires these legal opinions even where custody is delegated to other EU markets.
138. The PRC also positively notes that the CNB (CZ) receives and reviews external auditor reports on asset segregation to gain further insight into the level of compliance by the depositaries under its supervision.
139. The PRC positively notes that the CBol (IE) performed on-site inspections at global custodians in third countries. However, this needs to be understood in the context of the NCAs' overall supervisory practices, particularly related to the issues highlighted in paragraph 127.

Assessment

140. In the PRC's view, the requirement for depositaries to submit relevant documentation on the safekeeping function during the initial authorisation procedure is a crucial aspect of an NCA's overall supervisory process. The PRC is concerned that the SFSA (SE) appear not to have processes in place to collect and assess due diligence information at authorisation.

³⁷ The SFSA (SE) confirmed that this was subject to review in 2024.

³⁸ These reconciliations are to be read in the context of paragraph 127 where the PRC notes that the CBol (IE) does not require the maintenance of first-level accounts by the depositary in cases where custody is delegated.

141. The fact that the PRC did not see sufficient evidence that the CNB (CZ) and SFSA (SE) assessed whether depositaries reviewed legal opinions on the adequacy of the insolvency laws in third countries is an area for future improvement. The same is true for the SFSA (SE) regarding the frequency of reconciliations between the accounts of the depositaries and their sub-custodians.
142. In line with the European Commission (EC) Q&A³⁹, the PRC is of the view that the supervisory expectation regarding the frequency of reconciliations between the accounts of the depositaries and that of their sub-custodians should consider both the dealing and trading frequency of the UCITS or AIF. The PRC see merit in more in-depth supervisory assessments and challenge, in this respect. This would allow NCAs to identify, challenge and address diverging market practices.
143. The CBol (IE) concentrated on the governance aspects of a depositary's custody oversight process, including meeting with the depositary's global network management team and sample testing of due diligence reports for sub custodians. Indeed, this NCA also performed on-site inspections at global custodians in third countries, which the PRC view as a supervisory tool to assess custodians' compliance with UCITS and AIFMD provisions on the safekeeping of assets.
144. While acknowledging the supervisory work performed by the CBol (IE) in this area, the PRC did not find evidence that this NCA performed in-depth supervisory assessments regarding the requirement to ensure the maintenance of records and segregated accounts in case of delegation and their compatibility with the amendments in the UCITS and AIFMD since 2020, as outlined in paragraph 127. The PRC did not see such practices among the other four NCAs and markets covered (CZ, IT, LU, SE) and therefore encourages the CBol (IE) to review its supervisory practices on this point.
145. For the CSSF (LU), the PRC saw clear evidence that comprehensive supervisory assessments were performed to verify the adherence of depositaries to relevant regulatory provisions under UCITS and AIFMD.
146. The PRC supports that two NCAs (in CZ, IT) also demonstrated thorough assessments regarding the verification of the proper segregation of client assets. However, the PRC noted the absence of focus on the due diligence of sub-custodians. Indeed, the CNB (CZ) acknowledged that this was not a focus area for an in-depth review in this supervisory cycle but will be for the next.
147. For the SFSA (SE), the PRC sees merit in the authority evolving toward undertaking more in-depth supervisory assessments of depositaries due diligence practices as it relates to the delegation of safekeeping functions.
148. In light of the above, the peer review assessment is as follows:
- CZ: largely meeting expectations
 - IE: largely meeting expectations
 - IT: largely meeting expectations

³⁹ [ESMA34-32-352](#) Section VI; question and answer no.15.

- LU: fully meeting expectations
- SE: partially meeting expectations

4.2.2 Delegation arrangements

149. The PRC considered how NCAs supervise whether the delegation arrangements of depositaries relate exclusively to safekeeping functions. In this context, it is important to bear in mind that the AIFMD and UCITS Directive do not allow for any form of delegation of oversight or cash flow monitoring functions but solely allow depositaries to involve third parties for mere 'supporting tasks'. ESMA has provided guidance on what qualifies as such supporting tasks in Q&As.⁴⁰

150. The PRC assessed whether NCAs had a demonstrable supervisory approach to assess depositaries compliance with requirements of UCITS and AIFMD, including (i) the number and frequency of supervisory activities undertaken (ii) the issues reviewed, documents analysed and scrutiny applied and (iii) the conclusions reached, including remediation actions.

Summary of findings

151. The PRC noted that a variety of market practices on delegation arrangements exist across the jurisdictions under review. While the CNB (CZ) performed supervisory reviews to verify no use of third parties by depositaries with relevance to the oversight functions, the other four NCAs (in IE, IT, LU, SE) reported significant use of third parties in a cross-border context with entities or branches in other EU jurisdictions and/or third countries (notably India). Two NCAs (in IE, LU) have issued market guidance regarding supervisory expectations on delegation.

Level of supervisory activity, and issues / documents reviewed and related scrutiny –desk-based reviews

152. Regarding desk-based supervision, the PRC notes that to a large extent the same practices and corresponding PRC analyses apply to depositaries delegation arrangements as for valuation obligations (see Section 4.1.1). Notwithstanding, there were additional elements related to this assessment area which are called out below.

153. Four NCAs (in CZ, IE, IT, LU) reported that depositaries have to provide information on the arrangements with third parties during the initial authorisation stage and on an ad hoc basis in case of any new arrangement with third parties, where compliance with the requirements of the UCITS Directive and AIFMD is verified. The PRC did not see evidence that depositary supervisory resources were included in the initial authorisation process at the SFSA (SE), which is primarily undertaken by banking supervisors.

154. While the same NCAs reported that any changes in these arrangements have to be reported to the NCAs by the depositary before such changes enter into effect, the PRC

⁴⁰ [ESMA Q&As on the application of the AIFMD, Section VI, Q&A no. 10](#) and [ESMA Q&As on the application of the UCITS Directive, Section X, Q&A no. 2.](#)

did not see sufficient evidence whether and to which extent NCAs (in IE, IT⁴¹, LU, SE) use, challenge or verify this information at the point of notification or on an ongoing basis.

155. The SFSA (SE) undertook a one-time desk-based review, whereas three NCAs (in IE, IT, LU) include this topic in their annual desk-based supervision plan. The CNB (CZ) assessed this topic through on-site inspections rather than desk-based supervision.

156. The CBol (IE) supplemented its regular supervisory approach by issuing an ad-hoc questionnaire to depositaries on their governance and controls regarding the performance of depositary supporting tasks. This included questions on the processes which govern approvals within the depositary, including how these activities are deemed mere 'supporting tasks' and therefore do not qualify as a delegation arrangement as further specified in the aforementioned ESMA Q&As.

157. For two NCAs (in CZ, LU), outside of work undertaken at the authorisation stage, the PRC did not see evidence of in-depth proactive desk-based supervision, for example through the review of relevant documentation. The PRC notes that for the CNB (CZ), the absence of use of third parties for the performance of oversight functions is the likely reason for this. The CSSF (LU) put reliance on entities self-identifying issues through the SAQs/LFRs, which may then initiate supervisory activity.

Level of supervisory activity, and issues / documents reviewed and related scrutiny – on-site supervisory work

158. Four NCAs (in CZ, IE, IT, LU) looked at the contractual arrangements between the depositaries and third-party service providers, which included review of relevant policies and procedures as well as Key Performance Indicators (KPIs) for relevant activities when conducting on-site inspections. For some of these NCAs (in IE, IT, LU), on-site inspections generally covered the depositary's overall organisational framework, particularly in relation to custody-related activities, rather than a deep dive into what the supporting tasks actually entail, which could be achieved, for example, through the in-depth review of sample reports provided by third parties. For the CNB (CZ), inspections were focused on the verification that tasks were being performed in-house by the depositary.

159. The SFSA (SE) did not conduct on-site inspections with relevance to this topic during the review period⁴².

Assessment

160. Although the PRC notes that NCAs have supervisory approaches in place, it also observed some deficiencies with respect to the supervision of possible delegation arrangements, which may leave some material supervisory risks unaddressed.

⁴¹ During the review period, Italian depositaries did not report any changes in delegation arrangements or requests for (new) authorisation.

⁴² This NCA flagged that this will be a focus area for supervisory activities in 2024.

161. While all NCAs reported conducting supervisory assessments on possible delegation arrangements, albeit to varying degrees, the sample cases assessed by the PRC indicated that the relevant arrangements, activities, contracts/SLAs and sample reports were not sufficiently reviewed and challenged by some NCAs (in IE, IT, LU, SE) in relation to compliance with the applicable rules as further specified in the ESMA Q&As. The PRC recognise that the following jurisdictions (IE, IT, LU) with significant use of third parties performed, relative to the other NCAs, more intrusive and detailed supervisory assessments. Notwithstanding these assessments, the supervisory outcomes observed by the PRC, as specified in the next paragraph, fell short of expectations in this area.
162. Indeed, the sample cases assessed by the PRC and presented by depositary representatives during the stakeholder meetings indicated significant use of entities/branches in certain EU Member States and third countries. In those cases, the PRC is of the view that there would be merit in NCAs (in IE, IT, LU, SE) performing more in-depth supervisory assessments and challenge on cases where supervised entities foresee entrusting third parties and branches with potentially significant tasks with relevance to depositary oversight functions. These assessments should aim to verify that tasks indeed represent mere 'supporting tasks' as further specified in the ESMA Q&As and therefore do not contravene the AIFMD and UCITS rules that do not allow for any delegation of oversight functions.
163. Regarding situations where the depositary of a UCITS or AIF is a branch and the head office is established in a Member State other than the home Member State of the UCITS, the PRC points out that another ESMA Q&A⁴³ states that the operational infrastructure and internal governance system of such branches must be adequate to carry out depositary functions autonomously from its head office (and thus vice versa⁴⁴) and ensure compliance with national rules implementing the UCITS Directive.
164. In this respect the PRC points out, that the ESMA Q&As defines that supporting tasks linked to the depositary tasks have to meet all of the following conditions:
- I. the execution of the tasks does not involve any discretionary judgement or interpretation by the third party in relation to the depositary functions;
 - II. the execution of the tasks does not require specific expertise in regard to the depositary function; and
 - III. the tasks are standardised and pre-defined.
165. The PRC notably observed that some of the tasks performed by third parties did seem to require depositary expertise as set out in criterion II above, but this was not always sufficiently reviewed and challenged by NCAs. Hence, NCAs are invited to carefully assess possible delegation arrangements in line with the aforementioned, narrow, criteria set out in the ESMA Q&As and challenge supervised entities, where needed.

⁴³ [ESMA34-32-352](#) ESMA Q&As on the application of the AIFMD, Section VI, Q&A no. 12 and [ESMA Q&As](#) on the application of the UCITS Directive, Section X, Q&A no. 4

⁴⁴ See also subsequent Q&As no. 13 and no.5 on supervisory responsibilities

166. The PRC voices these concerns to four NCAs (in IE, IT, LU, SE). For the CNB (CZ), the PRC acknowledges that this issue poses less of a risk given the local market practice to perform most, if not all depositary oversight-related activities in-house, which is verified by the CNB (CZ) during their on-site inspection process. In addition, for the SFSA (SE), the PRC is concerned by an absence of in-depth supervisory assessments of depositaries delegation arrangements which were, similar to the other three supervisory expectations, more high-level in nature.

167. The PRC encourages all NCAs to apply intrusive assessment of and robust challenge to possible delegation arrangements upon notification by depositaries. This will help to ensure that delegated activities relate exclusively to safekeeping functions and not oversight and cash flow monitoring functions, before such arrangements become operational.

168. In light of the above, the peer review assessment is as follows:

- CZ: fully meeting expectations
- IE: partially meeting expectations
- IT: partially meeting expectations
- LU: partially meeting expectations
- SE: partially meeting expectations

5. Assessment and recommendations tables

5.1 Assessment by the PRC

169. The following table set out the Peer Review's assessment grade for each NCA under the areas assessed. In each case, NCAs are assessed as fully meeting expectations, largely meeting expectations, partially meeting expectations or not meeting expectations.

TABLE 5 – ASSESSMENT OF NCAS

	CZ	IE	IT	LU	SE
Oversight					
Valuation obligations					
Investment restrictions/leverage limits					
Safekeeping					
Due diligence obligations on safekeeping/asset segregation					
Delegation arrangements					
Fully meeting expectations	Largely meeting expectations	Partially meeting expectations	Not meeting expectations		

5.2 Recommendations by the PRC

170. 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 are marked as [open/partially addressed] may be subject to follow-up two years⁴⁵ from the publication of this report as will be defined by the PRC at that time.

TABLE 6 – RECOMMENDATIONS

Topic	Recommendations & (applicable NCAs)	Follow up status
General	- To introduce a more formalised, thorough and intrusive supervisory approach to all depositary obligations. This includes more in-depth desk-based and on-site inspections and issuing recommendations and follow-up reports that instruct supervised entities/the market to address identified shortcomings. (SE) - In line with the principles of risk-based supervision, where more frequent and intrusive engagement is delivered to higher impact entities, NCAs are to consider more frequent supervisory schedules for higher risk and/or impact depositaries. In this context, NCAs are encouraged to consult ESMA's recently approved principles on risk-based supervision. (CZ, IE, IT, LU, SE) - To ensure a circular process of supervision, where desk-based reviews inform on-site inspections and vice versa, NCAs are to further strengthen the link between desk-based and on-site supervision where identified areas of concern at the desk-based level inform on-site inspections. (CZ, IT, SE) - Review staffing levels to ensure sufficient resources are allocated to perform depositary supervisory tasks. (IT, SE) - To ensure depositary supervision is supplemented with a credible threat of enforcement, NCAs are encouraged to consider more frequent enforcement actions (where	Open

⁴⁵ Under Article 16 of ESMAR and the Peer Review Methodology.

	appropriate) on foot of identified breaches. (IE, SE) • To further strengthen enforcement practices, this NCA is to reassess the criteria/parameters applied in its enforcement matrix and their weightings to ensure the bar is not too high to take enforcement cases. (LU) • When following up on identified deficiencies, request the rationale for such deficiencies and as such be in a position to better identify root causes and/or potential systemic issues. This NCA is also invited to be more proactive in monitoring the implementation of remedial actions. (LU) • To systematically request evidentiary proof from depositaries before concluding that an issued remediation action has been closed. (CZ) • To revise the self-assessment questionnaire to make templates more granular and defined. This would help capture the most pertinent aspects of a depositary's organisation and control environment and would mitigate the reliance on entities providing sufficient information through voluntary disclosures. (IT)	
Valuation oversight	• To revise the scope of their supervisory activities to include more in-depth assessments of a depositary's valuation-related controls and their effectiveness that is consistent with the outcome of due diligence/risk assessments of the fund manager. (IE, IT) • To review contractual arrangements between depositaries and fund managers as part of their overall supervisory approach, at least on a sample basis. This also applies to subsequent expectation on investment restrictions and leverage limit oversight. (IE, SE) • To review the frequency of depositary control checks on valuations to ensure they are consistent with the valuation schedule of the fund. (IE, LU, SE)	Open

Investment restrictions/leverage limit oversight	• To review depositaries' use of client attestations and verify the adequacy of depositary control checks performed on more complex funds in order to ensure they are sufficiently robust and intrusive. (IE) • To revise the scope of their supervisory activities to include more in-depth assessments of a depositary's investment restrictions/leverage limit controls and their effectiveness that is consistent with the outcome of due diligence/risk assessments of the fund manager. (IE, IT) • To review the frequency of depositary control checks on investment restrictions and leverage limits to ensure they are proportionate to the nature, scale and complexity of the fund. (LU, SE) • To reassess the current supervisory approach which allows depositaries to provide ex-post first-level controls on investment restrictions and leverage limits on a delegation basis. (LU)	Open
Delegation of safekeeping functions to third parties/segregation of client assets	• To revise the scope of their supervisory activities to also focus on the due diligence obligations of the depositary as it relates to the selection and ongoing monitoring of sub-custodians (CZ, IT) • To establish and implement supervisory expectations regarding legal opinions on the adequacy of the insolvency laws in third countries (CZ, SE). • In consideration of the EC Q&A⁴⁶, the PRC invites these NCAs to establish and implement supervisory expectations regarding the frequency of reconciliations between the accounts of the depositaries and their sub-custodians (CZ, IT, SE). • To perform in-depth supervisory work to assess the compatibility of depositary account structures to the amendments made to EU rules since 2020. (IE)	Open
Delegation	• To strengthen its practices with respect to assessing potential delegation arrangements at	Open

⁴⁶ [ESMA34-32-352](#) Section VI; question and answer no.15.

	the stage of authorisation and ongoing supervision. (SE) To ensure depositaries do not delegate oversight functions, NCAs are to more thoroughly assess, through the review of sample reports, Key Performance Indicators (KPIs), contracts/SLAs and on-site inspections at large service providers, whether any envisaged arrangements with third party service providers are in line with the applicable rules as further specified in the ESMA Q&As⁴⁷ (IE, IT, LU, SE)	
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6 Good Practices

171. The PRC identified good practices regarding NCAs' supervision of depositary obligations as presented in the table below.

TABLE 7 – GOOD PRACTICES

Topic	Good Practices identified by the PRC in relation to NCAs
Compliance and internal audit reports	The regular collection and review of internal audit and compliance reports of depositaries by the CBoI (IE), BoI (IT), CSSF (LU) and SFSA (SE) are good practices which allow NCAs to gather valuable insights into the control framework and compliance culture of the supervised entities.
IT tool	The CSSF's (LU) IT tool ('Pentana') which covers information on planning, definition of milestones, inspection steps, inspection objectives, decision-making and validation. This is a good supervisory practice as it represents an effective and efficient way to record and exchange of supervisory information.
Cross checks of breach reports	In relation to both valuation and investment restrictions and leverage limit breaches, the PRC notes the positive practice of the CNB (CZ) to collect, review and conduct cross checks between the breach reports received by fund managers and depositaries, through their dedicated IT tool.

⁴⁷ [ESMA Q&As on the application of the AIFMD, Section VI, Q&A no. 10](#) and [ESMA Q&As on the application of the UCITS Directive, Section X, Q&A no. 2.](#)

7 Annex 1 – Mandate



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8 Annex 2 – Questionnaire



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9 Annex 3 – Statement

Statement from the Commission de Surveillance du Secteur Financier (LU)

The CSSF welcomes ESMA's work in the area of supervisory convergence and appreciates the recognition of its strong supervisory practices in relation to the supervision of depositary obligations.

The CSSF takes this opportunity to clarify its well-established supervisory approach to the delegation of investment restrictions and leverage limits controls to depositaries. The provisions of such services, subject to strict compliance with applicable conflicts of interest and delegation rules, allow a depositary to perform certain fund administrative tasks, such as ex-post regulatory compliance monitoring as per the provisions of Annex II of the UCITS Directive and Annex I of the AIFMD. The provisions contained therein distinguish between investment management functions (comprising portfolio management and risk management as further detailed under AIFMD and core functions of investment management in a UCITS context) and the administration functions (including regulatory compliance monitoring). The AIFMD and UCITS Directive aim at preserving the integrity of the depositary oversight role, and for that have a strict functional and hierarchical segregation and rigorous conflict-of-interests management (Article 25(2) UCITS Directive & Article 21(10) AIFMD).