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ESMA42-2004696504-8471

Follow-up Report

to the Peer Review on the supervision of cross-border activities of investment firms

List of Acronyms and Terms Used

AFM	Autoriteit Financiële Markten
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht
BoS	Board of Supervisors
CFDs	Contracts for Difference
CNB	Česká národní banka
CSSF	Commission de Surveillance du Secteur Financier
CySEC	Επιτροπή Κεφαλαιαγοράς Κύπρου
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
Credit institutions	As per definition in Article 4(1)(27) of MiFID II
EU	European Union
FPS	Freedom to provide investment services mechanism
FTE	Full time equivalent to one employee working full-time
Home NCA	NCA of the home Member State as per Article 4(1)(55) of MiFID II
Host NCA	NCA of the host Member State as per Article 4(1)(56) of MiFID II
Investment firms	As per definition in Article 4(1)(1) of MiFID II. Unless specified otherwise, throughout the report this term refer to both credit institutions and investment firms providing investment services
IPSC	Investor Protection Standing Committee
MFSA	Awtoritàgħas-Servizzi Finanzjarji ta' Malta
Methodology	ESMA Peer Review Methodology (ESMA42-111-4966)
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
NCA	National Competent Authority
PRC	Peer Review Committee

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1 Executive Summary

This follow-up report updates on the actions taken by six National Competent Authorities (NCAs) - AFM (NL), BaFin (DE), CNB (CZ), CSSF (LU), CySEC (CY) and MFSA (MT) - to address the findings and recommendations of the 2022 peer review on the supervision of cross-border activities of investment services.[1]

Effective supervision of cross-border activities in the EU Single Market is crucial to ensure that retail clients benefit from the same treatment regardless of where the firm providing those activities is based. The original peer review had identified shortcomings in the authorisation, supervision and enforcement related to these activities, with different severity across the six NCAs. Based on this, ESMA set forth recommendations to significantly reinforce the cross-border supervisory framework through a risk-based, proportionate and effective supervision aligned with the scale, nature and complexity of cross-border activities. This follow-up examines whether, and to what extent, NCAs have improved their practices.

Firstly, the Peer Review Committee (PRC)[2] observes that the cross-border provision of investment services to retail clients continues to grow in scale and complexity, as also evidenced by ESMA's recent analyses.[3] The number of retail clients served on a cross-border basis has increased significantly since the peer review and new jurisdictions are growing in relevance. This underscores the importance that supervisory practices and resources keep pace with evolving risks.

With regard to authorisation controls, the PRC finds tangible improvements by the five NCAs relevant to this recommendation, with earlier identification of cross-border risks and more robust gatekeeping. Notably, NCAs in CZ, DE and LU have introduced more granular and structured assessments of firms' intended cross-border activities, including governance, internal controls and language capabilities. CySEC also enhanced its processes by systematically incorporating cross-border elements in its assessment, reflecting the prominence of outbound activities from Cyprus. Finally, AFM follows up on applicants' plans to operate cross-border by raising questions on the related arrangements; nevertheless, the PRC considers that, to further ensure consistency over time, this NCA may further systematise its approach by complementing expert judgement with objective criteria, across both authorisations and ongoing supervision.

Looking at supervisory activities, the PRC welcomes clear progress in integrating cross-border activities into risk-based supervisory frameworks. All NCAs reported enhanced data collection and analytics, and most have embedded cross-border indicators into their risk-scoring models, to support determining supervisory priorities, the intensity and frequency of monitoring, and the selection of firms for investigations and on-site inspections. Several NCAs (notably in CZ, LU, MT and CY) have introduced regular, dedicated monitoring of cross-border activities while others (BaFin) rely more heavily on data-driven risk scoring combined with supervisory engagement and audits or (AFM and CNB) give their staff more discretion to decide on follow-up supervisory activities based on their observations. Most NCAs ensure that firms with significant cross-border activities, and their cross-border clients, are specifically represented in supervisory samples for focused reviews and inspections, marking a clear improvement compared to the situation identified in the original peer review.

Finally, the PRC welcomes the use of diverse and agile supervisory tools for cooperation among NCAs since the peer review, and the use of enforcement in some specific situations, as well as the improved cooperation arrangements set up by CySEC.

Progress is therefore fully acknowledged. Some risks however remain and the PRC considers that NCAs from those jurisdictions with particularly significant outbound cross-border activities (DE and CY) would benefit from further pursuing their efforts and continuing close monitoring and robust supervisory or enforcement activities commensurate to the actual or potential risks posed to retail investors.

In conclusion, the PRC observes that the peer review has had a clear positive impact on the identification of cross-border services as a distinct area of investment firms' activity, prompting NCAs to strengthen authorisations, data-driven supervision and cross-border risk awareness and oversight, further supported by ESMA's convergence initiatives to improve supervisory approaches and dialogue. ESMA's annual cross-border data analytics (which might be further formalised in the Retail Investment Strategy) alongside the work resulting from the peer review to strengthen risk-based supervision, have been prompting more informed supervisory efforts. This supports simplification objectives and enhances supervisory efficiency by directing attention towards entities and activities posing the highest risks.

Given the continued growth and increasing complexity of cross-border investment services, boosted by ever growing digitalisation, attention should continue to be kept high across all EU NCAs, including those with recent upticks in outbound cross-border volumes, to ensure that supervisory actions, resources and credible use of the supervisory toolkit remain proportionate and effective. As we strive to develop an effective European Savings and Investments Union, and retail investors increasingly access investment opportunities across the EU, ensuring investor protection and the proper functioning of the Single Market is a key mission for ESMA and NCAs.

[1] ESMA42-111-5534_report_peer_review_cross_border_activities_investment_firms.pdf
[2] Peer reviews and related follow ups are conducted by an independent Peer Review Committee.
[3] ESMA35-335435667-6654 Report on the 2024 Cross-border provision of investment services to retail clients

2 Introduction

1. This report provides an update on the actions that National Competent Authorities (NCAs) have undertaken further to the publication of the report on the peer review on supervision of cross-border activities of investment firms (the Report).[4]

2. Peer reviews are an important part of ESMA's supervisory convergence toolkit. They allow to assess the degree of convergence within an existing supervisory framework and suggest actions for NCAs to take where more effective and consistent supervision is required. Follow-ups aim to monitor developments and assess how NCAs have taken on board the peer review's findings.

3. Given the importance of cross-border investment services in the EU Single Market and past concerns about investor detriment, ESMA's Board of Supervisors (BoS) launched a peer review in 2021 to assess how NCAs supervise cross-border activities, to promote consistent investor protection across the EU regardless of where firms are established.

4. The peer review covered the supervision of cross-border activities of investment firms and credit institutions targeting retail clients, under the freedom to provide investment services (FPS)[5]. Under this framework, the supervision of cross-border activities rests with home NCAs.[6] Accordingly, the peer review focused on the supervision by home NCAs across key areas of the supervision cycle: (i) authorisations; (ii) passport notifications; (iii) ongoing supervision[7]; (iv) exchanges and cooperation with NCAs; and (v) enforcement / sanctioning. The peer review also covered the work of host NCAs[8] on some areas above, insofar as they can support effective supervision by home NCAs.

5. The peer review assessed the supervisory practices of 6 NCAs in the EU/EEA, as displayed in Table 1.

Table 1 – Competent Authorities covered by in the peer review follow-up.

Country Code	Country	Competent Authority	Acronym
CZ	Czechia	Česká národní banka	CNB
CY	Cyprus	Επιτροπή Κεφαλαιαγοράς Κύπρου	CySEC
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
LU	Luxembourg	Commission de Surveillance du Secteur Financier	CSSF

[4] Peer review on supervision of cross-border activities of investment firms
[5] in accordance with Article 34 of MiFID II.
[6] home Member State' means the Member State in which the investment firm's head / registered office is situated.
[7] including supervisory arrangements, day to day supervision and investigations and inspections.
[8] host Member State means the Member State, other than the home Member State, in which an investment firm provides investment services and/or activities.

MT	Malta	Malta Financial Services Authority	MFSA
NL	Netherlands	Autoriteit Financiële Markten	AFM

6. The Report identified the need for home supervisors to significantly improve their approach in the authorisation, ongoing supervision and enforcement work relating to investment firm's cross-border activities to retail clients, calibrating their supervisory work to the nature, scale and complexity of those firms' activities and the risks they pose. To this end, the report included recommendations to the 6 NCAs.

3 Follow-up process

7. This follow-up assesses the progress made by the six NCAs in those areas where the Report identified them as partially meeting or not meeting expectations. It focuses on NCAs' home capacity, since the Report had assessed that NCAs were fully or broadly meeting expectations when acting in their host capacity.

8. The follow up has been conducted in accordance with Article 30 of ESMA Regulation and, ESMA's Peer Review Methodology[9]. The Peer Review Committee (PRC)[10] carried out the assessment as a desk-based information gathering exercise to determine progress in addressing the weaknesses identified in the Report.

9. The PRC consulted on this follow-up report the ESMA Investor Protection Standing Committee (IPSC) and Management Board, before discussion and approval by the BoS.

3.1 Scope of cross-border activities

10. To assess the adequacy of supervision, it is important to first consider the size, nature and scope of cross-border activities across the EU and, in particular, from the six jurisdictions in scope. The analyses below are based on ESMA Report on the 2024 cross-border provision of investment services to retail clients in the EU and EEA[11], and – for comparison – the data available for 2022[12]. Notably, ESMA has put in place and improved over the past years a structured and proportionate data collection (ESMA data collection) to enhance understanding of the state-of-play of cross-border investment services and promote that supervisory efforts are commensurate to the risks identified, with particular emphasis on the investor protection objective and safeguarding trust in the Single Market.

[9] ESMA42-111-4966 Peer Review Methodology
[10] Under ESMA Regulation, follow ups are carried out by the same PRC that was in charge of the original peer review. As some members have left their authorities since the peer review, the follow up was conducted by the remaining PRC members.
[11] ESMA35-335435667-6654 Report on the 2024 Cross-border provision of investment services to retail clients
[12] ESMA performs an analysis of the cross-border investment activity of firms. Comparable data before 2022 are not available.

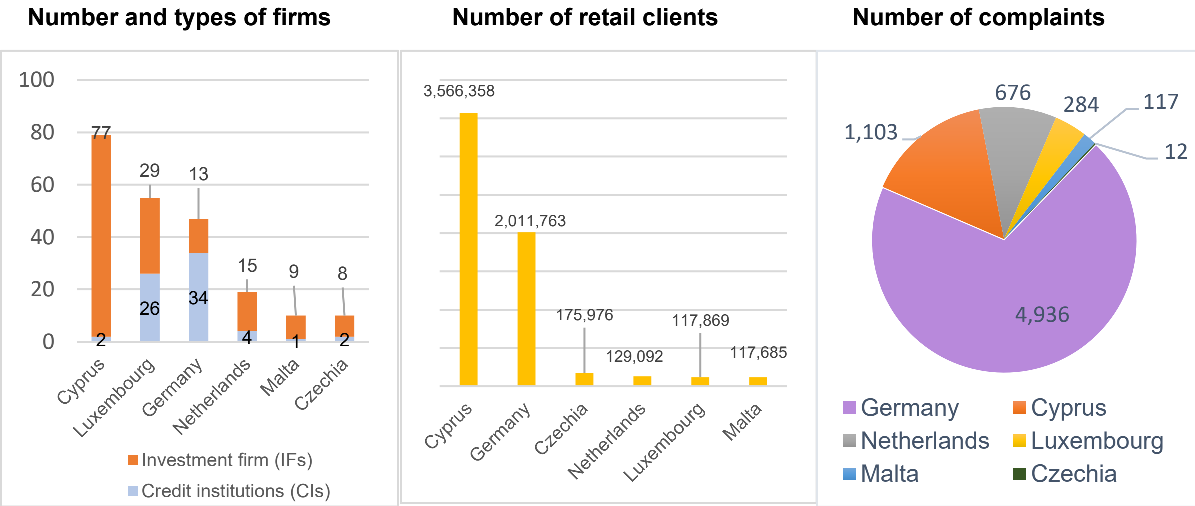
Cross-border provision of services in 2024

11. The European market for cross-border provision of investment services in 2024 comprised 370 firms across 30 EU/EEA Member States providing services to about 10.5 million retail clients in other Member States[13]. Cross-border activities are mostly provided by investment firms (59%), followed by credit institutions (41%).

12. Looking at the six jurisdictions in scope of the peer review, as displayed in Figure 1, a total of 220 firms provides cross-border services from these jurisdictions, offering them to over 6 million retail clients, representing almost 60% of the total EU/EEA cross-border market. However, distribution is uneven across countries: CY, LU and DE represent almost 50% of the EU/EEA total in terms of number of firms, with CY and DE covering almost half of the EU/EEA total in terms of number of clients served.

13. Firms providing investment services in the 6 jurisdictions reported to the NCAs in 2024 a total of 7,128 complaints in relation to cross-border activities, the majority of which in DE (4,936) and CY (1,103). This represents almost 65% of the total number of complaints received by all EU/EEA NCAs in respect to the cross-border provision of services in the same year. In DE, it should be noted that a single investment firm reported alone 3,179 complaints while all other firms reported the remaining 1,757 complaints.[14]

Figure 1- 2024 Outbound cross-border activities from the six jurisdictions in scope



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[13] This is based on data collected only in relation to firms which provide cross-border services to more than 50 retail clients in a Host Member State. Therefore, it does not capture the entire cross-border activity to retail clients in the EU/EEA, under MiFID II.

[14] The number of complaints covers both the home and host country perspectives, i.e. data on firms receiving complaints from cross-border retail clients, and data on retail clients submitting complaints about cross-border services provided by firms. It should be noted that the definition of what constitutes a complaint is relatively broad ('a statement of dissatisfaction by the client'), possibly leading to different interpretations by firms on what to report as a complaint. Therefore, the increase in complaints is always considered carefully by the relevant NCAs in their supervisory activities, and statistical outliers are possible.

Historical evolution 2022-2024

14. The PRC compared data available for 2022 and 2024, noting that the scope and quality of the collection was refined in this period, therefore the comparison can be considered as a proxy only.

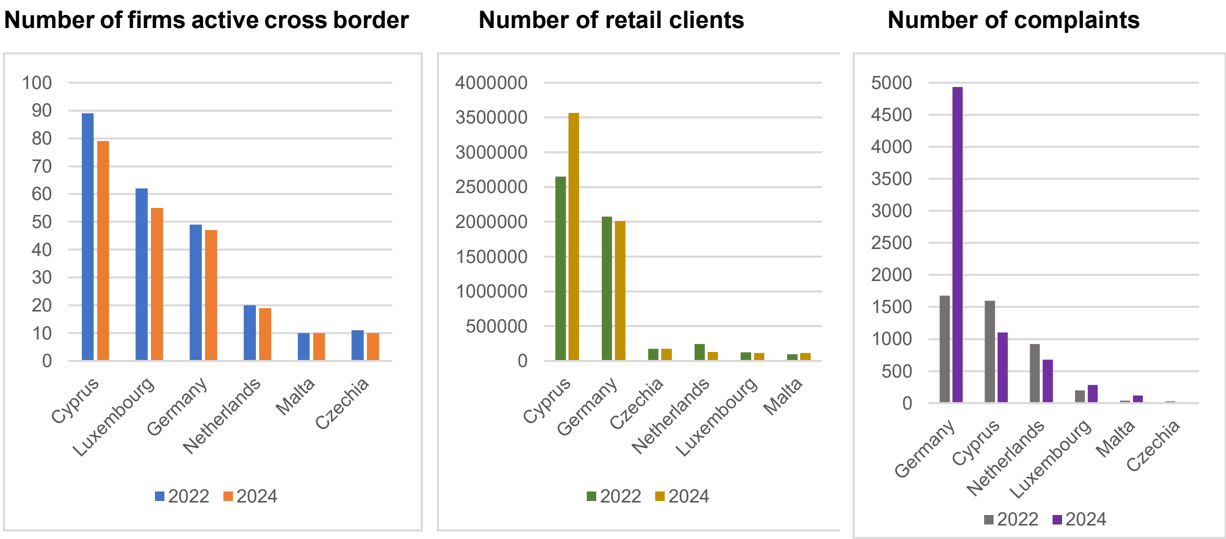
15. For the six NCAs, the comparison shows overall:

    a) a stable or slightly lower number of firms active cross border;

    b) an overall stable or increasing (+35% in CY) number of active clients; and

    c) an overall stable or decreasing number of complaints in most jurisdictions. It is noted specifically for DE that while the 2024 numbers suggest a steep increase, this can be partially due to quality / interpretational issues.

Figure 2 – Comparison 2022-2024 for the six jurisdictions in scope



Historical evolution 2022-2024 – EU/EEA as a whole

16. It is interesting also to look beyond the six jurisdictions at stake. The comparison of 2022 and 2024 data at EU / EEA level shows an evolving picture in terms of the overall dimension and complexity of cross-border activities.

17. First of all, while the total number of firms providing cross-border services slightly reduced (from 380 to 370), the amount of retail clients served significantly increased (+39%) during the period, moving from over 7.6 million to over 10.5 million clients.

18. Furthermore, the geographical distribution shows a marked increase of outgoing cross-border activities from some jurisdictions with limited activities until 2022, notably Estonia, Latvia and Lithuania:

a) Vast increase of retail clients, respectively (EE from approximatively 13 thousand to over 138 thousand, LV from approximatively 1000 to over 190 thousand, LT from approximatively 500 to over 2.5 million. Other member states that increased significantly include SK (+884%), PT (+360%) and IE (+169%);

b) A high concentration of cross-border activities on a limited number of firms in certain jurisdictions. Notably, the increase in retail clients served abroad from Lithuania is attributable to a single company. This leads Lithuania to have now become the second-largest jurisdiction in terms of cross-border retail clients and complaints (which rose from 0 to 1,562).

19. The PRC stresses therefore the increasing size of cross-border activities targeting retail clients within the EU and the evolution across jurisdictions, inviting all NCAs and in particular those most affected by these changes, to reflect on these trends and adjust or scale up, as needed, their supervisory practices.

4 Findings of the Follow-up

20. This section contains a summary of the findings of the follow up based on the information that NCAs reported to the PRC following the recommendations made in the Report. Notably, it considers how NCAs have changed their processes and carried out relevant activities following the peer review in relation to: (i) authorisations; (ii) ongoing supervision; (iii) cooperation with other NCAs; and (iv) enforcement and sanctioning. Additional considerations of cross-cutting nature are also presented as relevant.

4.1 Authorisations

21. The Report indicated the NCAs in CZ, DE, LU, NL as partially meeting expectations. It recommended them to introduce targeted criteria and controls at authorisation stage to assess information in relation to firms' intentions to perform cross-border activities assessing the overall structure and capability of the applicant firms, their proposed governance and risk management, and processes to operate in other Member States.

22. The Report also indicated CySEC as partially meeting expectations and recommended the NCA to complete its authorisation practices by including and systematically applying controls on whether an applicant firm's organisation is adequate to carry out the cross-border activities envisaged, including in particular whether internal functions have capacity and procedures to process and oversee the information provided to clients and by clients

in local languages. These controls should consider the prominence of cross-border activities by firms authorised in Cyprus.

4.1.1 Response

23. The NCAs in CZ, DE and LU reported that they have strengthened their authorisation frameworks to ensure a more thorough and robust assessment of firms intending to provide investment services on a cross-border basis.

24. Notably, CNB has introduced a new internal licensing methodology (effective 1 September 2024) requiring applicants to specify, within their programme of operations, the exact scope of cross-border services, languages used, distribution methods, and marketing plans per host Member State. CNB now requires applicants to demonstrate how they will meet national conduct of business requirements abroad.

25. BaFin now evaluates targeted cross-border criteria at the authorisation stage by using the "Review scheme for the cross-border provision of services Appendix – Cross-border provision of services". This requires detailed information on the services offered, target jurisdictions, organisational arrangements and compliance structures[15]. It covers activities, customer profiles, profit drivers, growth plans, and the integration of cross-border risks into compliance, internal control and risk management systems. BaFin reviews submissions for completeness and plausibility and has also updated its administrative practice to require all investment firms providing cross-border services to appoint at least two managing directors.

26. CSSF has revised its authorisation documents and internal procedures to incorporate mandatory and detailed cross-border considerations. Applicants must now evidence personnel language capabilities, control and oversight mechanisms for activities abroad, internal controls capable of supervising foreign-language client interactions, risk-management arrangements for free provision of services models, cross-border marketing strategies, reporting lines, compliance support for local legal requirements, and complaint-handling arrangements in relevant languages.

27. AFM indicated that where an applicant flags that it intends to provide services on a cross-border basis, they ask follow-up questions relating to the cross-border activities and services. These may include, for example, the relevant target market, the languages used in each jurisdiction for the marketing materials and contracts. The NCA further indicated that through a number of questions, they try to ascertain the activities of the applicant in other countries and how that might influence the activities in NL as well as whether the applicant has enough substance in NL that will allow compliance in all countries. There are

[15] pursuant to Article 6 of Delegated Regulation 2017/1943.

no pre-set requirements or questions, and follow-ups are left to the full discretion of staff member in charge of the authorisation.

28. CySEC indicated that they have strengthened their authorisation framework for cross-border activities by:

    i. adding new questions relating to cross-border activities of applicants;

    ii. enhancing the checklist used by staff for the first on-site inspection of applicants (before granting the investment firm licence) by adding additional questions relating to the cross-border activities of the applicant;

    iii. updating the internal guidance provided to staff for the assessment of notifications under Article 34 of MiFID II; and

    iv. developing a specific list of areas to be taken into consideration for the assessment of any new application or notification of cross-border activities.

4.1.2 Assessment analysis & conclusion

29. The PRC welcomes that the NCAs in CZ, DE and LU have updated their authorisation frameworks to allow for earlier, more granular scrutiny of cross-border operations, with emphasis on governance, internal controls, language capacities, regulatory compliance in host jurisdictions, and the operational and risk-management robustness of firms seeking to operate across the EU. It also welcomes that the NCAs added documented processes and practices to ensure that they carry out such controls structurally and specifically.

30. The PRC also welcomes the greater importance given by CySEC to cross-border considerations at authorisation stage, given the preponderance of applicants with the intention to provide cross-border services, as well as the fact that the NCA revised the control process to ensure its systematic use (e.g. through the pre-licence onsite visits).

31. Regarding AFM, the PRC notes the importance of expert judgment and observed some examples on its application. It would be beneficial for such judgment to be further supported by objective criteria and guidance for more consistent authorisation outcomes across time when considering a firm's ability to effectively oversee its cross-border services.

Recommendations

32. Although its authorisation framework does consider whether an applicant plans to provide services on a cross-border basis, the PRC encourages AFM to further strengthen its framework with common guidance for staff to ensure a more structural assessment.

4.2 Ongoing supervision

33. With respect to supervisory arrangements[16], the Report indicated the NCAs in CZ, DE, LU, NL as partially meeting expectations and the NCA in CY as not meeting expectations. It requested them to ensure that the approach to supervision of cross-border activities by firms specifically considers and addresses the risks linked to the activities carried out in other Member States.

34. With respect to ongoing supervision, the Report indicated the NCAs in CZ, DE, LU, MT[17] and NL as partially meeting expectations and the NCA in CY as not meeting expectations. It recommended to put in place regular specific monitoring on the overall cross-border activities of firms and their relevant risks, based on the nature, scale and complexity of the activities provided. As part of this, it recommended NCAs to use available supervisory tools including intrusive tools such as investigations and inspections to assess cross-border activities, when relevant. The report also recommended to BaFin to scale up supervisory activities, based on BaFin's own observations beyond what the annual auditors review.

35. Finally, the peer review addressed two recommendations to CySEC under Article 16 of ESMA Regulation, which were subject to comply or explain mechanism. As a result of the first recommendation, CySEC increased its supervisory resources by 32 along the figures requested, which the PRC considers a significant achievement promoted by the peer review. Regarding the second recommendation, CySEC was asked to put in place a revised annual supervisory plan, spanning ongoing supervision, investigations and – as applicable – enforcement, to increase the supervisory work performed on firms. Changes deriving from these actions and their overall supervisory approach, planning and intensity are reflected in the paragraphs below.

4.2.1 Response

Arrangements for ongoing supervision

<u>Data collection</u>

36. All 5 NCAs indicated that they updated their arrangements for ongoing supervision to better reflect firms' cross-border activities in their risk-based approach/models. To this end, they all request – as relevant - more data relating to cross-border services than

[16] Supervisory policies, methods and approaches.
[17] To note, MFSA was assessed as broadly meeting expectations as regards their supervisory arrangements. For this reason, following a risk-based approach, this follow up does not consider (changes) to their supervisory arrangements, but only in relation to the way they carry out in practice day-to-day supervision.

those gathered for ESMA data collection, on the basis of the respective nature and size of outbound activities which varies across the six jurisdictions in scope.

37. Notably, CNB indicated that they collect, monthly, information on customers' domiciles. In addition, for credit institutions offering investment services, they monitor, bi-annually, languages used to promote investment services on websites and social networks to check for any language other than Czech and English.

38. BaFin indicated that they use data from the ESMA data collection to assign a risk scoring to each firm and to identify those that pose a higher risk due to their cross-border activities. Those with a higher score based on this first layer of data must provide further information such as information relating to the use of tied agents in cross-border services, complaints management, marketing strategy, foreign language skills as well as control functions for cross-border activities. This additional questionnaire is sent out every 5 years or on an ad hoc basis in case of anomalies, and responses are considered in day-to-day supervision. BaFin reported that it has established a dedicated cross-border team (five staff members) to carry out the new processes as reported in this Section. The team complements the resources dedicated to ongoing supervision of investment firms so to focus specifically on cross-border aspects.

39. AFM carries out an additional annual request for information including questions about cross-border services. The annual request for information however does not apply to credit institutions.

40. CNB, AFM and BaFin indicated that transaction records (under Article 26 MiFIR) are compared with data from the ESMA data collection, to check for discrepancies. Both BaFin and AFM then integrate the data in a pilot dashboard available to supervisory staff (see also below re the use of data).

41. CySEC indicated collecting more data on cross-border activities of firms[18] and also on a quarterly basis. Together with other information collected from investment firms, it is integrated in their internal Quarterly Statistical Bulletins and internal Notes submitted to the CySEC's Board and departments.

42. CSSF indicated that, in parallel to the ESMA data collection, they conduct an annual cross-border national survey that is broader in scope (it covers all types of clients and applies no threshold as to the number of clients in each Member State) and more granular. This national exercise differs for investment firms and credit institutions providing investment services. The data collected is the basis for the NCA's risk-based

[18] Including number of clients solicited by the firm, amount of deposits and withdrawals, percentage of withdrawals cancellation.

supervision of the freedom to provide services. It is checked against the ESMA data collection for discrepancies.

43. The NCAs in CZ, DE, LU and CY indicated that the data collected is available to all relevant staff at all times.

44. The NCA in NL indicated that an internal report on ESMA data collection is distributed to all staff. Departments included in the call for action resulting from such report receive specific notifications that next steps are expected. In addition, supervisory staff focusing on retail services has access to the pilot dashboard based on MIFIR transaction data that is used to produce quarterly analytical reports serving as input to set supervisory priorities.

Use of the data collected and risk assessment

45. Whilst the NCAs in CZ, DE, NL and CY indicated that they incorporated the ESMA data collection in their supervisory arrangements, CSSF indicated that they did not because they instead base their risk-based supervisory approach on the national exercise described above as they consider it is more exhaustive and granular.

46. All 5 NCAs indicated that the data relating to cross-border services is now part of their risk-based approach.

47. Notably, in CZ, DE, LU and CY, the NCAs have added cross-border criteria in their risk scoring processes used as part of their risk-based approach to determine the intensity and frequency of supervisory activities. For instance, criteria having an impact on the cross-border risk score include: the number of retail clients in host member States compared to the firm's client base in the Home Member State (DE, CY, CZ), the number of complaints related to cross-border services received by the firm (DE, LU and CY), the volume of cross-border trades and their proportion in the global volume of trades (CZ), the percentage of revenues generated through the free provision of services (LU), the number of host Member States where investment services are effectively being provided (LU), whether risky instruments are provided on a cross-border basis (LU), geographical concentration of new clients by solicitation in host Member States (CY).

48. In addition, CNB indicated that for credit institutions providing investment services and that exceed the threshold of 150 clients in one member State, the information is recorded and taken into account in planning on-site inspections. The data collected is also compared to passport notifications, transaction reporting records and web site monitoring, and year-on-year changes are monitored. In case of discrepancies, these are further investigated. BaFin indicated having an additional cross-border risk score that is assigned to those firms identified at higher risk through the ESMA data collection. Firms scoring 10 or more are considered in scope of BaFin's risk-oriented supervisory

approach. CySEC also uses an early warning tool for a more frequent monitoring of investment firms, taking into account the cross-border quarterly data collected.

49. In NL, the NCA indicated that the ESMA data collection sets the basis of a report and pilot dashboard on the cross-border provision of services that is actively used by supervisors alongside other supervisory tools such as the more general risk-based scoring system. As part of this, supervisory objectives and themes are prioritised considering various criteria on the relevance of each topic including (i) the number of clients affected (both domestically and cross-border), and (ii) the estimated size of the (potential) damage. Cross-border characteristics are integrated into the broader risk assessment as part of a weighted evaluation (rather than treating them as direct risk escalators). They may contribute to the overall risk score depending on the context.

50. All 5 NCAs updated their internal guidance to ensure that staff is fully aware of the new processes. AFM also added a cross-border criterion on the supervisory planning, although it remains unclear how this criterion is systematically considered and weighted.

Ongoing supervision

<u>Day to day supervision</u>

51. Regarding regular specific monitoring activities, all NCAs reported some forms of cross-border related work, with NCAs in LU, CZ, MT and CY reporting more proactive monitoring and others (in DE and NL) more reactively based on issues identified.

52. In particular, CSSF assigns to all firms a cross-border risk exposure score. Depending on such score, a risk level is assigned to each firm (low, medium-low, medium-high and high) that will determine specific off-site monitoring. As a minimum (low and medium-low firms), the supervisor will check the consistency of the passporting notifications received with the cross-border activities carried out. The cross-border risk exposure score considers elements such as the percentage of annual revenue generated on a cross-border basis, the categories of clients to whom cross-border activities are provided, the number of Member States where activities are carried out, the types of products.

53. CNB indicated that they are now carrying semi-annual monitoring of investment firms' and credit institutions' websites to check whether languages used match passporting notifications or if there are inconsistencies with the ESMA data collection.

54. MFSA reported several regular activities specific to cross-border, covering marketing communications, quarterly data collection, quarter-on-quarter changes in cross-border data, a MiFID II ad hoc report addressing cross-border aspects[19] sent every other year,

[19] Such as firm's operational complexity, technical innovation, strategy used across jurisdictions to target customers, Compliance work and ongoing relationship between the investment firm operating cross-border and the client, including complaints.

as well as a cross-border specific questionnaire to be used in all on-site inspections. Complaints, including to the Malta's Arbiter for Financial Services are also monitored.

55. CySEC put in place dedicated guidance and several regular monitoring activities including marketing communications, quarterly cross-border data collection, quarter-on -quarter changes in cross-border data, monitoring of complaints received. Based on the scores calculated in some of these monitoring, CySEC would automatically carry out certain initiatives (e.g. letter to the firm asking to appoint an internal auditor / carry out an internal investigation).

56. AFM and BaFin did not report regular specific monitoring activities on the cross-border activities of their firms on top monitoring done through the data collection and risk-based scoring exercise, from which ad hoc supervisory actions may arise.[20]

Investigations and on-site inspections

57. When performing investigations and inspections on firms' overall activities, all NCAs indicated that cross-border data is now systematically part of their risk scoring processes determining which supervisory activities to carry out and for which firms, except for AFM for which this is done on a case by case basis.

58. In addition, for all on-site inspections, CSSF indicated that they require the list of clients and their domicile to also include in the investigation cross-border aspects. Notably, this allows, when reviewing clients' files, to use a representative sample including cross-border clients and to consider informative data. Similarly, MFSA uses a cross-border specific questionnaire for all on-site inspections and indicated that the selection of client files always includes a representative sample of foreign clients. As noted above, for credit institutions with a number of clients above a certain threshold, CNB addresses cross-border aspects during any on-site inspection.

59. CySEC reported that, as all their firms provide cross-border services, representativity of cross-border firms in supervisory samples is always ensured. However, in addition, they take a range of indicators into account to determine their sample of firms subject to specific supervisory actions. Such indicators include, notably, the number of retail clients per Member State (there is additional prioritisation if a firm has more than 500 clients in one Member State), complaints received from host NCAs, whether the firm carries out marketing activities in more than 3 Member States.

60. AFM did not indicate any systematic cross-border criteria to determine firms subject to supervisory actions. However, firms active abroad may be included in samples for investigations, as relevant. AFM reported that a cross-border presence is one of (many)

[20] For BaFin, please refer below also to the annual audit activities.

indicators taken into consideration when supervisors decide on which supervisory actions to take.

61. Regarding specific supervisory activities carried out since the publication of the peer review report, CSSF did not carry out any on-site inspection focusing exclusively on cross-border aspects. However, CSSF specified that, since then, it conducted 22 on-site inspections during which they investigated cross-border aspects as described in paragraph 58 above. In addition, specific activities are undertaken for each firm depending on their cross-border exposure risk level, as described in paragraph 52. CSSF further participated to all the annual ESMA Common Supervisory Actions[21] during the reference period, specifically including in the sample firms targeting retail clients abroad.

62. CySEC reported a large number of supervisory actions since 2022 (noting that such actions can have varying intensity from (short) onsite inspections to email enquiries), and two circulars relating to measures applicable in other Member States and that firms operating cross-border should take into account, and one similar circular for 2024.

63. AFM noted that ESMA data collection of 2023 resulted in concrete supervisory actions for two firms: the first one was singled out because data showed that the firm increased its Contracts For Difference (CFD) activity in other Member States and the second one was contacted because of non-negligeable retail clients in other Member States. In addition, for ESMA's 2022 Common Supervisory Action on costs and charges, a specific question on cross-border services was included to allow AFM to identify whether the information provided on costs across EU Member States was consistent.

64. BaFin recalled that under their regulatory framework, publicly sworn auditors examine annually whether in principle all firms comply with all regulatory requirements, including in respect of their cross-border activities. In addition, BaFin reported two cases of external audits focused on cross-border activities, as well as follow-ups to their qualitative questionnaires for four major cross-border firms, as well as supervisory actions on affiliate marketing of three high risk cross-border firms. The NCA also undertook during this period an enhanced dialogue with firms providing passporting notifications resulting in follow-ups, firms refraining from submitting formal passporting notifications and, in one case, the rejection of a passporting notification.

65. CNB reported, for investment firms, two supervisory investigations specific to cross-border risks and activities: one related to a firm marketing its activities in one Member State without the proper notification and the other related to firms' use of influencers in different jurisdictions.

[21] Common Supervisory Actions are supervisory exercises coordinated by ESMA to carry out supervisory action by each NCA around common methodologies, questionnaires and parameters, to address concertedly a given supervisory risk.

66. Lastly, MFSA sent to all firms with cross-border activities a “Dear CEO letter” to set out the MFSA’s expectations for such firms and requiring a gap analysis vis-à-vis them. MFSA also reported supervisory checks and reviews under ESMA’s common supervisory actions including specifically cross-border firms in the sample.

67. Specifically with respect to the recommendation to scale up its supervisory activities beyond what is carried out through the annual external audit, BaFin, reported as noted above, (i) enhanced data gathering and (ii) cross-border specific risk coring, based on which BaFin determines the intensity and frequency of day-to-day supervisory measures. These may include additional information requests and monitoring, dedicated meetings to communicate supervisory expectations, setting focus areas within annual audits and, where necessary, escalating cases to enforcement.

4.2.2 Assessment analysis & conclusion

68. Regarding arrangements for ongoing supervision, the PRC welcomes the clear improvements undertaken by NCAs in LU, CZ (for investment firms), DE and CY regarding how they consider cross-border aspects and risks linked to the nature, scale and complexity of the activities carried out in other Member States. This translates in: (i) the collection, on a regular basis, of information on firms’ actual cross-border activities; (ii) the data collected being readily available to staff in charge of firms’ supervision; (iii) cross-border specific risks being integrated in the supervisory risk-based approach; and (iv) clear guidance to staff.

69. The PRC also welcomes the regular monitoring put in place by NCAs in CZ, LU, MT and CY and particularly the more extensive checks from the latter three given the substantiveness of the cross-border activities of their firms.

70. Further, the PRC appreciates the arrangements made by NCAs in LU, DE, CZ (for investment firms), MT and CY to ensure that cross-border firms are duly represented in investigations and inspections, and that a representative sample of cross-border clients is included. The PRC also acknowledges the specific supervisory actions undertaken by all NCAs since the publication of the Report, albeit to varying degrees.

71. For AFM and CNB (only for credit institutions providing investment services), whilst noting the enhanced supervisory arrangements and that cross-border aspects are addressed to some extent at monitoring and / or investigation phase, the PRC nonetheless notes that these are not pursued in a more systematic, comprehensive way.

72. For BaFin, the PRC welcomes the more structured set up to inform and prioritise its supervisory work on cross-border entities. Relatedly, the PRC notes the closer attention to high-risk firms with collection of relevant information whose frequency can be adapted based on issues observed, which aligns with a risk-based supervision logic. Finally, the

PRC notes the role of external auditors in providing a base layer control on firms' activities. At the same time, the amount and nature of specific activities reported during the period (see paragraph 64) and resulting from this monitoring appears overall contained relatively to the important volume of outgoing cross-border activities and high number of complaints. This may leave some riskier activities undetected or unaddressed.

Recommendations

73. The PRC recommends that AFM strengthens the integration of cross-border data and related risks into its supervisory guidance and practices to ensure more consistent risk-based supervision on these activities. For example, AFM would benefit from considering relevant risk-based weights or indicators to assess cross-border specific risks. In addition, when performing investigations and inspections on firms' activities, AFM would benefit from ensuring adequate representation of firms providing cross-border activities based on their nature, scale and complexity.

74. Noting the current (low) volume of cross-border activities carried out by Czech credit institutions providing investment services, the PRC invites CNB to monitor the adequacy of its supervisory arrangements and day-to-day supervision for such entities and to adopt a more systematic approach similarly to what is already foreseen for investment firms, should the need arise.

75. Finally, the PRC considers that BaFin should further scale up the volume of intrusive supervisory activities on firms active cross-border beyond annual or special audits and risk-based questions, to ensure its activities are aligned to the large number of firms active cross-border, clients served and possible related risks. For example, BaFin staff may carry out proactively examinations on its own, particularly on those firms with the largest number of activities or complaints. This could inform BaFin's risk-based prioritisation and allow better targeting of supervisory intensity over time.

4.3 Cooperation among authorities

76. The Report indicated CySEC as partially meeting expectations regarding its cooperation with other NCAs and recommended reinforcing the cooperation framework by monitoring the average handling time for requests and act as needed.

4.3.1 Response

77. CySEC reported that it has introduced:

- tracking of and automatic statistics and overviews on requests' handling time;

- monthly meetings with case handlers to assess status and take relevant action; and

- a self-assessment of requests received in 2024-H12025 which took more than three months to be handled. Based on the findings and root caused identified[22], it changed its processes through: (i) reinforced interdepartmental consultation (with deadlines and reminders) and prioritisation; (ii) earlier / periodic engagement with the requesting NCAs; and (iii) targets to handle requests according to or within stricter limits than in the relevant ESMA's Implementing Technical Standards.

78. As a result, CySEC noted that requests' average handling time overall reduced (by almost 10% in 2024 and 47% in 2025 as compared to 2022[23]). More specifically: (i) the ratio of requests taking over 3 months (outliers) over the total requests received reduced by respectively 5% and 15%, and (ii) the average handling time excluding outliers moved from 37 days (2022) to 42 (2023[24]), 39 (2024) and 31 (2025). The overall number of requests received also reduced since 2022.

4.3.2 Assessment analysis & conclusion

79. The PRC welcomes the structural changes by CySEC to closely monitor and increase its timeliness in handling requests, and the improvements observed in practice.

Recommendations

80. As the most promising trends in the reduction of timing needed to address host NCAs' requests and complaints, are still recent (mostly 2025), the PRC invites CySEC to continue monitoring its timeliness and to take future actions if needed.

4.4 – Enforcement and sanctioning

81. While recognising the importance that NCAs address supervisory shortcomings in an agile and timely way, as well as the diversified toolkit available to supervisors, the peer review also looked at the use of enforcement and sanctioning considering that there are cases in which formal action may be needed, also considering its important deterrent effect.

82. Specifically in relation to enforcement and sanctioning, the Report indicated CySEC and MFSA as partially meeting expectations. The peer review was unable to assess the practices of BaFin, CNB and CSSF given the lack of relevant examples in relation to cross-border activities. It recommended to all five NCAs to assess their framework for enforcement (frequency, type of measures, level of sanctions / settlements and timeliness) in relation to cross-border to ensure using this tool effectively.

[22] Relating to staff availability, coordination, external dependencies, legal interpretations and administrative procedures requirements
[23] Statistics were not available for the original peer review period.
[24] CySEC noted the prolonged absence of a member of the relevant team in 2023.

83. The peer review also recommended CySEC to monitor and assess the recurrence of breaches by firms conducting cross-border activities and introduce relevant changes in the enforcement measures applied (e.g. type of measure, level of sanctions and / or timeliness) to act as a real deterrent, particularly in the case of recurrent infringers.

4.4.1 Response

84. CNB indicated that it identified and took formal measures on three cases related to cross-border activities. However, these cases refer to measures taken on investment firms established in other EU countries, carrying out business activities in CZ through a branch under the right of establishment (RoE)[25], with no cases related to services under the FPS.

85. Beyond several potential infringements addressed mostly informally or formal letters leading to the remediation of the issues at stake, BaFin reported three enforcement cases: (i) a CFD provider offering services primarily in another member state, to which BaFin revoked the licence; (ii) an investment firm carrying out cross-border activities initially on its own and later through a tied agent, on which BaFin took in 2022 initial measures including the prohibition to use tied agents, and later revoked the licence in 2025; and (iii) a sanction of over 500 thousand EUR.[26]

86. CSSF reported that the supervisory work carried out on investment firms and credit institutions, while not solely focused on cross-border activities, resulted in several cases in observations and injunction letters on entities having more than 40% of their EU clients outside Luxembourg. Furthermore, on one such firm, CSSF issued an administrative sanction (PANC).

87. MFSA reported two relevant cases: (i) in 2025, a firm surrendered voluntarily its licence following intense supervisory work by MFSA on various shortcomings and elements related to the (cross-border) business model of the entity, and the issuance of an administrative penalty; and (ii) an ongoing enforcement process initiated based on major shortcomings noted in the client files in the context of an onsite inspection in 2023.[27]

88. CySEC noted that if it identifies non-significant shortcomings (particularly for the first time) they are resolved at staff level, whereas serious or repeated ones are escalated to the Board. Most cases in the period 2022-2025[28] were non-significant. However, CySEC also

[25] in accordance with Article 35 of MiFID II.
[26] BaFin also reported a fine of several millions EUR to a credit institution and another enforcement measure to a different firm, both with a number of customers served abroad although the cross-border services represent a relatively limited part of overall activity.
[27] MFSA reported two other cases, one where the firm fully remediated the shortcomings without the need for further measures and one for which the relevant course of action was still being assessed in the peer review follow up sample period.
[28] Until 30 September 2025. This is valid also for other statistics pertaining to 2025 reported in this Section.

took in the period (the majority in 2022) 68 formal measures of which: (i) 19 licences withdrawals; (ii) 17 suspensions; (iii) seven administrative fines (ranging between 150.000 and 1 million EUR); and (iv) 25 settlements; in addition to six measures against the owners or directors. In other nearly 600 cases, CySEC called the firms for corrective measures. A clear trend in terms of on the severity of formal measures does not emerge since 2022, although their total number has overall reduced by at least 50% every year since 2022. In comparison, in the two-year period covered in the original peer review (2018-2020), CySEC had imposed four sanctions and 16 settlements, in addition to two voluntary licence renunciation by the firms, which shows that there was an overall increase of actions and severity since the peer review.

89. CySEC also reported that it reviewed its enforcement framework to (i) track recurrences of fines and settlements through central registers, and (ii) report to the Board – when submitting enforcement recommendation – an analysis of past administrative fines and settlements, which may be complemented where appropriate by an overview of past supervisory history.[29] In addition, recurrence of findings in relation to cross-border activities is factored in firms' risk profiles.

4.4.2 – Assessment analysis & conclusion

90. The PRC notes that CNB did not identify potential infringement substantially related to Czech entities' cross-border activities. While a very limited use to enforcement may impair the effectiveness and deterrence effects of supervisory intervention, the PRC also acknowledges the relatively small size of outbound cross-border activities from this jurisdiction and the fact that the authority used strong measures in other cases (e.g. for cross-border services provided under the right of establishment).

91. The PRC positively notes the use of (strong) measures by MFSA, CSSF and BaFin. For the latter, the PRC notes that on the one hand the overall number of measures is contained considering the size of outbound activities and complaints reported. On the other hand, BaFin also took when needed a very sizable sanction to an entity active both locally and cross-border.

92. For CySEC, the Report had noted that despite examples of active use of enforcement compared to other NCAs, these were overall insufficient at addressing the risks posed by Cypriot firms' cross-border services. The PRC acknowledges that since then, CySEC has

[29] CySEC is also implementing a project aimed at expanding its central register of fines and settlements to also include supervisory measures taken (e.g. calls for corrective measures).

taken a number of strong measures, and that it has requested several corrective actions to firms (also as a consequence of the more intensified supervisory activity carried out since the original peer review). However, based on the numbers and their distribution across time, the PRC cannot yet conclude that CySEC is now structurally using more or stronger measures including on repeat infringers. Relatedly, the PRC welcomes CySEC's revised process to structurally track and report to the Board past fines and settlements to given firms. At the same time, it notes that this is limited for the time being only to fines and settlements and not – systematically - to the overall supervisory history of the firm and the effectiveness in promoting long lasting changes putting repeated wrongdoings to an end.

Recommendations

93. The PRC finds the increased supervision and enforcement path by CySEC since the peer review, a constructive and encouraging development. The PRC stresses the importance that this attention remains systematically high and recommends that CySEC continues ensuring that it uses enforcement commensurately to the risks posed by firms' cross-border services, and to introduce the planned changes to analyse the past supervisory history and behaviours of firms when considering formal measures, so to systematically take strong action against repeat infringers.

94. BaFin is invited to consider its use of enforcement throughout time and ensure that it is commensurate to the volume and risks (including in relation to number of complaints and supervisory findings) of outbound cross-border activities.

4.5 – Cross-cutting considerations

95. In 2022, the Report noted a possible growing trend in the cross-border activities provided by Maltese entities. Therefore, this follow up considered whether this growth had materialised and any consequent change in MFSA practices and resources.

96. Finally, the PRC considered some transversal conclusions from the original peer review and activities carried out by ESMA to further promote effectiveness in cross-border supervision of investment services across the EU.

4.5.1 – Response

97. With regard to the volume of outgoing cross-border activities from Malta, the NCA reported having received 22 requests for authorisations by potential investment firms since the peer review, of which eight were authorised and five submitted passporting notification. This represents a 31% decrease in application for an investment firm license as compared to

the review period. Further, data in Section 3 shows a stable volume of firms, retail clients and complaints relevant to Maltese entities. Nevertheless, MFSA noted that to meet the peer review recommendations, it increased staff dedicated to authorisation (from 3 to 4.75 FTE) and supervision (from 9.5 to 12), and its SupTech capability as noted above.

98. Following the peer review, ESMA launched several additional initiatives to facilitate supervisory awareness, sound approaches and cooperation among authorities, in the interest of a well-functioning successful Single Market where investors interests are protected.

99. Firstly, ESMA published in December 2022 a supervisory briefing to help all NCAs in their day-to-day supervisory work in line with the recommendations made in the Report.[30] The guidance applies a risk-based logic, whereby supervisors devote more efforts to riskier firms and activities, increasing efficiency and lowering burden on well-functioning firms.

100. To facilitate communication across authorities, making use of information available to each other, ESMA, together with the European Banking Authority and with the European Insurance and Occupational Pensions Authority, established a system for the exchange of information relevant to the assessment of the fitness and propriety[31]. In the period between May 2025 (go live date of the system) and December 2025 over 650 requests for information were exchanged among competent authorities.

101. ESMA has also continued facilitating discussions and exchanges of supervisory cases on cross-border issues at its IPSC working group and, in terms of contribution to the single rulebook, has proposed the review of existing technical standards on cross-border notifications and on cooperation[32].

4.5.2 – Assessment analysis & conclusion

102. The PRC welcomes the increase of resources dedicated to cross-border supervision by the Maltese NCA and their monitoring of the volume of cross-border activities (firms, clients, complexity and complaints) to ensure that supervisory resources remain commensurate.

103. Finally, the PRC notes the initiatives taken by ESMA for increased convergence. Further opportunities for strengthened cooperation and to continue promoting effective cross-border arrangements may continue to be considered, including in the context of the Retail Investment Strategy and the Savings and Investments Union packages.

[30] Esma35-36-2780_mifid_ii_supervisory_briefing.pdf
[31] of holders of qualifying holdings, directors and key function holders of financial market participants.
[32] ESMA35-36-2848_Final_Report_on_review_of_technical_standards_on_passporting_under_Article_34_of_MiFID_II.pdf and ESMA35-36-2819 Final report on review of ITS on cooperation between NCAs