



# REPORT ON THE PEER REVIEW ON AUTHORISATION UNDER PSD2

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**EBA**

EUROPEAN  
BANKING  
AUTHORITY

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## List of abbreviations

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AML/CFT	Anti-money laundering/ countering financing terrorism
CA	Competent authority
CRD	Capital Requirements Directive (Directive 2013/36/EU)
EBA	European Banking Authority
EMD	E-Money Directive (Directive (EU) 2009/110)
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
EMI	Electronic money institution
ESAs	European Supervisory Authorities
ESMA	European Securities and Markets Authority
FTE	Full time equivalent
GL	Guidelines
ML/TF	Money laundering/ terrorism financing
MS	Member state
PRC	Peer Review Committee
PI	Payment institution
PSD2	Payment Services Directive (Directive (EU) 2015/2366)
SAQ	Self-Assessment Questionnaire



## Executive summary

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The revised Payment Services Directive (PSD2) has been applicable since 13 January 2018 and sets out the requirements that applicants must meet in order to be authorised as payment institutions (PIs) and electronic money institutions (EMIs). This report sets out the findings of the EBA's peer review on the authorisation of PIs and EMIs under the PSD2, taking into account the EBA Guidelines on authorisation issued in 2017 in support of the Directive.

The review shows that competent authorities (CAs) have largely implemented the Guidelines and, where implemented, the Guidelines have achieved their objective of providing consistency and transparency in the authorisation information that prospective PIs and EMIs have to submit.

However, some CAs have not fully implemented the Guidelines, in particular in relation to obtaining the full set of information from applicants. This potentially limits the extent to which those CAs can scrutinise applications compared with having the information required under the Guidelines.

There are also significant divergences in the practices of CAs in assessing the information submitted, and the level of scrutiny of those documents varies considerably across CAs. More specifically, there are divergent practices in relation to the assessment of business plans and applicants' governance arrangements and internal control mechanisms. This includes the assessment of directors and persons responsible for the management of PIs and EMIs, and of whether applicants meet the requirement in PSD2 to have their head office in the jurisdiction where they are seeking authorisation and to conduct part of their activities there ('local substance').

Together, these deficiencies mean that applicants remain subject to different supervisory expectations as regards the requirements for authorisation as a PI or EMI across the EEA. This gives rise to issues in terms of supervisory level playing field and 'forum shopping' and undermines the objectives of the Directive and the Guidelines of establishing a single EU payments market.

The report therefore sets out follow-up measures to specific CAs on how they should improve their practices in order to fully implement the Guidelines and to strengthen convergence of supervisory practices in assessing applications.

It also sets out follow-up measures for all CAs in key areas. To help ensure a consistent and strengthened approach to internal controls going forward, all CAs should ensure that applicants have a 'three lines of defence' model that includes the functions of risk management, compliance and internal audit, where the nature, scale and complexity of their activities makes this appropriate. To minimise potential forum shopping and ensure sufficient local substance, all CAs should ensure that applicants are effectively managed and controlled from the jurisdiction in which they seek authorisation, and have close links with that jurisdiction. The EBA will review implementation of these measures in its follow-up review in two years.

There are also significant variations in the resources available and length of the authorisation process. The average duration ranges from 4-6 months to 20 months or more. The main reason for delays is the quality of applications and applicants' timeliness in addressing issues identified. Other reasons identified for these variations across CAs include different timelines set out in national laws and different procedural approaches in the acceptance and assessment of applications. In the light of the report's findings, all CAs are asked to follow-up by reviewing their resources and processes to ensure that they remain adequate to scrutinise applications within a reasonable timescale.

In addition, the report identifies some good supervisory practices observed during the analysis that might be of benefit for other CAs to adopt. This includes:

- publishing guidance to clarify the requirements CAs expect applicants must meet;
- comparing applicants' forecasts against data from existing similar PIs/EMIs to inform the CAs' assessment of the plausibility of the financial forecasts;
- making use of existing EBA and EBA/ESMA guidelines under the Capital Requirements Directive to assess independence of the internal control functions and suitability of the directors and persons responsible for the management of PIs and EMIs.

The report also recommends that, as part of any future review of the Guidelines, the EBA provides more guidance on how the proportionality principle should be applied in assessing the suitability of shareholders having a qualifying holding in an applicant's capital.

Furthermore, the report expands on the recommendations included in the EBA's response to the European Commission on the review of the PSD2 (EBA/Op/2022/06) and recommends that, as part of its ongoing PSD2 review process, the European Commission:

- clarifies the delineation between the different categories of payment services as well as e-money issuance;
- clarifies the applicable governance arrangements for PIs and EMIs;
- clarifies the criteria that CAs should use in assessing the suitability of directors and persons responsible for the management of PIs and EMIs;
- mandates the EBA to develop a common assessment methodology for granting authorisation as a PI or as an EMI; and
- clarifies the requirements that applicants must meet in order to ensure sufficient local substance, leveraging on the best practices mentioned in this report.

# 1. Introduction

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1. One of the EBA's tasks is to conduct peer reviews of the activities of competent authorities (CAs), objectively assessing and comparing those reviewed to further strengthen consistency and effectiveness in supervisory outcomes. Article 30 of the EBA's founding regulation sets out how peer reviews are carried out. This chapter gives an overview of how this particular peer review was conducted, and of the areas reviewed.
2. Peer review reports set out the main findings of the peer reviews, together with the follow-up measures that are deemed appropriate, proportionate and necessary as a result of the peer review. A follow-up report undertaken two years after this report will assess the adequacy and effectiveness of the actions undertaken by CAs in response to these follow-up measures.
3. This report focuses on the assessment of CAs' supervisory practices in the authorisation of payment institutions (Pis) and e-money institutions (EMIs) under the Payment Services Directive (PSD2), including the implementation of the EBA Guidelines on the information to be provided for the authorisation of Pis and EMIs and for the registration of account information service providers under PSD2 (EBA GL/2017/09) (the "Guidelines").
4. In fulfilment of the mandate in Article 5(5) of PSD2, the EBA issued these Guidelines in 2017 to specify the information that applicants are required to submit to the CA when applying for authorisation as PI or EMI. The Guidelines apply to both Pis and EMIs, in line with Article 3(1) of the E-Money Directive (Directive (EU) 2009/110), which states that Article 5 of PSD2 applies *mutatis mutandis* to EMIs. In addition, in order to provide clarity to applicants in respect of the completeness of the application in accordance with Article 12 PSD2, the Guidelines provide further details in this respect.
5. The Guidelines have been applicable since 13 January 2018 and are addressed to both Pis/EMIs and CAs. Their aim is to provide greater transparency and clarity in respect of the information that an applicant has to submit as part of an application for authorisation, and thus to increase the efficiency of the authorisation process by reducing the need for applicants to re-submit documents. They also aim to ensure a level playing field for applicants, so that no advantages or disadvantages arise as a result of applying for authorisation in one Member State (MS) instead of another, and to contribute to the consistency of the assessment of applications, and so to harmonised supervision of Pis and EMIs across the EEA.
6. In line with Article 16(3) of the EBA founding regulation and as stated in the Guidelines, CAs are expected to comply with the Guidelines by incorporating them into their practices as appropriate (e.g., by amending their legal framework or their supervisory processes), including where they are directed primarily at institutions.

7. In examining CAs' supervisory practices in the authorisation of PIs and EMIs, the peer review focused on the following key areas:
  - the timeliness of the authorisation process;
  - the implementation of the Guidelines by CAs, with regard to: GL 4 (business plan); GL 5 and 8 (structural organisation, governance arrangements and internal control mechanisms); GL14 (AMF/CFT internal control framework); GL 15 (suitability of shareholders with qualifying holdings); and GL 1.3 of section 4.4 of the Guidelines (confirmation of completeness); and
  - practices of CAs when reviewing the substance of the applications submitted to them, with a focus on: (i) the programme of operations; (ii) the business plan; (iii) governance arrangements and internal control mechanisms; (iv) the assessment of shareholders with qualifying holdings and of directors and persons responsible for the management of PIs and EMIs; (v) the AML/CFT internal control framework; and (vi) compliance with Article 11(3) PSD2 on local substance.
8. The objectives of this report are to:
  - further strengthen consistency and convergence of the assessment of applications for authorisations of PIs and EMIs across the EEA; and
  - assess whether the EBA Guidelines have achieved their aim of bringing about consistency and clarity in respect of the information that applicants have to submit as part of an application for authorisation and of contributing to harmonisation in the authorisation process and to a level playing field across the EEA.
9. This report is also a partial fulfilment of the mandate conferred by the PSD2 on the EBA to review the Guidelines "on a regular basis and in any event at least every 3 years" (Article 5(5) PSD2).
10. In terms of methodology, the peer review was performed by a Peer Review Committee (PRC) of EBA and CA staff (see Annex 1 for the composition) and covered the CAs from all EU Member States and from two EEA States, as detailed in Annex 2. One EEA CA (IS) was not reviewed because it has only recently implemented the PSD2 and did not receive any application for the authorisation of PIs and EMIs in the period analysed (2019-2021).
11. The analysis has been conducted based on the CAs' responses to a self-assessment questionnaire (SAQ), which covered a three-year period from 1 January 2019 to 31 December 2021. Where necessary, the PRC followed up with the CAs in writing seeking further clarifications and explanations. The PRC also conducted interviews with a subset of 10 CAs (BG, DK, ES, PL, PT, MT, NL, IT, LT and SE) to gain a better understanding of their supervisory practices.

- 12. This report sets out the conclusions of the peer review together with follow-up measures that CAs need to take, and specific recommendations to the EBA and the European Commission, all of which are aimed at further strengthening consistency and effectiveness in supervisory outcomes across the EEA. It also identifies a number of best practices whose adoption might be of benefit for other CAs. As noted above, the actions taken by CAs in response to follow-up measures will be assessed in a follow-up report after two years.
  
- 13. The report is structured as follows:
  - Chapter 2 presents an overview of the authorisation process across CAs;
  - Chapter 3 includes the PRC’s assessment regarding the implementation of the Guidelines by CAs;
  - Chapter 4 focuses on the CAs’ practices when reviewing the substance of the applications submitted to them; and
  - Chapter 5 summarises the conclusions set out in the report.



## 2. Overview of the authorisation process

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14. This chapter provides an overview of the authorisation process across CAs, including the number of applications received and of authorisations granted by CAs in the period analysed and the average duration of the authorisation process across CAs. It also identifies a number of best practices and follow-up measures to further improve the efficiency of the authorisation process.

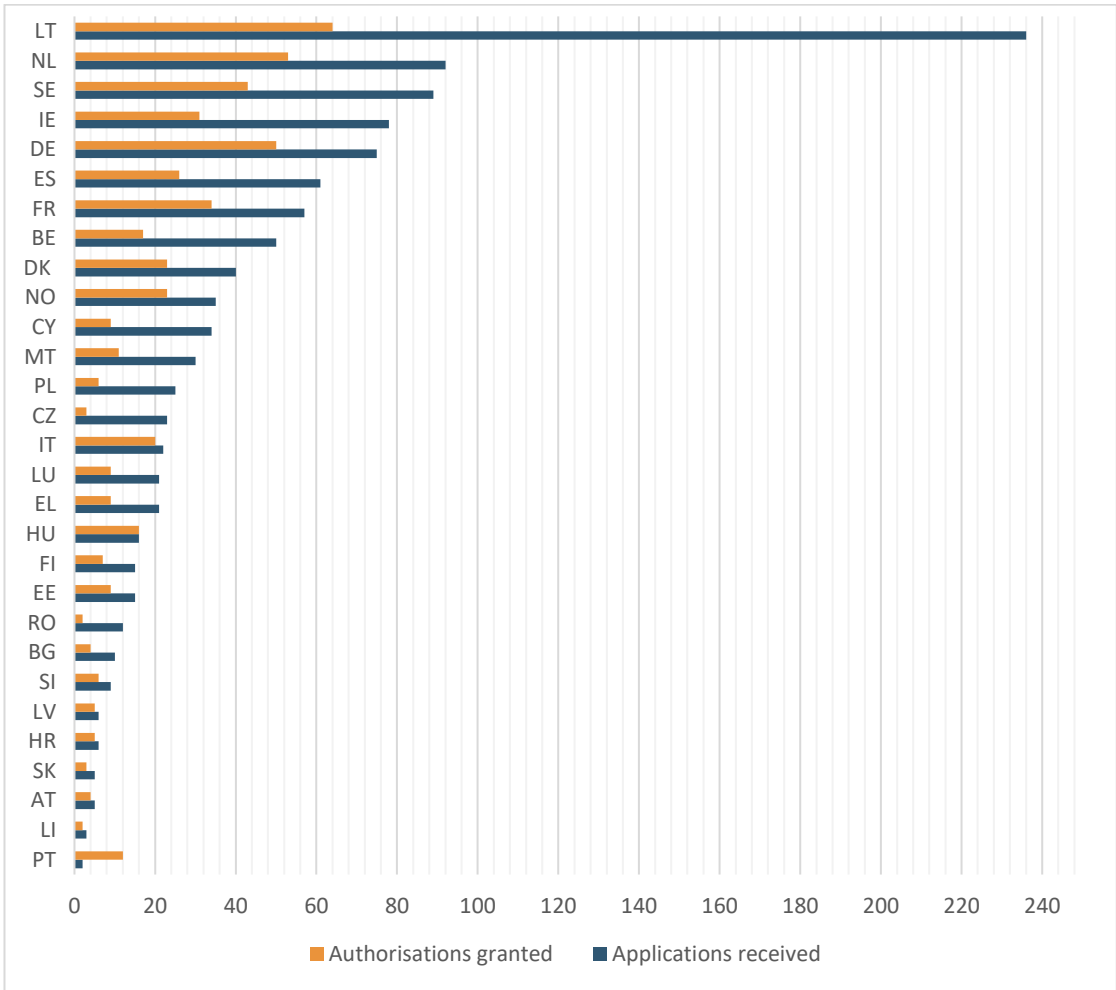
### 2.1 Number of applications received and of authorisations granted by CAs

15. The number of new applications for authorisation varies significantly across CAs but with no apparent correlation with the size of Member States. The figure below provides an overview of the number of applications received and of authorisations granted during the reference period across all MS.

**Figure 1. Number of applications received and of authorisations granted during 2019-2021<sup>1</sup>**

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<sup>1</sup> The data reported by Sweden originally included 36 applications received within the period analysed for the re-authorisation of existing PIs an EMIs under the national transitional provisions and 29 re-authorisations granted within the same period for the re-authorisations of existing PIs an EMIs. In order to remain consistent with the data provided by other CAs, these 36 applications and 29 re-authorisations granted have been deducted from the data for Sweden.



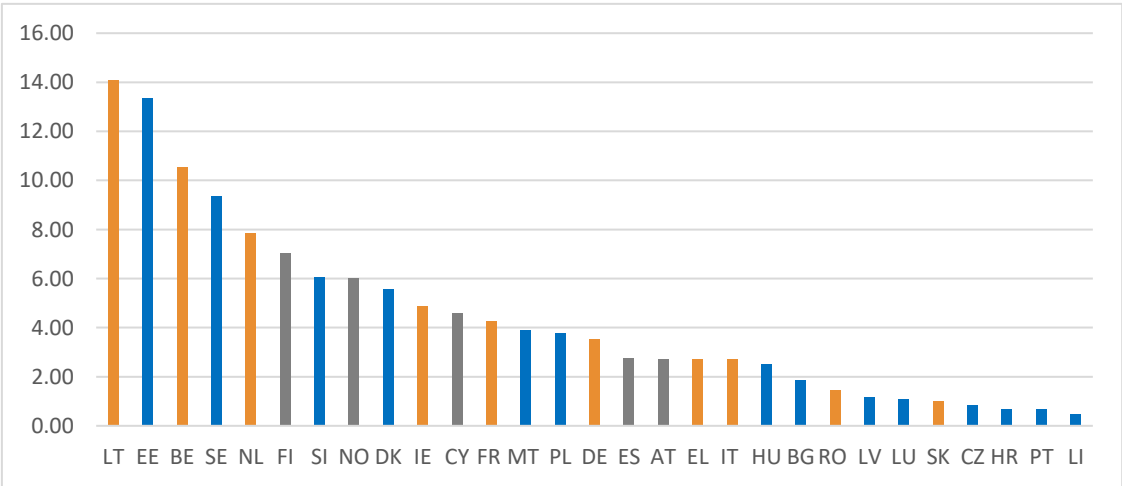
- 16. The number of new applications received ranges from 2 (PT) to 236 (LT), with NL (95), SE (89), IE (78) and DE (75) also receiving a high number of applications. Within the same period, the number of authorisations granted ranges from 2 (LI, RO) to 64 (LT). NL (53), DE (50), SE (43) and FR (34) come in next after LT in terms of the number of authorisations granted.
- 17. It should be noted that in the case of the bars indicating “Authorisations granted”, the figures include applications that CAs had received prior to 2019. This explains why in the case of PT the number of applications granted in 2019-2021 (12) is higher than the number of new applications received within the same period (2).

## 2.2 Organisational set-up and resources of CAs

- 18. The organisational set up of the authorisation process follows a similar pattern across most CAs. For the majority, the authorisation process is coordinated by an authorisation unit with input from prudential supervisors and resources from other departments, such as experts in charge of the fit and proper assessments, supervisors from AML/CFT supervision teams, and IT experts.

- 19. Other CAs, such as BG, BE, DE, DK, LT and LI have adopted a different approach: the same staff are engaged in both the authorisation and prudential supervision of PIs/EMIs.
- 20. One CA (SE) has adopted yet another approach: the assessment of authorisations is assigned to the legal department, with input from the supervision department as regards the assessment of the business plan, the AML department and the department for operational risks.
- 21. As regards the human resources dedicated to the assessment of applications for authorisation of PIs and EMIs, the PRC observed that this varies significantly across MS, ranging from 0.6 full-time equivalents (FTEs) (in the case of AT) to 15 FTEs (ES). The number of FTEs was indicated by CAs on a best-effort basis as of 1 June 2022 and represents the full-time equivalents dedicated to the assessment of applications across the CA and, where relevant, from other authorities involved in the assessment.
- 22. The number of FTEs can be used to calculate the number of applications per FTE for each CA. The figure below provides such an analysis, focusing on the years 2020 and 2021 and also depicts the CAs' self-assessment of the adequacy of resources. It should be noted that as the FTE figures are as of 1 June 2022, they may differ from the number of FTEs available during the period analysed. Data for 2019 was not included in the assessment because of the increase in some countries of the number of applications received in 2019 in the context of Brexit, which the PRC considered to be exceptional and not representative of the more long-term resource situation and may therefore skew the analysis.

**Figure 2. Number of applications received per FTE in 2020-2021 and CAs' self-assessment of the adequacy of resources**



Legend:

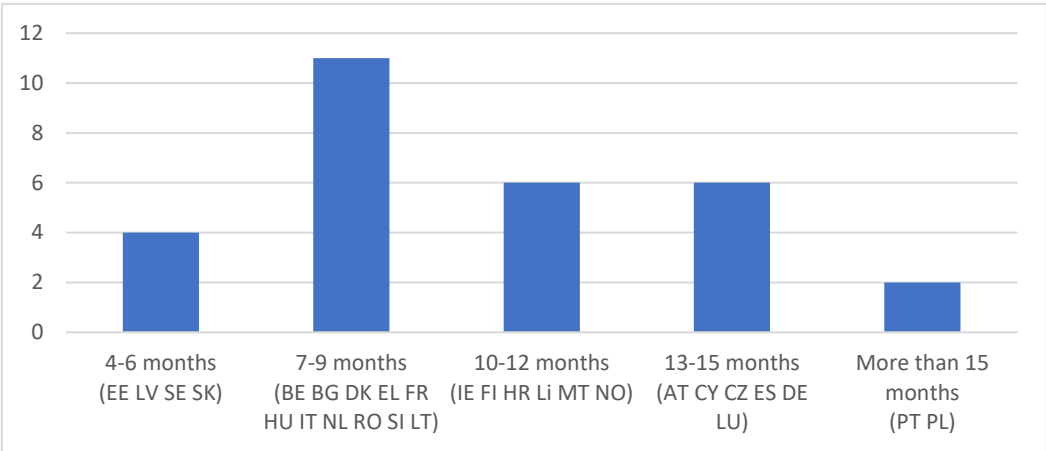
- CA deems resources are adequate
- CA deems a moderate increase of resources is needed
- CA deems a significant increase of resources is needed

23. Furthermore, based on the CAs' self-assessment as regards the adequacy of the FTEs allocated to the assessment of applications, the analysis shows that:
- 48% of CAs consider that resources are adequate;
  - 35% of CAs consider that a moderate increase of resources is necessary; and
  - 17% of CAs consider that a significant increase of resources is necessary.
24. In this regard, the PRC notes that there is a vast discrepancy across CAs as regards the number of applications received per FTE, which ranges from 0.67 to 14.1. The PRC does not have enough data to take a view whether this surprising finding is due to the general degree of scrutiny given to applications, the efficiency of the authorisation process or the relative complexity of applications received by different CAs. It is also worth noting that some of the CAs with the highest number of authorisation applications per FTE (EE, SE, SI, DK) indicated that their resources are adequate and not in need of increases, with one CA (MT) estimating that their assessment might change in the future as a result of a potential increased demand for future authorisations in the payments and crypto asset sector. By contrast, many of the CAs with lower numbers of applications per FTE indicated that they are in need of additional resources.
25. Considering the above, the PRC considers that, as a follow-up measure, CAs should review processes and resources in order to ensure that they remain adequate to scrutinise applications received within a reasonable timeframe.

### 2.3 Average duration of the authorisation process across CAs

26. All CAs comply with the requirement in Article 12 PSD2 to take a decision on an application within 3 months from receiving a complete application. However, the average duration of the authorisation process starting with the date of submission of an application (whether complete or incomplete) until a decision is issued varies significantly across CAs, ranging from 4-6 months to 20+ months. The main reason for delays in the authorisation process is the quality of applications and applicants' timeliness in addressing the issues identified by the CA in respect of the application that had been submitted. The peer review also identified a number of reasons for these variations across CAs, which include different timelines set out in national law and different procedural approaches in the acceptance and assessment of applications.
27. The figure below depicts the average duration of the authorisation process across CAs, from the date of submission of an application (whether complete or incomplete).

**Figure 3. Average duration of the authorisation process across CAs**



- 28. The median duration of the authorisation process is 7-9 months from the submission of an application. Generally, the CAs that have the shortest authorisation period (4-6 months) also have a smaller amount of applications, with the exception of SE which has the third highest number of applications received in the period analysed. The countries with the longest authorisation process are PT (16-18 months) and PL (20-24 months).
- 29. The PRC has identified a number of elements that impact the duration of the authorisation process, that are summarised below.

**Quality of applications and applicants’ timeliness in addressing issues identified with the application**

- 30. 28 out of 29 CAs explained that the main reason for delays in the authorisation process is that applications are often incomplete upon submission and thus further clarifications or amendments by the applicant are necessary (the most common issues relate to the level of detail, consistency of information and compliance with applicable regulations).
- 31. A large number of these CAs indicated that the documentation submitted as part of the application is often too generic and not specific to the applicant and the payment services it intends to provide. In particular, some CAs indicated that they often receive standardised procedures written by law firms, at times even re-used from other applications, throwing doubt upon whether these procedures or policies are accurate reflections of the applicant’s situation. As a result of these issues, several rounds of clarifications/revisions by applicants of the documentation submitted, and subsequent review by the CA, are often needed. Moreover, several CAs explained that applicants generally take a long time to address the deficiencies identified and to complete their applications, which leads to delays in the authorisation process.

### Different timelines set in national law

32. The different timelines set out in national law explain, to some extent, the different durations of the authorisation process across CAs. For example, while in most jurisdictions the maximum length of the authorisation process is 3 months from the receipt of a *complete* application, in EE national law requires the CA to grant or refuse an authorisation within 3 months after receipt of a complete application but in any case not later than 6 months from the submission of the application, regardless of whether the application is complete or incomplete upon submission.
33. In IT, the deadline for the CA to grant or refuse an authorisation is 3 months from the submission of a complete application, with the possibility to suspend this period for up to 6 additional months in case additional clarifications or changes to the application are needed, meaning that the maximum length of the authorisation process cannot exceed 9 months from the date of submission of the application, complete or incomplete. The CA explained that, in case the applicant does not provide the requested information within the 6 months deadline, the CA makes its assessment on the basis of the available information and, where this is considered as insufficient, it rejects the application.
34. In several countries (BE, BG, EE, HR, ES, IE, NO, RO and MT), there are time limits set out in national law after which incomplete applications are rejected or considered as withdrawn. The length of these deadlines varies across these MS, and ranges between 3 months from the CA's request to the applicant to provide the respective information to 12 months from the submission of the application. One CA (DE) indicated that, while such a time limit is not currently foreseen in national law, it is administrative practice that applications will be rejected if, within 12 months from receiving an application, the CA does not have sufficient information or documentation in order to grant an authorisation, despite previous deadlines given by the CA to the applicant to complete its application. The CA explained that this time limit will be included in future national legislation.

### Resource constraints of CAs

35. Only in a few MS do the resource constraints of CAs appear to be a contributing factor to extended authorisation periods, as only two CAs (NO, CY) indicated explicitly that they consider lack of adequate resources to impact the length of the authorisation process.
36. One of these CAs (CY) explained that the number of new applications received in 2020-2021 increased significantly compared to previous years, as a result of PIs and EMIs that were authorised in the UK seeking authorisation in CY following Brexit, as well as a wider boom of other fintech companies seeking authorisation as PIs or EMIs, both of which put more pressure on the CA's resources. The same CA further explained that it has taken measures to address this, by recruiting more staff for the assessment of applications and establishing a new organisational section responsible for the licensing of entities that are not credit institutions. The CA also indicated that it now reviews the application in stages, i.e. first by



performing a pre-screening of the application, then reviewing the qualifying shareholders, the members of the management body and the key function holders, and finally the remaining parts of the application, and providing feedback at the end of each stage to the applicant, in order to improve the response time to applicants.

37. Another CA (DK) indicated that they have also observed a sharp increase in the number of applications (from about 5-10 applications a year in 2017-2018 to 20-25 applications a year in 2020-2021) and that they have allocated one additional FTE for the assessment of applications since June 2022 to address the resource constraints.

### Other factors impacting the length of the authorisation process

38. CAs mentioned other factors that impact the length of the authorisation process. These include (i) the time for coordination between different specialised departments of the CA, or with other authorities involved in the assessment of applications (where applicable); (ii) difficulties applicants face to obtain professional indemnity insurance for authorisation as a payment initiation service provider or for registration as an account information service provider; and (iii) material changes in the organisation or shareholding structure of the applicant during the authorisation process, that require updating the information already submitted and subsequent review by the CA (where CAs allow such changes to be made without requiring a new application).
39. Comparing authorisation lengths across CAs, it appears that the different procedural approaches adopted by CAs in the acceptance and assessment of applications explain, to some extent, the variations observed. For example, in cases where the applicant makes material changes to its application (e.g., changes to the activities envisaged) during the authorisation process that impact multiple documents submitted to the CA, some CAs typically ask the applicant to submit a new application. By contrast, one CA (PL) explained that, in such cases, it does not request applicants to submit a new application and allows them additional time to amend their application, as national law allows applicants to modify their application during the authorisation process, irrespective of the scope and materiality of the changes.
40. Furthermore, it appears that there is a discrepancy between CAs as to how they perceive their role in the authorisation process which impacts the length of the authorisation process. Some CAs (such as BE, ES, FR) guide applicants in addressing the issues identified by providing detailed feedback to applicants on where they are not meeting the requirements and grant them more time to address those deficiencies in their application. For example, ES explained that in some instances additional time is granted to applicants to reinforce their local structure where it is deemed insufficient, which impacts the duration of the authorisation process.
41. By contrast, SE explained that their role as CA is *not* to guide financial institutions on how they should set up their business in order to fulfil all the regulatory requirements, and that

it is the applicant's responsibility to prove to the CA that it fulfils all the regulatory requirements to receive an authorisation. The CA explained that it normally sends out only one request to applicants to materially supplement their application where it identifies material deficiencies, and usually declines an application in the early stages of the authorisation process where the issues identified are not addressed within the deadline set by the CA. The CA further explained that this allows the CA to be efficient in assessing the applications. Other CAs, such as DK and NL, also indicated that they usually decline an application in the early stages of the authorisation process where they identify material deficiencies in the application, or provide feedback to the applicant in the early stages of the authorisation process regarding the issues identified, allowing them to voluntarily withdraw their application.

42. Another approach that has been observed is for the CA to encourage applicants to have pre-application meetings with the CA before submitting a formal application, and provide feedback to applicants before an application is submitted. BE, DK, ES, IT, PT, LU, MT, NL, RO and LV indicated that they follow this practice. Several of these CAs indicated that, in their experience, this helps prospective applicants to better understand the CA's expectations and how they should fulfil the legal requirements, and also helps filter out applications with material deficiencies before an application is submitted. In the view of those CAs, this has led to efficiency gains in the subsequent authorisation process by ensuring that less time is spent by both applicants and CAs on applications that will not materialise into an authorisation.
43. Some of these CAs (BE, LU, LV) encourage applicants to only submit a formal application once they have gone through this pre-screening or "pre-analysis" phase (without this being however legally mandatory). In the case of LU, this "pre-analysis" phase was introduced in August 2021, in the context of the transfer of the competence to grant an authorisation from the Ministry of Finance to the CSSF, and hence its effects are yet to be fully seen. Nevertheless, the CA mentioned that it can already see some efficiency gains. For example, the CA explained that after the "pre-analysis" step was introduced, the legal classification of the activities envisaged by applicants in one of the payment services in Annex I to PSD2 is conducted in this pre-analysis step, which, in its view, has led to efficiency gains compared to previous years when the CA received many applications with numerous documents and information that had to be constantly amended due to discussions on the legal qualification of the activities.
44. In another country (MT) such pre-screening phase has been mandatory for approximately the same time. Before an application is officially submitted, prospective applicants are requested to submit their intention to the CA and can only submit an application when "instructed" to do so by the CA. This usually takes the form of an email to the prospective applicant stating that they may submit their application considering any comments made by the CA during the preliminary meeting.

## 2.4 Conclusions

### Follow-up measures for CAs

45. PSD2 and the Guidelines do not fully harmonise the authorisation process, leaving room for different approaches by CAs in organising the process, including the extent to which CAs guide applicants. Nevertheless, PSD2 requires applications to be decided within three months from when they are complete and it is important that applicants receive decisions quickly based on scrutiny of their application. Any process that a CA may set up to guide or assist applicants should still ensure that applications that are complete (i.e. all information required to arrive at a positive or negative decision has been provided) are swiftly decided.
46. As mentioned in paragraph 25 above, the PRC considers that CAs should, as a follow-up measure, review their processes and resources in order to ensure that they remain adequate to scrutinise applications received within a reasonable timeframe.

### Best practices for CAs

47. A number of approaches to authorisation developed by some CAs might be of benefit for other CAs and therefore constitute best practices to enhance the transparency of the authorisation process, improve the quality of the applications received and increase the efficiency of the authorisation process.
48. One best practice that the PRC has observed for several CAs is to publish guidance clarifying the CA's supervisory expectations as regards the requirements applicants must meet to receive authorisation, including in terms of local substance, internal governance and controls and shareholders' suitability. BE, DE, ES, FR, IE, NL, LV and SK indicated that they provide such guidance to the market.
49. In addition to the above, there are also other practices CAs can adopt to improve the quality of the applications and increase the efficiency of the process. Such is the case with pre-applications meetings with prospective applicants before submission of an application and providing initial feedback to prospective applicants on key issues identified before they submit a formal application. BE, DK, ES, IE, IT, PT, LU, LV, MT, NL, RO and SK indicated that they follow this approach. This practice can support prospective applicants in better understanding the process and the legal requirements they must meet, and foster a better understanding by the CA of the business model and nature of the applicant's activities. This can contribute to efficiency gains in the subsequent authorisation process by improving the quality of applications and reducing the number of unrealistic applications and the time spent in follow-ups with applicants after the application has been formally submitted. On the other hand, this practice should not be used as a means of artificially shortening the formal authorisation process, whilst in practice lengthening the overall authorisation process.

50. Furthermore, CAs can speed up the authorisation process by providing early feedback to applicants on material deficiencies and/or by declining an application where such deficiencies are not promptly addressed as done by SE. Any such feedback will need to be accompanied by clear guidance by the CAs as to the requirements the applicant has to meet, as articulated in paragraph 48 above. Without such clear guidance, the overall authorisation process risks being lengthier as applicants may have to restart the authorisation process several times to be able to obtain an authorisation, which may also be inefficient for the CA.
51. A third best practice observed (for example in the case of BE, FR, MT and RO) is for CAs to provide more transparency and certainty to the market regarding the expected time frame of the authorisation process by setting clear and transparent time frames for the authorisation process, including timelines for the CA to provide feedback to applicants. This can help applicants to better understand the progress of their application file and the expected timeline to receive the CA's feedback.
52. Moreover, given that the main reason for delays in the overall duration of the authorisation process is that applications are often incomplete upon submission and thus further clarifications or amendments by the applicant are necessary, it is a best practice for CAs to encourage applicants to respond in a timely manner to the CA's comments on the application file, by including such encouragement in the CA's published guidance on the application process.

## 3. Implementation of the EBA Guidelines on authorisation

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53. This chapter presents the PRC's assessment of the extent to which CAs have implemented the EBA Guidelines, in the following areas: Guideline 4 (regarding the business plan); Guidelines 5 and 8 (regarding the structural organisation, governance arrangements and internal control mechanisms); Guideline 14 (regarding the AMF/CFT internal control framework); and Guideline 15 (regarding the assessment of shareholders with qualifying holdings). The main criterion for evaluating the implementation of the Guidelines by CAs was the extent to which CAs require from applicants the submission of all the information specified in the respective guidelines.
54. In addition, the PRC examined whether CAs provide the confirmation of completeness specified in GL 1.3 of section 4.4 of the Guidelines.
55. In accordance with Article 19 of the [EBA Peer Review Methodology](#), for benchmarking purposes, the following grade-scales were used where possible:
  - **Fully Applied:** A provision is considered to be 'fully applied' when all assessment criteria are met without any significant deficiencies.
  - **Largely Applied:** A provision is considered to be 'largely applied' when some of the assessment criteria are met with some deficiencies, which do not raise any concerns about the overall effectiveness of the competent authority, and no material risks are left unaddressed.
  - **Partially Applied:** A provision is considered to be 'partially applied' when some of the assessment criteria are met with deficiencies affecting the overall effectiveness of the competent authority, resulting in a situation where some material risks are left unaddressed.
  - **Not Applied:** A provision is considered to be 'not applied' when the assessment criteria are not met at all or to an important degree, resulting in a significant deficiency in the application of the provision.

### 3.1 Assessment of the implementation of the Guidelines by CAs

#### Guideline 4: Business plan

56. The PRC found that the vast majority of CAs require all the information specified in GL 4, with the exception of SE and DK. In particular, SE does not request applicants to submit the information specified in GL 4.1(a) (marketing plan and description of the applicant's competitive position), 4.1(b) (certified annual accounts for the previous 3 years), and requests only part of the information specified in GL 4.1(c), 4.1(d) and 4.1(e). With regard to GL 4.1(c), the PRC understands that the CA requires applicants to submit the information specified in GL 4.1(c)(i) with regard to target scenarios and the information in GL 4.1(c)(ii), but not the other information specified in GL 4.1(c)(i) regarding stress scenarios and the information in GL 4.1(c)(iii) (diagram and detailed breakdown of the estimated cash flows for the next three years). In relation to GL 4.1 (d), the CA explained that it requires a certificate issued by a chartered accountant that the applicant has the necessary capital/own funds, specifying the amount of the initial capital, but that it does not require information on the composition of the initial capital. The CA mentioned that it is going to update its internal policy to require the applicant to provide information on the composition of the initial capital. With regard to GL 4.1(e), the CA indicated that it requires all information specified in that GL, with the exception of an annual projection of the breakdown of the own funds for three years.
57. In terms of reasons for this practice, the CA explained that it does not ask applicants to submit these different pieces of information that are set out in the Guidelines because this is not required under their national legislation and the regulatory code issued by the CA (the FFFS 2010:3). The CA further explained that, in its view, the CA meets the requirements in the Directive without collecting and analysing this information and that therefore it does not deem there is a need to introduce the respective guidelines in binding regulations.
58. The PRC is of the view that the information mentioned in paragraph 56 above which is not required by SE is necessary in order for CAs to be in a position to conduct a proper assessment of the applicant's business plan and ensure that the applicant has appropriate resources in place to manage risks and operate soundly, as required by Article 5(1) (b) of PSD2. In particular, the PRC is of the view that in order to inform this assessment CAs should undertake a full qualitative review of the strategy of the applicant, which entails the evaluation of its competitive position, and a quantitative review of its business plan, which includes an assessment of its ability to maintain sound operations in stress situations. Given that SE does not require this information, the PRC concluded that **SE has only partially applied GL 4** and considers that SE should take follow-up measures to implement GL 4.1(a), 4.1 (b), and fully implement GL 4.1(c), 4.1 (d) and 4.1(e).



59. DK indicated that it requires applicants to submit all the information specified in GL 4, with the exception of marketing materials referred to in GL 4.1(a)(ii). The CA explained that it does not require this on the ground that most applicants have not decided on marketing material at the time of application and also because there are no requirements under the PSD2 nor their national law to assess such information.
60. The PRC is of the view that CAs should require and assess the marketing materials specified in GL 4.1(a)(ii) as part of their assessment of the applicants' business plan. Collecting and assessing this information is also important in order for CAs to understand the markets and the geographical location of customers that the applicant intends to target and assess whether applicants meet the requirement in Article 11(3) PSD2 to conduct "at least part of their payment service business services business" in the jurisdiction in which they are seeking authorisation (as further detailed in Section 4.7 of this report). Considering that DK does not require this information, but that it requires all the other information specified in GL 4, the PRC concluded that **DK has largely applied GL 4** and considers that DK should take follow-up measures to implement GL 4.1(a)(ii).

#### **Guidelines 5 and 8: Structural organisation, governance arrangements and internal control mechanisms**

61. The review found that all CAs require the information specified in GL 5 and 8, with the exception of SE, DK and IT. More specifically, SE does not require applicants to submit the information specified in GL 5.1(b) (the forecast of the staff number for the next three years), GL 8.1 (c) (accounting procedures) and GL 8.1(i) (the description of the group governance where applicable) and requires only part of the information specified in GL 8.1(b) and 8.1 (d). In relation to GL 8.1(b), the CA indicated that it requires information on the procedures for carrying out periodical and permanent controls and their frequency, but does not require information on the human resources allocated for the executions of controls. In relation to GL 8.1 (d), the CA indicated that it requires information regarding the identity of the person responsible for the internal control functions, but not the CV of the person responsible for these internal control functions.
62. The CA explained that it does not ask applicants to submit these different pieces of information that are set out in the Guidelines because this is not required under their regulatory code issued by the CA (the FFFS 2010:3). The CA is of the view that it meets the requirements set out in the Directive and that it does not deem that there is a need to introduce the respective guidelines in binding regulations.

63. The PRC is of the view that the information mentioned above that is not required by SE is necessary in order for CAs to conduct a proper assessment of the applicant's internal control framework and ensure that the applicant's internal control mechanisms are appropriate, sound and adequate as required by Article 5(1)(e) PSD2. Given that SE does not require this information, the PRC has concluded that **SE is only largely compliant with GL 5 and 8** and considers that SE should take follow-up measures to implement GL 5.1(b), GL 8.1 (c), and GL 8.1 (i) and fully implement GL 8.1(b) and 8.1(d).
64. DK and IT indicated that they require applicants to submit all the information specified in GL 5 and 8, with the exception of the draft outsourcing agreements referred to in GL 5.1(d). DK explained that it does not require this because there is no requirement in PSD2 or in their national legislation for the CA to do so, and is of the view that it complies with the requirement in Article 5 PSD2 which refers only to "a description of outsourcing arrangements".
65. IT explained that it does not require applicants to submit a copy of the draft outsourcing agreements because, first, in general these contracts are complex documents, that require specific competencies for a proper evaluation. Second, requiring these agreements from applicants implies that every aspect included could be considered as "approved" by the CA. And third, the draft agreements could be different from the final ones. The CA also indicated that, instead of draft outsourcing agreements, it requires applicants to submit summarised information about the outsourcing agreements, the general scheme of the outsourcing agreements and the outsourcing policy, as well as, where necessary, further information to check whether the (draft) outsourcing agreements are in line with the EBA Guidelines on outsourcing arrangements.
66. With regard to the views expressed by DK, the PRC recalls that Articles 5.1(e) and 11(4) of PSD2 provide that CAs should grant an authorisation only if the applicant has "robust governance arrangements", a notion that includes effective outsourcing governance. Furthermore, Article 11(2) PSD2 provides that CAs "shall grant an authorisation if the information and evidence accompanying the application complies with all of the requirements laid down in Article 5". This includes the information specified in GL 5.1(c) (a description of the relevant operational outsourcing arrangements) and GL 5.1(d) (a copy of the draft outsourcing agreements) which is necessary in order for CAs to assess whether applicants comply with the relevant requirements in PSD2 as regards governance arrangements and outsourcing. Therefore, in line with Articles 5.1(e) and (l) and 11(4) of PSD2 and GL 5.1(d), CAs should require and assess, as part of the authorisation procedure, the draft outsourcing agreement, as specified in GL 5.1(d). Considering that DK and IT do not require this, but require all the other information specified in GL 5 (including the description of relevant operational outsourcing arrangements set out in GL 5.1(c)), the PRC concluded that **DK and IT have largely applied guideline 5** and considers that these CAs should take follow-up measures to implement GL 5.1(d).

**Guideline 14: AML/CFT internal control framework**

67. The PRC found that not all CAs require the entire list of information specified in GL 14. In particular, HU indicated that it does not require the information specified in GL 14.1(c) (policies and procedures to ensure that branches and agents of the applicant comply with AML/CFT obligations), 14.1(e) (background and competency verification of the person in charge of ensuring AML/CFT compliance) and 14.1(f) (systems and controls to ensure that the internal AML/CFT framework remains up to date and relevant). HU indicated that preparations are currently ongoing to integrate these requirements in the national authorisation process. The information specified in GL 14.1(c), (e) and (f) is necessary in order for CAs to conduct a proper assessment of the AML/CFT internal control framework the applicant has or will put in place to ensure AML/CFT compliance of the PIs/EMIs. Given that HU does not require all this information, the PRC concluded that **HU has only partially applied GL 14** and considers that HU should take follow-up measures to implement the relevant parts of this guideline.
68. Also, the PRC understands that SE does not require applicants to submit all the information specified in GL 14.1 (c), (e), (g) and (h). In relation to GL 14.1(e), SE indicated that it does not assess the AML/CFT expertise of the person in charge of ensuring AML/CFT compliance, and does not require the CV of that person during the authorisation process. Instead, it requires the applicant itself to conduct such a background check of that person in order to establish that he/she is fit and proper. With regard to GL 14.1(c) and (g), the CA explained that this information is not collected specifically, but is covered by other documents required from applicants in line with GL 14. Similarly, the CA indicated that it does not require an AML/CFT manual for the staff of the applicant as specified in GL 14.1(h), instead, they require other information that in the CA's view qualifies as equivalent. In this regard, the PRC is of the view that the information to be collected from the applicant on the systems and controls the applicant has or will put in place to ensure AML/CFT compliance of its branches, agents and distributors is crucial, as well as the CAs' independent assessment of the applicant's designated person in charge of AML/CFT compliance. Given that SE does not require all the information specified in GL 14.1 (c), (e), (g) and (h) and the other documents used by the CA do not provide the same level of information, the PRC concluded that **SE has only largely applied GL 14** and considers that SE should take follow-up measures to fully implement GL 14.1 (c), (e), (g) and (h).
69. With regard to GL 14.1 (e) (background and competency verification of the person in charge of ensuring AML/CFT compliance), RO reported that they require and assess this information for entities seeking authorisation for the provision of the payment services 1 - 6 of the Annex I to PSD2, but that their national legislation does not require the CA to assess, during the authorisation process, the AML/CFT expertise of the person in charge of ensuring the applicant's compliance with AML/CFT obligations for entities applying for authorisation/registration for the payment services 7- 8 of the Annex I to PSD2 (i.e., payment initiation services and account information services). RO explained that for this type of entities these verifications are only part of the ongoing supervisory work once the PI is

authorised and functioning. In this regard, the PRC notes that this information is not required by the PSD2 and the GL from applicants applying for registration for the provision of only service 8 of Annex I to PSD2 (account information services), but is required for applicants applying for authorisation for the provision of service 7 of Annex I to PSD2 (payment initiation services). Considering that, for these entities, RO does not make any verification of the AML/CFT expertise of the person in charge of AML/CFT compliance of the applicant as part of the authorisation process, the PRC is of the view that **RO has only largely applied GL 14.1(e)** and considers that RO should take follow-up measures to fully implement this GL.

70. Furthermore, DE reported that in very rare and specific cases, taking into account the business model, planned payment services, overall risk and ML/FT risk, the CA has allowed the person responsible for the applicant's compliance with AML/CFT obligations to be appointed after authorisation, but before the start of operations. Although this has only occurred in a limited number of cases, the AML/CFT officer is a key position in a PI and should always be appointed before authorisation. Therefore, the PRC is of the view that **DE has only largely applied GL 14** and considers that DE should take follow-up measures to fully implement GL 14.1(e).
71. While all other CAs comply with GL 14 in terms of the information collected from the applicant, the PRC would like to emphasize that obtaining the documents required under GL 14 is necessary but not sufficient to ensure compliance with the PSD2 requirements. It is essential that information obtained from the applicant on AML/CFT internal controls is assessed by experts with appropriate AML/CFT expertise.

#### **Guideline 15: Assessment of shareholders with qualifying holdings**

72. The PRC found that not all CAs require the information specified in GL 15. In particular, the PRC understands that SE does not require applicants to submit the information specified in GL 15.1(a) (description of the group), 15.2 (g) (the description of links to politically exposed persons), 15.3 (j) (the shareholding structure of persons with qualifying holdings), 15.3(n) (information on the regulatory regime of third countries where the person having a qualifying holding has its head office in a third country), 15.3 (o) para. (ii) (the investment policy of persons with a qualifying holding that do not have legal personality) and requires only partially the information specified in GL 15.1 (b), 15.1 (c), 15.3(h), 15.3 (l), 15.4 and 15.5.
73. With regard to GL 15.1(a) (description of the group), the CA is of the view that it meets the requirement in Article 5.1(m) PSD2 and the overall purpose of GL 15.1 without requiring this information. In relation to the information in GL 15.1(b) (chart setting out the shareholder structure of the applicant) and 15.3 (j) (the shareholding structure of persons with qualifying holdings), the CA explained that it requires information on the persons with a direct or indirect *qualifying* holding in the applicant but not information on other shareholders that do not have a direct or indirect *qualifying* holding in the applicant, or information on the shareholding structure of persons with qualifying holdings. The CA is of the view that it

meets the requirement in Article 5.1(m) PSD2 without requesting this information, as PSD2 refers only to the assessment of shareholders with qualifying holdings and does not require to collect information on all shareholders.

74. Regarding GL 15.1(c), the CA requires the percentage of the shares held by shareholders with a direct or indirect qualifying holding in the applicant, but not information on the number, type, and nominal value of the shares. The CA is of the view that this is line with PSD2 and that this information is not necessary to achieve the objective of GL 15.1 and Article 5(1)(m) PSD2 to identify and assess the suitability of persons with qualifying holdings in the applicant. With regard to GL 15.3 (l) (annual reports *for the last three years* of persons with a qualifying holding), the CA indicated that it requires only the most recently adopted annual financial statement.
75. With regard to GL 15.4 (the strategy of persons with a qualifying holding regarding their holding in the applicant) and GL 15.5 (source of funding), the CA explained that it requires some of the information covered by these guidelines, such as, for shareholders natural persons, information on income for the previous and current calendar year (amount, sources), their current assets/liabilities and guarantees or other commitments and other factors that can affect their financial situation, information on common interests with other shareholders (including shareholder agreements or other agreements concerning common ownership), and for shareholders legal persons, a registration certificate not older than two months, the most recently adopted annual report and, if possible, cite credit ratings and credit assessment companies, and information on common interests with other shareholders. However, the CA does not require information on the purpose and motive behind a holding in the applicant and how the holding was financed. The CA is of the view that this information is disproportionate to require, and is, most of the time, also outdated.
76. The PRC is of the view that the respective information specified in GL 15 and that is not required by SE is necessary in order for CAs to understand the shareholding structure of the applicant and conduct a proper assessment of the suitability of shareholders with qualifying holdings in accordance with Articles 5(1)(m) and 11(6) of PSD2. Given that SE does not require those pieces of information but nevertheless requires a substantial part of the information specified in GL 15, the PRC is of the view that **SE has only largely applied GL 15** and considers that SE should take follow-up measures to implement GL 15.1(a), 15.2 (g), 15.3 (j), 15.3(n), 15.3 (o) para. (ii) and fully implement GL 15.1 (b), 15.1 (c), GL 15.3(h), 15.3 (l), GL 15.4 and GL 15.5.
77. Furthermore, as regards BE and LT, the PRC understands that in rare cases these CAs have accepted to grant an authorisation without all the documents specified in GL 15 being provided with the application, where the respective information was not deemed material to the CA's assessment of the suitability of the candidate shareholder(s). In this respect, BE explained that it requires applicants to provide the full set of information specified in GL 15, but that, in a few cases, the applicants could not provide the criminal record and/or resumé of individual ultimate beneficiary owners of publicly held companies or venture capital

investment firms having a qualifying holding in the applicant's capital. The CA indicated that, in such cases, if the respective information is not deemed material to the CA's assessment of the fitness and propriety of the candidate shareholder, this would not constitute a reason to refuse to grant an authorisation. LT indicated that the CA has accepted, in very rare cases that occurred during the Covid pandemic, that applicants provide criminal records for the persons subject to the CA's approval after the authorisation was granted. In all these cases, the CA indicated that a condition was formulated in the operative part of the authorisation decision, with regard to the submission of the document(s) by the specified date. The CA indicated that three such conditional decisions for authorisation were issued from 2019 to 2022, and that in all these cases the CA was assured through other justification provided before the issuance of the decision that the reputation of the shareholders was suitable.

78. In this regard, the PRC recalls that all CAs should require and assess the criminal records for the persons subject to the CA's approval before the authorisation is granted in order to assess whether the respective shareholders are of good repute. Given that BE and LT have accepted in the cases described above that such information was not provided as part of the authorisation process, but do require and assess all the other documents specified in GL 15, the PRC has concluded that **BE and LT have largely applied GL 15** and considers that these CA should take follow-up measures to fully implement GL 15.2(c)(i).
79. Two other CAs (PL and RO) indicated that they require all the documents specified in GL 15, but, at the same time, they also indicated that their national law requires the CA to assess all shareholders with a direct qualifying holding, but not all shareholders with an indirect qualifying holding in the chain, as explained in more detail in paragraph 129 below. RO further explained that for entities authorised so far under PSD2 there was no case in which there were shareholders with an indirect qualifying holding in the chain. Considering the above, the PRC is of the view that **PL is only largely compliant with GL 15** and considers that both PL and RO should take follow-up measures to ensure that they fully implement GL 15, by collecting and assessing the information specified in GL 15 in relation to all shareholders having an indirect qualifying holding in the applicant's capital.

#### **Guideline 1.3 of section 4.4 of the Guidelines: Confirmation of completeness**

80. Seven CAs (CY, CZ, DE, DK, EE, HU, PT) do not provide the confirmation of completeness set out in GL 1.3 of section 4.4 of the Guidelines. As a reason, these CAs explained that, in their view, this confirmation is unnecessary because applicants are informed relatively quickly of the CA's decision once their application is complete and/or that this is not required under their national law. One of these CA (EE) is of the view that this confirmation does not bring any added value because under their national law the authorisation procedure cannot exceed 6 months from when an application is submitted, complete or incomplete, and, in its view, the ongoing correspondence between the CA and applicants during the authorisation process ensures the necessary transparency. In addition, the CA is of the view that providing such confirmation to applicants may constitute a legally binding confirmation



by the CA and thus, in its view, could have a negative impact on the authorisation proceeding.

81. Moreover, six other CAs (AT, ES, IE, IT, LT, SI) provide a confirmation to applicants once all documents have been submitted, but without carrying out at that stage a substantive assessment of the content of those documents. As a result, often several requests are sent to applicants to submit further information or to amend or clarify the information already submitted, after such confirmation has been provided. This leads to situations where a decision is reached on the application several months after the CA has provided such confirmation. This can reach up to 17 months in the case of ES and 9-12 months in the case of IE.
82. The PRC is of the view that such limited confirmation approaches do not achieve the purpose of providing applicants with comfort that their application does not require material additional information and so will be determined within the 3-month period specified in PSD2. It is therefore not a confirmation of 'completeness' within the meaning of Article 12 PSD2 and GL 1.1 of section 4.4 the Guidelines.
83. While the PSD2 does not specifically require CAs to notify applicants when their application is complete, GL 1.3 of section 4.4. of the Guidelines is clear that all CAs should provide this confirmation. This gives the applicant the certainty that the decision according to Article 12 PSD2 has to be made within three months from the date of the confirmation of completeness. In line with the EBA Guidelines, CAs should provide such confirmation to applicants once the CA is in a position to confirm that the application is complete both from a formal and substantive point of view. Given that they do not provide this confirmation, the PRC has concluded that **AT, CY, CZ, DE, DK, EE, ES, HU, IE, IT, LT, PT and SI have not applied GL 1.3 of section 4.4 of the Guidelines** and considers that these CAs take follow-up measures to implement this guideline.





### 3.2 Summary of the assessment as regards the implementation of the Guidelines

84. Based on the above analysis, the figure below provides a summary of the PRC's assessment as regards the implementation of the Guidelines in the areas analysed.

**Figure 5. Implementation of the EBA Guidelines on authorisation**

Country	GL 4 (Business plan)	GL 5 and 8 (Structural organisation, governance and internal controls)	GL 14 (AML/CFT internal control framework)	GL 15 (Assessment of persons with qualifying holdings)	GL 1.3 of section 4.4 of the Guidelines (Confirmation of completeness)
AT	Green	Green	Green	Green	Yellow
BE	Green	Green	Green	Yellow	Green
BG	Green	Green	Green	Green	Green
CY	Green	Green	Green	Green	Red
CZ	Green	Green	Green	Green	Red
DE	Green	Green	Yellow	Green	Red
DK	Yellow	Yellow	Green	Green	Red
EE	Green	Green	Green	Green	Red
EL	Green	Green	Green	Green	Green
ES	Green	Green	Green	Green	Yellow
FI	Green	Green	Green	Green	Green
FR	Green	Green	Green	Green	Green
HR	Green	Green	Green	Green	Green
HU	Green	Green	Yellow	Green	Red
IE	Green	Green	Green	Green	Yellow
IT	Green	Yellow	Green	Green	Yellow
LI	Green	Green	Green	Green	Green
LT	Green	Green	Green	Yellow	Yellow
LU	Green	Green	Green	Green	Green
LV	Green	Green	Green	Green	Green
MT	Green	Green	Green	Green	Green
NL	Green	Green	Green	Green	Green
NO	Green	Green	Green	Green	Green
PL	Green	Green	Green	Yellow	Green
PT	Green	Green	Green	Green	Red
RO	Green	Green	Yellow	Green	Green
SE	Yellow	Yellow	Yellow	Yellow	Green
SI	Green	Green	Green	Green	Yellow
SK	Green	Green	Green	Green	Green

Legend:

- Fully applied 
- Largely applied 
- Partially applied 
- Not applied 

### 3.3 Conclusions

#### Follow-up measures for CAs

85. In light of the above, the PRC is of the view that the practices of some CAs require improvements in order for CAs to fully comply with the EBA Guidelines and achieve the intended supervisory outcomes set out in the Directive and the Guidelines. In particular, as mentioned above:
- With regard to GL 4, SE should take follow-up measures to implement GL 4.1(a), 4.1 (b), and fully implement GL 4.1(c), 4.1 (d) and 4.1(e); DK should take follow-up measures to implement GL 4.1(a)(ii);
  - With regard to GL 5 and 8, SE should take follow-up measures to implement GL 5.1(b), 8.1(c), and 8.1(i) and fully implement GL 8.1 (b) and 8.1(d); DK and IT should take follow-up measures to implement GL 5.1(d);
  - With regard to GL 14, HU should take follow-up measures to implement GL 14.1 (c), (e) and (f); SE should take follow-up measures to fully implement GL 14.1 (c), (e), (g) and (h); and DE and RO should take follow-up measures to fully implement GL 14.1(e);
  - With regard to GL 15, SE should take follow-up measures to implement GL 15.1(a), 15.2 (g), 15.3(j), 15.3(n), 15.3(o) para. (ii) and fully implement GL 15.1(b), 15.1(c), 15.3(h), 15.3(l), 15.4 and 15.5; BE and LT should take follow-up measures to fully implement GL 15.2(c)(i); PL and RO should take follow-up measures to ensure that they fully implement GL 15, by collecting and assessing the information specified in GL 15 in relation to all shareholders having an indirect qualifying holding in the applicant's capital;
  - With regard to GL 1.3 of section 4.4 of the Guidelines, AT, CY, CZ, DE, DK, EE, ES, HU, IE, IT, LT, PT and SI should take follow-up measures in order to provide the confirmation of completeness as explained in paragraph 83 above.

## 4. Practices of CAs when reviewing the substance of applications

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86. This chapter examines the supervisory practices of CAs as regards the substantive assessment of applications for authorisation of PIs and EMIs, focussing on the following areas: programme of operations; business plan; governance arrangements and internal controls; assessment of shareholders with qualifying holdings and of persons responsible for the management of PIs/EMIs; AML/CFT internal control framework; and local substance. Unlike the previous chapters, the conclusions are presented at the end of each section.

### 4.1 Programme of operations

87. With regard to the assessment of the programme of operations (referred to in GL 3), the PRC conducted a more targeted analysis regarding the challenges faced by CAs in assessing the programme of operations and the legal qualification of the activities envisaged by applicants. Almost half of the CAs indicated that they face challenges in this respect.
88. Some CAs reported that often applicants do not properly describe the services they intend to provide and the manner in which they plan to provide them, and/or apply for a wrong type of license (e.g., they apply for a particular payment service that is not supported by their actual product offering). In addition, many CAs indicated that they face challenges in the categorisation of the activities under the payment service(s) referred to in the Annex to PSD2 (especially the case for innovative business models) because of the absence of clear guidance in the Directive distinguishing between the different payment services (e.g., acquiring/money remittance, execution of payment transactions covered by a credit line etc.) and their delineation from issuance of e-money. This can lead to divergent practices across CAs and to regulatory arbitrage.
89. This issue is not new and was also identified in the EBA's response to the European Commission (EC)'s call for advice on the review of the PSD2 (EBA/Op/2022/06). To address this issue, the PRC reiterates the recommendation the EBA provided in its response to the call for advice that any potential legislative proposal to revise PSD2 should articulate clear criteria to delineate between the different categories of payment services as well as e-money issuance.

### 4.2 Business plan

90. The PRC assessed to what extent CAs scrutinise the business plan to ensure that it demonstrates that the applicant has appropriate systems, resources and procedures in place to operate soundly, in line with Article 5(1)(b) PSD2. In particular, the PRC examined:

- (i) the extent to which CAs check that the target and stress scenarios provided by applicants are plausible and realistic, including assessing whether the costs for internal control and outsourcing are adequately reflected in these financial forecasts; and
  - (ii) whether CAs check, based on the financial projections, that the applicant will have the ability to meet its capital and own funds requirements at the authorisation stage and on an on-going basis for the first three years.
91. The PRC also took into account in its assessment the analysis described in chapter 3 of this report as regards the implementation by CAs of GL 4 on the business plan. The follow-up measures and best practices for CAs outlined at the end of that chapter in relation to the implementation of GL 4 have not been reiterated in this section.

### Supervisory practices of CAs

92. The PRC found that the large majority of CAs, with the exception of SE and DK, assess the business plan in a satisfactory manner against the criteria described in paragraph 90 above. However, the scope and intensity of the assessment of the business plan varies significantly across CAs.
93. In particular, SE appears to perform a limited review of financial forecasts. The PRC understands that the CA checks whether the prognoses for income and cost are not obviously unrealistic, but without carrying out an in-depth assessment of the plausibility of these forecasts. SE explained that the assessment of the business plan is limited in scope because it considers that it has no legal basis to reject an application on the grounds that a company is loss-making even in the absence of guaranteed capital injections going forward, as long as the minimum capital requirement is satisfied at the outset.
94. While the PRC acknowledges that some checks are carried out by the CA, it is of the view that these checks are not sufficient. They do not ensure that the applicant has appropriate resources in place to manage risks and operate soundly, as required by Article 5(1)(b) PSD2 (e.g. adequate resources to implement the envisaged internal controls etc.). This view also takes into account that SE does not require some of the information specified in GL 4 (e.g. analysis of the applicant's competitive position, certified annual accounts for the previous three years, stress tests) and GL 5.1(b) (forecast of the number of staff for the first 3 years). This information is important in conducting a proper assessment of the credibility of the financial forecasts submitted by applicants and their underlying assumptions. Therefore, the PRC is of the view that **SE is only partially compliant with the supervisory expectations on the assessment of the business plan**, and considers that SE should conduct a more in-depth assessment of business plans, including a more thorough check of the plausibility of the financial forecasts. In particular, the PRC considers that SE should conduct a more thorough assessment of the credibility of the main assumptions underlying the business plan, including with regard to the generation of revenues and estimation of costs in both the

target and stress scenarios. As part of this assessment, SE should also collect and scrutinise the applicant's analysis of its competitive position.

95. DK, too, appears to carry out a limited review of the plausibility of the assumptions on which the financial forecasts submitted by applicants are based. DK indicated that it does not assess the competitive position of the applicant or check whether the costs for internal control and outsourcing are reflected in the applicant's financial projections. The CA explained that it focuses on whether the applicant has sufficient capital and has adequate plans to raise more capital if this is needed in light of the business plan, rather than on whether the assumptions underpinning the forecasts are plausible.
96. As reasons for this practice, DK explained that, in its view, the assessment of the financial forecasts is of little relevance at the authorisation stage and that Article 11 PSD2 does not prescribe that the CA has to evaluate the business plan. Furthermore, the CA added that, in its view, it is not the role of CAs "to pick the winners in the market" by assessing whether the business model is good or not, but rather to ensure that the applicant has the necessary contingency plans in place should it be necessary to raise more capital, if the business plan does not hold up.
97. The PRC recalls that Articles 5.1(b) and 11(2) PSD2 require CAs to scrutinise the application, including the information on the business plan. Furthermore, Article 5.1(b) of PSD2 specifies that the business plan should "demonstrate that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly". While it is not for CAs to refuse to grant an authorisation merely because it believes that the company will be unprofitable, CAs should assess at the authorisation stage, based on the financial forecasts, whether any capital or liquidity shortage could jeopardize the ability of the applicant to meet prudential requirements (e.g. its ability to implement the internal control framework) for the first 3 years in both target and stress situations. In order to take an informed view in this regard, it is important that CAs assess the plausibility of the financial forecasts submitted by applicants, by analysing the assumptions on which they are based.
98. Taking into account the above, the PRC is of the view that **DK is largely compliant with the supervisory expectations on the assessment of the business plan**, and considers that DK should conduct a more in-depth assessment of business plans, including a more thorough check of the plausibility of the financial forecasts. As part of this assessment, DK should also collect and scrutinise the applicant's analysis of its competitive position and check whether the costs for internal control and outsourcing are properly reflected in the applicant's financial projections.
99. Furthermore, in addition to SE and DK, several other CAs (BG, DE, HR, LI, PL, SI, SK) do not appear to check whether the costs for internal control and/or outsourcing are adequately reflected in the financial forecasts submitted by applicants. In this regard, BG and PL indicated that they sometimes check whether those costs are reflected in the financial forecasts on a case-by-case basis, but without having a clear methodology or criteria for

triggering such checks. BG further added that the assessment of the costs for internal control and outsourcing is made on the basis of the “general financial status”, as no specific criteria for the assessment are contained in the Guidelines. DE and HR indicated that they assess the human resource costs as one of the main lines of expenses on an aggregated basis, but do not assess specifically the human resources costs related to internal control as part of their assessment of the business plan. DE further explained that (i) there is no explicit requirement in GL 4 for applicants to specify the forecasted number of staff allocated to internal control, and (ii) under national law, applicants are required to submit the forecast balance sheets and P&L-statements in accordance with special accounting standards applicable to PIs and EMIs in Germany, which do not include a specific breakdown of human resources costs outlining those related to internal control functions. The CA further explained that it requires applicants to submit the planned amount of FTEs dedicated to internal control functions as specified in GL 8.1 (b), and assesses this information as part of their assessment of applicants’ internal control mechanisms. It also explained that, while the CA does not specifically assess the human resources costs dedicated to internal control as part of their assessment of the business plan, it has the power to require a detailed breakdown of human resource costs in order to verify that these resources are adequately taken into account in the financial forecasts.

100. With regard to the above, the PRC recalls that GL 8.1(b) explicitly indicates that applicants should describe periodic and permanent controls including “the human resources allocated”. In the PRC’s view, CAs should consider this information as part of their assessment of the business plan, when assessing the plausibility of the base assumptions described in GL 4(c)(i) and the “explanations of the main lines of [...] expenses” referred to in GL 4(c)(ii). Therefore, the PRC is of the view that **BG, DE, HR, LI, PL, SI and SK are only largely compliant with the supervisory expectations on the assessment of the business plan** and considers as follow-up measures that these CAs should check, as part of their assessment of the business plan, whether the costs for internal controls are properly reflected in the financial forecasts submitted by applicants under GL 4 (both in the target and stress scenarios referred to in GL 4.1(i)). This is important in order to check possible inconsistencies between the envisaged internal control frameworks and the resources that the applicant envisages to implement that framework. In this regard, the PRC considers that **CAs should gather precise information on the estimated cost of implementation, including costs for envisaged human resources allocated to this framework, to be in a position to challenge and fully understand the applicant’s ability to effectively implement it.**
101. Two other areas in which the PRC found that there are discrepancies in CAs’ practices relate to:
- (i) assessment of the viability and sustainability of the applicants’ business model; and
  - (ii) supervisory actions taken after assessing the business plan.



102. In relation to (i), while most CAs indicated that they assess the viability and sustainability of the applicants' business model, a minority indicated that they do not. These latter CAs indicated that, as long as the applicant demonstrates that it is able to meet the requirements for authorisation (including initial capital and own-funds requirements), the CA does not have the power to reject an application if it believes that the business will not be viable. One CA (DK) indicated that it is stated explicitly in their national legislation that it is not up to the CA to determine if the business model is viable.
103. The PRC acknowledges that these discrepancies in CAs' practices may be due to the fact that CAs interpret differently the meaning of 'viability'. In this regard, the PRC is of the view that it is not up to the CA to refuse to grant an authorisation merely because it believes that the company will be unprofitable. However, in the PRC 's view, CAs should assess at the authorisation stage, based on the financial forecasts as scrutinised by the CA, whether any capital or liquidity shortage could jeopardize the ability of the applicant to meet prudential requirements (e.g., its ability to implement the internal control framework) for the first 3 years in both target and stress situations, and assess the sustainability of a business model to properly understand its vulnerabilities.
104. In relation to (ii), the PRC found that CAs take different approaches when they conclude that financial forecasts are overestimated, or that there is a substantial risk that the applicant within a few years will lack the necessary capital or liquidity. Some of these different approaches include: (i) asking applicants to further stress-test their business plan and demonstrate that they will have enough capital to cover the subsequent losses (e.g., FR, PT); (ii) asking the applicant to increase their own funds as of licensing (e.g., BE, CY, EE, HL, PT); (iii) requiring applicants to hold 20% higher own funds as per Article 9(3) PSD2 (e.g., IE and PT); and (iv) requesting details on how the applicant intends to raise the necessary capital (DK and SE) which can take the form of a commitment letter from existing shareholders (DK, PT). Also, one CA (HR) indicated that, in exceptional cases, it requires a bank guarantee in case the applicant later faces financial difficulties, to ensure that the applicant will be able to continue to operate soundly.

## Conclusions

### Follow-up measures for CAs

105. As mentioned above, the PRC considers as follow-up measures that:
- DK and SE should conduct a more in-depth assessment of business plans, including a more thorough check of the plausibility of the financial forecasts.
  - BG, DE, HR, LI, PL, SI and SK should check whether the costs for internal controls are properly reflected in the financial forecasts submitted by applicants.

### Best practices for CAs

106. The PRC also identified a number of best practices developed by some CAs that might be of benefit for others CAs to adopt in order to support their assessment of the business plan. In particular, in order to inform the CAs' assessment of the plausibility of the financial forecasts submitted by applicants, the PRC considers it a best practice to compare the forecasts submitted by applicants with historical data available to the CA from supervised PIs/EMIs carrying out similar activities, where possible. Several CAs indicated that they carry out such benchmarking, either systematically for all applications or on a case-by-case basis where the CA has doubts about the plausibility of the financial forecasts.
107. For example, PT explained that it compares the financial forecasts submitted by applicants against the financial reports from the last three exercises submitted by authorised PIs/EMIs to verify whether, for example, the fees and commissions projected by the applicant are in line with the ones charged by the already established entities or (ii) the projected number and evolution of clients and transactions represent realistic assumptions. Similarly, DE mentioned that they assess the plausibility of the assumptions on which applicants' financial forecasts are based by comparing them to existing data from other applications and already licensed institutions which are comparable in business model, size etc. Also, NL indicated that it uses a dashboard with the figures of the current stock of authorised entities and looks at the ratios such as C/I, ROE, transaction volume, fee income, for authorised PIs/EMIs with a similar business model. Two other CAs (CY, FR) indicated that they are developing experimental tools drawing on the data from their supervision department responsible for the ongoing supervision of authorised EMIs/PIs, with the aim of using that data as a benchmark to assess the projected financial performance of new applicants.
108. Another best practice that the PRC has observed in the case of DK, FR, LV, NL and IT is to establish forums for exchange of information with market participants (e.g. Fintech forums, Innovation hubs etc.) to monitor market trends and gather a deeper understanding of innovative business models and the key economic drivers of the industry. Where such forums already exist, CAs are encouraged to share key findings of those forums with the staff responsible for the assessment of the business plan. This can better inform the CAs' assessment of the plausibility of business plans as well as understand the base assumptions upon which they were constructed.

### Recommendation to the European Commission

109. Furthermore, in order to ensure more consistency and harmonisation across the EU and create a level-playing field, the PRC recommends that the European Commission mandate the EBA, as part of the PSD2 review process, to develop a common assessment methodology for granting authorisation as a PI or as an EMI, which could then include a section providing more detailed requirement on the business plan analysis.

### 4.3 Governance arrangements and internal control mechanisms

110. The PRC aimed to assess whether CAs ensure that applicants have proportionate, appropriate, sound and adequate governance arrangements and internal control mechanisms in line with Articles 5(1)(e) and 11(4) of PSD2. The PRC also took into account in its assessment the analysis described in chapter 3 of this report as regards the implementation by CAs of GL 5 and 8 (on the structural organisation, governance arrangements and internal control). The follow-up measures and best practices for CAs outlined at the end of that chapter in relation to the implementation of GL 5 and 8 have not been reiterated in this section.

#### Supervisory practices of CAs

111. The PRC found that CAs' supervisory expectations in relation to governance arrangements and internal control mechanisms vary across CAs.

112. When asked to explain their supervisory expectations in this area, and what specific elements they examine when assessing whether the applicants' envisaged internal control framework is adequate, some CAs (AT, BG, EE, ES, FI, HR, LI, NO, PL, SE, SK) did not clearly articulate their supervisory expectations in this area. For example, some CAs indicated that they carry out the assessment by reviewing the information under GL 8 and ask the applicant to explain these in detail and, where necessary, to improve the described internal control framework, or that they perform case-by-case assessments. When some CAs were probed, general responses were again given, with little or no explanation of the checks performed, which may be reflective of a lack of clearly a defined methodology or criteria for assessing applicants' governance arrangements and internal control mechanisms. Two of these CAs (EE, SK) indicated that they have such criteria/methodology and that these are set out in their national legislation and/or guidelines, without providing further explanations regarding the criteria the CA uses when assessing the information specified in the PSD2 and the EBA Guidelines.

113. Despite the lack of details in some CAs' answers, the PRC identified two essential areas of the assessment in which CAs' practices diverge:

- the assessment of the persons responsible for internal control functions; and
- the assessment of the adequacy of resources dedicated to internal control functions.

114. While some CA explicitly mentioned that they evaluate the fitness of the person(s) responsible for internal control functions as part of the assessment of the internal control framework, other CAs (i.e. DK, ES, and SE) indicated that they do not. Those CAs explained that this is because, in their view, they have no legal basis under PSD2 to do so. Another CA (LU) mentioned that, in the absence of a clear legal basis for the CA to challenge the

- suitability of these persons, if the CA is of the opinion that a proposed person is not suitable because they lack experience, the CA's only course of action is to recommend that such persons follow proper training with regards to specificities of the national legislation on payment services. PT appears to take a similar approach.
115. In this regard, the PRC is of the view that, while the PSD2 does not provide specific guidance regarding the assessment of the persons responsible for internal control functions, these checks are part of the assessment of the appropriateness of internal governance arrangements referred in Articles 5.1(e) and 11(4) of PSD2. GL 8.1(d) specifies that, as part of the information on governance arrangements and internal control mechanisms, applicants should provide information on the identity of the person(s) responsible for the internal control functions, as well as an up-to-date curriculum vitae. Therefore, in line with Articles 5.1(e), 11(2) and 11(4) of PSD2 and GL 8.1(d), the PRC is of the view that PSD2 and the GL expect CAs to use this information, without carrying out a full fitness and propriety check, to evaluate whether the persons responsible for internal control functions possess appropriate knowledge and experience to perform their role.
  116. Given that DK, ES, and SE do not perform such checks, the PRC is of the view that **DK, ES, and SE are not fully compliant with the supervisory expectations deriving from Guideline 8** and considers as a follow-up measure that these CA should evaluate whether the persons responsible for internal control functions possess appropriate knowledge and experience to perform their role.
  117. Furthermore, as regards the evaluation of the person responsible for internal control functions, some CAs (i.e., 13 out of 29 respondents) indicated that they do not have a minimum requirement regarding the experience that this person should have. By contrast, other CAs seem to have stricter expectations. For instance, CZ indicated that the person responsible for internal control functions should have a relevant experience of at least 3 years. Similarly, SK indicated that it should have 3 years of 'executive' experience in banking, finance, law or other economic areas. HU also highlighted that it requires internal auditors to have at least 3 years of professional experience.
  118. In relation to the adequacy of internal controls resources, the majority of CAs indicated that they check, as part of the authorisation process, whether applicants have enough resources dedicated to internal control functions. Yet, CAs' assessment of what is considered sufficient varies. While some CAs assess the adequacy of the number of forecasted FTEs dedicated to internal control, other CAs seem to limit their assessment to the suitability of the head of the internal control function, without taking a view on the adequacy of the forecasted staff allocated to internal control. SE is an outlier in this respect, as it does not seem to make any checks on these resources. In this respect, and as also mentioned in paragraph 116 above in relation to GL 8, the PRC is of the view that **SE is not fully compliant with the supervisory expectations deriving from Guidelines 5 and 8** and considers that SE should evaluate the adequacy of internal controls resources as part of its assessment of the internal control mechanisms.

119. The PRC is of the view that these divergences stem from the absence of clear rules and guidance in the PSD2 as regards the applicable requirements on governance arrangements for PIs/EMIs. This leads to divergent practices across CAs and unlevel playing field issues, and also creates challenges for CAs in ensuring that there are appropriate checks and balances in place. For example, several CAs indicated that, in the absence of any minimum requirements in the legislation in terms of internal governance structures required for PIs and EMIs, it is challenging to ensure that the independence in the management board is achieved through a balance of executive and (independent) non-executive directors.
120. Regarding governance arrangements, the PRC also identified some areas for improvement in relation to the CAs' review of the (draft) outsourcing agreement. In particular, the PRC found that some CAs do not check whether applicants' draft outsourcing agreements are in line with the [EBA Guidelines on outsourcing arrangements \(EBA/GL/2019/02\)](#). More specifically, some CAs do not check whether the draft outsourcing agreements include service level agreements (DK, SE); provisions on business continuity and exit strategies (AT, DK, SE); or reporting obligations on events that may have a material impact on the PI/EMI (AT, DK, PL, SE). For this reason, the PRC is of the view that **AT, DK, PL and SE are not fully compliant with the supervisory expectations as regards the assessment of outsourcing agreements** and considers as a follow-up measure that these CAs should check whether the draft outsourcing agreements submitted by applicants include the mandatory provisions set out in the EBA Guidelines on outsourcing arrangements.
121. Finally, in relation to the assessment of outsourcing agreements, DK indicated that while applicants 'typically' submit draft outsourcing agreements, the CA's evaluation relies on the applicant's self-assessment of the contracts. The CA explained that, in its view, it does not have a legal basis under PSD2 to evaluate those outsourcing arrangements as part of the authorisation process, or to refuse authorisation on the basis of this evaluation since PSD2 refers only to "a description of outsourcing arrangements" (Article 5(1)(l) PSD2). The PRC disagrees and recalls that Articles 5.1(e) and 11(4) of PSD2 indicate that CAs should grant an authorisation only if the applicant has "robust governance arrangements", a notion that includes effective outsourcing governance.
122. Furthermore, Article 11(2) PSD2 provides that CAs "shall grant an authorisation if the information and evidence accompanying the application complies with all of the requirements laid down in Article 5". The GL specify that the description of outsourcing arrangements under Article 5.1(l) PSD2 includes a copy of the outsourcing agreement (GL 5.1 (d)). This information is necessary in order for CAs to assess whether applicants comply with the relevant requirements in PSD2 as regards governance arrangements and outsourcing. In this respect, and as also mentioned in paragraph 120 above, the PRC is of the view that **DK is not fully compliant with the supervisory expectations as regards the assessment of outsourcing agreements** and considers that DK should require applicants to submit draft outsourcing agreements and conduct a more in-depth analysis of the

outsourcing arrangements based on the copy of draft contracts submitted by the applicant and the information referred to in GL 5.1(c).

## Conclusions

### Follow-up measures for CAs

123. As follow-up measures, the PRC considers that:

- DK, SE and ES should evaluate whether the persons responsible for internal control functions possess appropriate knowledge and experience to perform their role;
- SE should check the adequacy of the resources dedicated to internal controls;
- AT, DK, PL and SE should check whether the draft outsourcing agreements submitted by applicants include the mandatory provisions set out in the EBA Guidelines on outsourcing arrangements in relation to service level agreements (DK, SE); provisions on business continuity and exit strategies (AT, DK, SE, DK); and reporting obligations on events that may have a material impact on the PI/EMI (AT, DK, PL, SE); and
- DK should require applicants to submit draft outsourcing agreements and conduct a more in-depth analysis of the outsourcing arrangements based on the copy of draft contracts submitted by the applicant and the information in GL 5.1(c).

### Best practices for CAs

124. The PRC also observed some best practices developed by some CAs that might be of benefit for other CAs to adopt to ensure a sound and prudent management of PIs and EMIs:

- Providing guidance to the market regarding the CAs' supervisory expectations in terms of governance arrangements and adequate internal control mechanisms for PIs and EMIs;
- Where internal control operational tasks are outsourced to a third party, ensuring that the responsibility for the internal control function is retained internally (i.e., that there is at least one person in-house responsible for the internal control function and the outsourced tasks) and assessing whether the respective third party has the necessary expertise and resources necessary in order to perform the respective tasks;
- Assessing the independence of the internal control functions against all the criteria set out in section 19.2 of the EBA Guidelines on Internal Governance under Directive 2013/36/EU (EBA/GL/2017/11);

- Conducting interviews, during the authorisation process, with the persons responsible for internal control functions in order to ensure that the internal controls in place match with the provided documentation;
  - Ensuring that the majority of the management body in its supervisory function consists of non-executive members and includes a sufficient number of independent members within the meaning of section 9.3 of the [Joint EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU \(EBA/GL/2017/12\)](#), where the nature, scale and complexity of their activities makes this appropriate, in order to ensure that independent judgement is exercised where there is an actual or potential conflict of interest. In this respect, one CA (NL) indicated that it requires that at least half of the members of the management body in its supervisory function to be independent.
125. In addition, the PRC observed some best practices developed by some CAs that it considers as follow-up measures that all CAs should adopt to ensure a sound and prudent management of PIs and EMIs:
- ensuring that applicants have a ‘three lines of defence’ model that includes the functions of risk management, compliance and internal audit where the nature, scale and complexity of their activities makes this appropriate, leveraging on the [EBA Guidelines on internal governance under Directive 2013/36/EU \(EBA/GL/2017/11\)](#); and
  - checking the adequacy of the number of forecasted FTEs dedicated to internal control, taking into account the applicant’s business model and business plan, including the information in GL 4 and GL 8.1(b).

### Recommendation to the European Commission

126. Moreover, the PRC recommends to the European Commission to clarify, as part of the PSD2 review, the applicable governance arrangements for PIs and EMIs, similarly to the approach taken under the CRD for credit institutions, and taking into account the proportionality principle. In particular, the PRC recommends to:
- clarify the minimum requirements that PIs or EMIs should meet and consider whether more alignment with governance requirements in CRD (for example aspects of Articles 76, 88, and 91 of CRD) would be appropriate;
  - clarify the requirement for CAs to assess the suitability of the persons responsible for internal control and the criteria CAs should use for carrying out this assessment. This would ensure more consistency and harmonisation across the EU and create a level-playing field, and also help address the challenges faced by those CAs who take

the view that they do not have a clear legal basis to conduct such assessments as part of the authorisation process;

- in line with the EBA response to the PSD2 call for advice, mandate the EBA, as part of the PSD2 review, to develop a mandate on the internal governance arrangements, processes and mechanisms for PIs/EMIs.

#### 4.4 Assessment of shareholders with qualifying holdings

127. With regard to the assessment of shareholders with qualifying holdings in the applicant's capital, the PRC assessed whether CAs scrutinise the suitability of those shareholders by taking into account the need to ensure the sound and prudent management of PIs and EMIs, in line with Articles 5(1)(m) and 11(6) PSD2. The PRC also took into account in its assessment the analysis in chapter 3 of this report as regards the implementation by CAs of GL 15 on the assessment of shareholders with qualifying holdings. The follow-up measures and best practices for CAs outlined at the end of that chapter in relation to the implementation of GL 15 have not been reiterated in this section.

##### Supervisory practices of CAs

128. The PRC found that the level of scrutiny that CAs apply to the assessment of the suitability of shareholders with qualifying holdings varies in terms of scope and intensity.
129. As regards the scope of the assessment, two CAs (PL, RO) do not always assess all the shareholders having a direct or indirect qualifying holding in the applicant's capital within the meaning of Articles 5(1)(m) and 11(6) PSD2. PL indicated that national law requires the CA to assess the shareholders with a direct qualifying holding in the applicant's capital and the parent entity at the top of the chain, but not the other shareholders in the chain that indirectly have a qualifying holding in the applicant's capital. PL explained that the CA may request any necessary additional information or documents, including information on entities in the chain of shareholders of the entity applying for authorisation and that it uses this right in justified cases. RO indicated that the national legislation stipulates the assessment of all direct shareholders with qualifying holdings, and the last indirect shareholder with qualifying holdings at the top of the chain that gains the control, unless the CA considers it necessary to assess one or more intermediate holders of qualifying holdings in the chain. The CA explained that for entities authorised so far under PSD2 there was no case in which there were shareholders with an indirect qualifying holding in the chain. It also indicated that it intends to amend the legal framework so that all the direct and indirect shareholders with qualifying holding will be assessed.
130. Considering that these CAs do not always assess all the shareholders having a direct or indirect qualifying holding in the applicant's capital as required by PSD2, the PRC is of the view that **PL and RO are not fully compliant with Articles 5(1)(m) and 11(6) PSD2 and with**



**GL 15**, and considers as a follow-up measure that these CAs should take further steps in order to ensure that they fully comply with these requirements.

131. Furthermore, the PRC identified an instance of potential breach of the PSD2's maximum harmonisation requirement in the case of BG. The national law requires the CA to assess all persons holding directly 3% (or more) of shares or voting rights attached to shares in the applicant's capital, and not only shareholders with a qualifying holding in the applicant's capital. The CA explained that, for the persons holding between 3% and 10% of the shares in the applicant's capital, a number of documents are required in order to obtain general information and examine the origin of the funds, in order to ensure that such persons do not operate or exercise an influence on decision-making to the detriment of the prudent and sound management of the applicant. The CA explained that the information required from these persons is narrower in scope compared to the more intensive assessment of shareholders with qualifying holdings.
132. The PRC notes that CAs should require and assess basic information about all shareholders including their name and their percentage holding, in line with GL 15.1(a), 15.1(b) and 15.3(j), in order to understand the full shareholding structure of the applicant. However, the information required by BG seems to go beyond what is required in Articles 5(1)(m) and 11(6) of PSD2, which provide that only shareholders with a qualifying holding within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013 (i.e., persons holding a direct or indirect holding in the applicant's capital which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the applicant) are to be assessed. Article 107(1) PSD2 provides that this is a fully harmonised provision and that Member States cannot have other requirements. In light of this, and given that the EBA's ability to investigate breaches of Union law does not extend to national legislation, the PRC recommends to the European Commission to assess whether such requirements are in line with the maximum harmonisation nature of the PSD2.
133. The PRC also identified a number of challenges faced by CAs when assessing the suitability of shareholders with qualifying holdings. The most common challenges relate to the assessment of documents from other jurisdictions, obtaining timely criminal records checks for shareholders from non-EU/EEA countries, assessing the suitability of shareholders with qualifying holdings in case of complex reputational profiles (e.g. individuals who are subject to sanctions) and assessing complex shareholding structures.
134. Also, a few CAs (BE, DK, RO) were of the view that the Guidelines are very prescriptive in terms of the documentation that needs to be obtained from shareholders. In particular, it was suggested that the Guidelines should be more flexible regarding the documents to be considered in the evaluation of certain types of shareholders (such as large capital investment funds, entities under the supervision of a competent authority, or international organisations such as EIF, EIB or ERBD).

## Conclusions

### Follow-up measures for CAs

135. The PRC considers that as follow-up measures that PL and RO should take further steps in order to ensure compliance with Articles 5(1)(m) and 11(6) of PSD2 as regards the scope of the assessment of shareholders with qualifying holdings.

### Recommendation to the EBA

136. In order to ensure more consistency in supervisory practices across the EU and create a level-playing field, the PRC recommends that, as part of any future review of its own Guidelines, the EBA provides more guidance on how the proportionality principle should be applied in assessing the suitability of shareholders having a qualifying holding in the applicant's capital. In particular, the PRC recommends that any future revised Guidelines clarify the interplay between these EBA Guidelines and the Guidelines developed by the EBA, ESMA and EIOPA (the Joint ESAs Guidelines) on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01), to which GL 15 cross refers and which allows CAs to calibrate, to some extent, the intensity of the assessment on the nature of the proposed shareholder/acquirer.

### Recommendation to the European Commission

137. The PRC also recommends that the European Commission assesses whether, in the case of BG, the national law provisions requiring the CA to assess all persons holding directly between 3% and 10% of shares or voting rights attached to shares in the applicant's capital are in line with the maximum harmonisation nature of the PSD2.

## 4.5 Assessment of directors and persons responsible for the management of PIs and EMIs

138. The PRC conducted a more targeted analysis regarding the assessment of directors and persons responsible for the management of PIs and EMIs. This analysis examined CAs' criteria for assessing the suitability of these persons.
139. The PRC found that some CAs apply in their supervisory practices the [Joint EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU \(CRD\) and Directive 2014/65/EU \(EBA/GL/2017/12\) across all financial institutions](#) for PIs and EMIs, to the extent possible, given that the CRD requirements on fit and proper checks are not the same as in the PSD2. However, the criteria CAs use in their assessment vary significantly across CAs. In some cases, these criteria are set out in the national legislation, in other cases CAs take a case-a-case approach in their assessment, without having any predetermined/written criteria. This ultimately results in different outcomes and may lead to unlevel playing field issues.

140. For example, LU requires that executive directors are full-time dedicated to the applicant and cannot have another executive mandate or role with other entities, whereas FR does not require this in all cases, e.g. where there might be group synergies. BG requires directors to have at least five years professional experience in comparable institutions whereas other CAs (such as BE) set no requirements on knowledge or education but allow persons with limited to no such knowledge to gain it after the authorisation is granted. Also, while most CAs check as part of their suitability assessment of the directors and persons responsible for the management of the applicant and/or as part of their assessment of applicants' governance arrangements whether the respective persons will have enough/sufficient time to fulfil their duties (the "time commitment criterion"), other CAs (e.g. PT, HR, SE) do not, as there is no express requirement in PSD2 to do so, unlike in CRD.

## Conclusions

### Best practices for CAs

141. Acknowledging that there are no specific requirements in PSD2 as to how CAs should carry out the assessment of the suitability of the directors and persons responsible for the management of PIs and EMIs, the PRC considers it is a best practice for CAs to apply in their assessment, to the extent possible, the guidance set out in the Joint EBA and ESMA Guidelines mentioned above, including the time commitment criterion.
142. Also, in those cases where the criteria used by CAs in their assessment are not specified, the PRC encourages CAs to provide clarity to the market as regards the criteria used by CAs in their assessment, in order to ensure more transparency and a level-playing field for applicants.

### Recommendation to the European Commission

143. Furthermore, taking into account the divergences in CAs' practices mentioned above, and in order to ensure more consistency and harmonisation across the EU, create a level-playing field and ensure a sound and prudent management of PIs and EMIs, the PRC recommends to the European Commission to clarify, as part of the PSD2 review, the criteria that CAs should use in assessing the suitability of directors and persons responsible for the management of PIs and EMIs taking into account the proportionality principle, including whether the time commitment criterion should be part of this assessment. In addition to clarifying these aspects in the Directive, the PRC recommends to the European Commission to mandate the EBA, as part of the PSD2 review, to develop guidelines specifying these criteria, similarly to the approach taken for credit institutions under the CRD and taking into account the proportionality principle.

## 4.6 The AML/CFT internal control framework

144. With regard to the assessment of applicants' AML/CFT internal control framework, the PRC assessed whether CAs scrutinise the documentation provided by applicants to ensure that

the applicant has in place or will put in place robust internal control mechanisms to mitigate ML/TF risks. As part of its assessment criteria, the PRC examined whether CAs:

- verify the applicants' ML/TF risk assessment as referred to in Guideline 14.1(a) is appropriate and complete;
- scrutinize the documentation provided by applicants to ensure that the applicant has in place, or will put in place, adequate systems and controls to ensure that its ML/TF risks are managed effectively, including the risks associated with its branches, agents or distributors; and
- check that the person in charge of ensuring the applicant's compliance with AML/CFT obligations has sufficient AML/CFT expertise to carry out their functions.

145. The PRC also took into account in its assessment the analysis in chapter 3 of this report as regards the implementation by CAs of GL 14 on the AML/CFT internal control framework. The follow-up measures and best practices for CAs outlined in that chapter in relation to the implementation of GL 14 have not been reiterated in this section.

### Supervisory practices of CAs

146. All CAs reported that they assess as part of the authorisation process the information submitted by applicants in relation to the internal AML/CFT framework of the applicant, either by conducting this assessment directly or by requesting input from the relevant AML/CFT competent authority.
147. Common challenges reported by CAs when assessing the information received from applicants included: the licensing team's lack of in-depth technical expertise to adequately assess AML/CFT documentation received, and the need to require support from the relevant AML/CFT department (CY); poor, unclear, or uncomplete documentation obtained from the applicant (FI, DK); and other operational issues (e.g. document not translated into the language used in the CA) (AT).
148. With regard to the assessment of the applicants' ML/TF risk assessment (referred to in GL 14.1(a)), three CAs (CY, HR, SI,) indicated that they do not have a methodology or criteria to assess that the applicant's ML/TF risk assessment is appropriate and complete. In addition, the PRC understands that one more CA (NO) uses a basic approach to such assessments using a checklist. On the other hand, some CAs reported that they assess the information received from the applicant in the same manner as if it was an ongoing supervisory activity on a PI already operating under their jurisdiction. For example, the applicant's risk assessment, provided for the application, is being analysed against the same criteria as it would be during an onsite/offsite supervisory activity on the PI. In the absence of a pre-defined criteria or methodology, the PRC is of the view that **CY, HR, NO and SI are not fully compliant with the supervisory expectations as regards the evaluation of the applicant's ML/TF risk assessment** and considers as a follow-up measure that these CAs should define

- objective criteria/methodologies for scrutinising the applicant's ML/TF risk assessment which is aligned to the EBA's [Risk Factor Guidelines \(EBA/GL/2021/02\)](#).
149. With regard to the assessment of the applicants' systems and controls to ensure AML/CFT compliance of its branches, agents or distributors (referred to in GL 14.1(c)), 8 CAs (CY, DE, HU, HR, PL, RO, SE, SI) indicated that they do not have a methodology or criteria to assess the systems and controls that the applicant has or will put in place to ensure AML/CFT compliance of its branches, agents or distributors. Two of these CAs (HU, SE) reported that their national legislation does not require the applicant to provide this information. Some CAs indicated that applicants do not always have a clear picture of their future network of agents and distributors at the moment of their authorisation and sometimes appoint agents and distributors after the authorisation is granted, at which point they need to undergo a separate registration process in accordance with Article 19 PSD2.
150. In relation to the above, the PRC is of the view that **CY, DE, HU, HR, PL, RO, SE and SI are not fully compliant with the supervisory expectations as regards the assessment of the applicants' systems and controls to ensure AML/CFT compliance of its branches, agents or distributors** and considers, as a follow-up measure, that these CAs should establish, and systematically follow, a methodology/criteria for such assessment.
151. With regard to the assessment of the person designated as responsible for the PI/EMI's compliance with AML/CFT requirements, three CAs (ES, HU, SE) reported that they do not assess the suitability and expertise of the person in charge of implementing the applicant's AML/CFT obligations as part of the authorisation process. In addition, one CA (RO) reported that they require and assess this information for entities seeking authorisation for the provision of the payment services 1 - 6 of the Annex I to PSD2, but not for entities applying for authorisation for the payment services 7 of the Annex I to PSD2 (i.e., payment initiation services), as detailed in paragraph 69 above. Other CAs reported that they conduct some analysis on the background and expertise of the applicant, however practices vary significantly across CAs. Most CAs consider the person's CV and previous job experiences, (i.e., education and any training activities the person have completed in the area of AML/CFT), although one CA (PL) reported that they do not request the CV of the person, just their diploma. A number of CAs (IE, MT, SE) conduct verifications on the independence of the candidate as part of the process, while one CA (EL) mentioned that they identify any potential conflict-of-interests during the assessment. In this regard, the PRC is of the view that as part of the authorisation process, CAs should evidence that the expertise of the person designated as responsible for the PI/EMI's compliance with AML/CFT requirements is sufficient to enable the person to fulfil their role effectively. For this reason, the PRC is of the view that **ES, HU, RO and SE are not fully compliant with the supervisory expectations as regards the assessment of the person in charge of ensuring the applicant's compliance with AML/CFT obligations** and considers, as a follow-up measure, that these CAs should integrate into their authorisation process the assessment of the suitability and expertise of the person in charge of implementing the applicant's AML/CFT obligations.

152. Some CAs (BE, CZ, CY, LT) reported that, in some instances, they conduct interviews with the person in charge of the AML/CFT compliance of the applicant in order to verify if the person's expertise in the AML/CFT area is sufficient. Although two other CAs (LV, MT) indicated that such interviews are a generalized practice for them during the authorisation process, the PRC noted that this emerging best practice remains marginal across CAs.

## Conclusions

### Follow-up measures for CAs

153. As follow-up measures, the PRC considers that:
- CY, HR, NO and SI should define objective criteria/methodologies for scrutinising the applicant's ML/TF risk assessment which is aligned to the EBA's Risk Factor Guidelines (EBA/GL/2021/02). The ML/TF risk assessment is central to the applicant's AML/CFT internal control framework, as the AML/CFT controls and systems, and mitigating measures of the applicant will be defined on the basis of the ML/TF risk identified and assessed.
  - CY, DE, HU, HR, PO, RO, SE and SI should establish, and systematically follow a methodology/criteria for the assessment of applicant's systems and controls to ensure AML/CFT compliance of the applicants' branches, agents or distributors;
  - ES, HU, RO and SE should integrate into their authorisation process the assessment of the suitability and expertise of the person in charge of implementing the applicant's AML/CFT obligations and define follow-up measures CAs can take in situations whereby the results of such assessment are unsatisfactory.

### Best practices for CAs

154. The PRC identified a best practice developed by LV and MT which might be of benefit for other CAs to adopt, which is to conduct, as part of the authorisation process, interviews with the person in charge of ensuring the applicant's compliance with AML/CFT obligations, in order to ensure that their AML/CFT expertise is sufficient to enable them to fulfil this role effectively.

## 4.7 Local substance

155. With regard to the assessment of local substance, the PRC assessed CAs' supervisory expectations and practices in terms of the requirements that applicants must meet in order to demonstrate compliance with Article 11(3) PSD2. This requires PIs to have their 'head office' in the same Member State as their registered office, and to carry out "at least part of [their] payment service business there". The aim of this provision is to reduce the scope for supervisory arbitrage and abuse of the passporting system, and to ensure that the home

- supervisor has effective powers over the entity that it has authorised and is responsible for supervising.
156. The analysis shows that there are significant differences in the CAs' supervisory expectations and practices as regards what is required from applicants to demonstrate compliance with Article 11(3) PSD2. In particular the PRC found significant differences in how CAs interpret the requirements in Article 11(3) in relation to:
- The location of the "head office" in the same Member State as its registered office; and
  - The provision of "at least part" of the PIs' payment service business in the MS in which it has its "head office".
157. The issue of local substance is cross-cutting and it affects many parts of the CAs assessment, including directors, internal governance and the business plan. This raises issues in terms of regulatory arbitrage and unlevel playing field issues, as the thresholds to be met across CAs varies with some venues appearing more attractive for applicants engaged in forum shopping.
158. As regards the requirement in Article 11(3) PSD2 for PIs to have their "head office" in the same Member State as its registered office, the PRC found that this requirement is interpreted differently across CAs. Some CAs have interpreted the reference to the "head office" to mean that the PI must be effectively directed from the MS in which it is seeking authorisation. To demonstrate compliance with Article 11(3), these CAs require that the executive members of the management body of the applicant are located in their jurisdiction, with different variations across CAs (e.g. some require a significant senior management presence (e.g. CY), others require a minimum of 2 executives to be present locally (e.g. NL), others require that at least one board member/director is present locally (e.g. DE, EE).
159. Other CAs do not require any physical presence of the management body but require instead local presence of other staff, with different variations across CAs. Some CAs require that the person responsible for the internal control functions is based in their jurisdiction (e.g. LT, BE), other CAs require that the applicant has in-house staff who are able to interact with the CA and/or the relevant AML/CFT authority supervisor and respond to any questions regarding how the entity complies with the prudential requirements (e.g. ES).
160. A third group of CAs does not impose any quantitative thresholds in terms of minimum presence of the members of the management body or other staff, but require applicants to explain the adequacy of their structure in the home MS and demonstrate that the business will be directed from there (e.g. BE requires applicants to demonstrate that there is sufficient staff on the payroll of the applicant, regardless of where the staff is physically located).

161. Finally, in some countries (e.g. HR, SE), the CAs' supervisory expectations in terms of the requirements applicants must meet in order to demonstrate compliance with Article 11(3) PSD2 are more flexible and there is no requirement or expectation for applicants to demonstrate that the PI/EMI will be effectively managed from the jurisdiction in which it is seeking authorisation in order to meet the requirement in Article 11(3) PSD2. This may also be due to the fact that some of these are countries have not yet been confronted with regulatory arbitrage related issues.
162. There is also a lack of consistency across CAs as regards the requirement in Article 11(3) PSD2 for PIs to provide "at least part of their activity" in the jurisdiction in which they have their head office. CAs generally assess the fulfilment of this requirement on a case-by-case basis, without using any quantitative thresholds, which can lead to different outcomes and unlevel playing field issues.
163. SE, which has attracted the third highest number of applications in the period analysed, is an outlier in this respect, as under national law no distinction is made between the concept of "head office" and the "registered office". The CA does not require the local presence of board members or of other staff/functions. Instead, at least half of the board members and the CEO must be domiciled *within the EEA*. Moreover, SE has not implemented into national law the requirement in Article 11(3) PSD2 for PIs to provide "at least part of their activity" in the jurisdiction in which they have their head office. The CA explained that it does not have the power to amend the legislation or to regulate this in its regulatory code. It further explained that, under national law, PIs that are legal entities need to be registered in Sweden and hold each year, within six months of the company's financial year-end, an annual general meeting (in which the shareholders elect board members, are presented with the annual accounts for approval etc.) that must be take place within the city, town or village where the registered office of the company is situated. SE indicated that, apart from these requirements, there is no legal ground under national law to require a certain amount of local presence. It also indicated that, in its experience, companies applying for authorisation are often start-ups and do not have plans to provide their services on a cross border basis. Furthermore, the CA explained that it checks during the authorisation process that the applicant will not outsource activities to such an extent that it will operate as an "empty shell".
164. Taking into account the above, the PRC is of the view that **SE is partially compliant with the supervisory expectations deriving from Article 11(3) PSD2**, and recommends to the European Commission to assess whether Sweden's transposition of PSD2 is in line with the requirement in Article 11(3) PSD2.



## Conclusions

### Follow-up measures for CAs

165. Despite the absence of clear rules in this area, the PRC did observe some best practices developed by some CAs that it considers all CAs should adopt in order to limit forum shopping and ensure that there is enough local substance:
- Ensuring that the applicant will be effectively managed and controlled from the jurisdiction in which it is seeking authorisation, and that it has close links with the respective jurisdiction, for example by requiring that the senior management and the persons responsible for the internal control functions are based in the respective jurisdiction, or, if they are not based in the respective jurisdiction, requiring the applicant to demonstrate how it will ensure that the company will be effectively directed and controlled from that jurisdiction;
  - Checking that the applicant will target customers in the jurisdiction in which it is seeking authorisation, including by assessing the business plan submitted by the applicant in terms of the geographical location of clients (target markets and customers), and checking the language of the website (where available) and the draft framework contracts with customers.

### Recommendations to the European Commission

166. In addition, as mentioned above, the PRC recommends to the European Commission to assess whether Sweden's transposition of PSD2 is in line with the requirement in Article 11(3) PSD2.
167. Furthermore, in order to ensure more consistency and harmonisation across the EU and create a level-playing field, the PRC recommends to the European Commission, to clarify, as part of the PSD2 review, the requirements that applicants must meet in order to ensure sufficient local substance by clarifying/amending the requirements in Article 11(3) PSD2, taking into account the best practices mentioned above.

## 5. Conclusions and recommendations

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168. Based on its analysis of CAs' supervisory practices, the PRC concludes that CAs have largely implemented the EBA Guidelines in the areas analysed and that, where implemented, the Guidelines have achieved their objective of providing consistency and transparency in respect of the information that applicants have to submit as part of an application for authorisation as a PI/EMI.
169. However, the analysis also shows that some CAs have not fully implemented the Guidelines, in particular in relation to obtaining the full set of information from applicants in relation to the business plan, governance and internal control and AML/CFT internal control framework requirements, and assessment of shareholders with qualifying holdings, potentially limiting the extent to which those CAs are able to scrutinise applications compared with having the full set of information required by the Guidelines.
170. Furthermore, there are significant divergences in the practices of CAs in assessing the information submitted and the level of scrutiny in assessing those documents varies across CAs. Together, these deficiencies mean that applicants remain subject to different supervisory expectations as regards the requirements for authorisation as a PI or EMI across the EEA. This gives rise to issues in terms of supervisory level playing field and 'forum shopping' and undermines the objectives of the Directive and the Guidelines of contributing to a single EU payments market and to the consistency of the assessment of applications across the EEA.
171. With regard to the timeliness of the authorisation process, the review found that, while all CAs comply with the requirement in Article 12 PSD2 to take a decision on an application within 3 months from receiving a complete application, the average duration of the authorisation process varies significantly across MS, ranging from 4-6 months to +20 months. The main reason for this is the quality of applications and applicants' timeliness in addressing the issues identified with the application. The PRC also identified a number of other reasons for these variations in duration across CAs, which include different timelines set out in national law and different procedural approaches adopted by CAs in the acceptance and assessment of applications.
172. Throughout the report, the PRC has identified a number of follow-up measures for CAs and recommendations to the EBA and to the European Commission, all of which are aimed at strengthening the consistency of supervisory practices and outcomes. An overview of these is presented in the following section.

## 5.1 Follow-up measures for CAs

173. The appropriate, proportionate and necessary follow-up measures considered necessary for relevant CAs to take in order to address the issues identified in the report are set out below. These are listed following the structure of the report.

### CA's resources

174. All CAs should review processes and resources in order to ensure that they remain adequate to scrutinise applications received within a reasonable time (see paragraph 25).

### Implementation of the EBA Guidelines

175. In relation to GL 4 (on the business plan), SE should implement GL 4.1(a) and (b) and fully implement GL 4.1(c), (d), and (e) (paragraph 58) and DK should take measures to implement GL 4.1(a)(ii) (paragraph 60).
176. In relation to GL 5 and 8 (on governance and internal control), SE should implement GL 5.1(b), and 8.1 (c) and 8.1 (i) and fully implement GL 8.1 (b) and 8.1(d) (paragraph 63) and DK and IT should implement GL 5.1(d) (paragraph 66).
177. In relation to GL 14 (on the AML/CFT framework), HU should take measures to implement GL 14.1 (c), (e) and (f) (paragraph 67); SE should fully implement GL 4.1. (c), (e), (g) and (h) (paragraph 68); and DE and RO should fully implement GL 14.1. (e) (paragraphs 69-70).
178. In relation to GL 15 (on the assessment of shareholders with qualifying holdings), SE should take measures to implement GL 15.1(a), 15.2 (g), 15.3(j), 15.3(n), 15.3(o) para. (ii) and fully implement GL 15.1(b), 15.1(c), 15.3(h), 15.3(l), 15.4 and 15.5 (paragraph 76); BE and LT should fully implement GL 15.2(c)(i) (paragraph 78) and PL and RO should ensure that they fully implement GL 15, by collecting and assessing the information specified in GL 15 in relation to shareholders having an indirect qualifying holding in the applicant (paragraph 79).
179. In relation to GL 1.3 of section 4.4 of the Guidelines (on the confirmation of completeness), AT, CY, CZ, DE, DK, EE, ES, HU, IE, IT, LT, PT and SI should provide the confirmation of completeness as explained in paragraph 83 above.

### Recommendations in relation to the CA's substantive review of applications

180. In relation to the assessment of the business plan, SE and DK should conduct a more thorough check of the plausibility of the financial forecasts (paragraphs 94 and 98), and BG, DE, HR, LI, PL, SI and SK should check, as part of their assessment, whether the costs for internal controls are properly reflected in the financial forecasts submitted by applicants (paragraph 100).

181. In relation to governance and internal control mechanisms, DK, ES and SE should evaluate whether the persons responsible for internal control functions possess appropriate knowledge and experience to perform their role (paragraph 116); SE should check the adequacy of the resources dedicated to internal controls (paragraph 118); AT, DK, PL and SE should check whether the draft outsourcing agreements submitted by applicants are in line with the EBA Guidelines on outsourcing arrangements (paragraph 120); and DK should require applicants to submit draft outsourcing agreements and conduct a more in-depth analysis of the draft outsourcing arrangements based on the description provided by applicants and the copy of the draft contracts (paragraph 122).
182. In addition, all CAs should ensure that applicants have a 'three lines of defence' model which includes the functions of risk management, compliance and internal audit, where the nature, scale and complexity of their activities makes this appropriate (paragraph 125) and check the adequacy of the number of forecasted FTEs dedicated to internal control, taking into account the applicant's business model and business plan, including the information in GL 4 and GL 8.1(b) (paragraph 125).
183. With regard to the assessment of shareholders with qualifying holdings in the applicants' capital, PL and RO should adopt follow-up measures in order to ensure that they fully comply with Articles 5(1)(m) and 11(6) of PSD2 (paragraph 130).
184. In relation to the assessment of the AML/CFT framework, CY, HR, NO and SI should define an objective criteria/methodology for scrutinising the applicant's ML/TF risk assessment which is aligned to the EBA's Risk Factor Guidelines (EBA/GL/2021/02) (paragraph 148); CY, DE, HU, HR, PL, RO, SE and SI should establish, and systematically follow a methodology/criteria for the assessment of applicant's systems and controls to ensure AML/CFT compliance of the applicants' branches, agents or distributors (paragraph 150); and ES, HU, RO and SE should assess, as part of the authorisation process, the suitability and expertise of the person in charge of implementing the applicant's AML/CFT obligations and define follow-up measures the CA can take in situations whereby the results of such assessment are unsatisfactory (paragraph 151).
185. In relation to the assessment of local substance, SE should ensure that its national law is amended to fully transpose the provision in Article 11(3) PSD2 (paragraph 164). In addition, all CAs should ensure that the applicant will be effectively managed and controlled from the jurisdiction in which it is seeking authorisation and that it has legitimate reasons to seek authorisation in that jurisdiction, in order to limit forum shopping and ensure sufficient local substance (paragraph 165).

## 5.2 Recommendations addressed to the EBA

186. In order to ensure greater consistency and harmonisation across the EU and create a level-playing field, the PRC recommends that, as part of any future review of its own Guidelines, the EBA provides more guidance on how the proportionality principle should be applied in

assessing the suitability of shareholders having a qualifying holding in the applicant's capital. In particular, the PRC recommends that any future revised Guidelines clarify the interplay with the Joint ESAs Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01), to which GL 15 cross refers and which allow CAs to calibrate, to some extent, the intensity of the assessment on the nature of the proposed shareholder/acquirer (paragraph 136).

### 5.3 Recommendations addressed to the European Commission

187. In order to ensure more consistency and harmonisation across the EU and create a level-playing field, the report expands on the recommendations included in the EBA's response to the European Commission on the review of the PSD2 (EBA/Op/2022/06) and recommends that, as part of its ongoing PSD2 review process, the European Commission:

- provides clear criteria in order to delineate between the different categories of payment services as well as e-money issuance (paragraph 89);
- clarifies the applicable governance arrangements for PIs and EMIs, similarly to the approach taken under the CRD for credit institutions, and taking into account the proportionality principle (paragraph 126);
- clarifies the criteria that CAs should use in assessing the suitability of the members of directors and persons responsible for the management of PIs and EMIs taking into account the proportionality principle (paragraph 143);
- mandates the EBA to develop a common assessment methodology for granting authorisation as a PI or as an EMI that could include a detailed section on the business plan analysis, governance and internal mechanisms and the assessment of directors and persons responsible for the management of PIs/EMIs (paragraphs 109, 126 and 143); and
- clarifies the requirements that applicants must meet in order to ensure sufficient local substance by clarifying/amending the requirements in Article 11(3) PSD2, taking into account the best practices mentioned in this report (paragraph 167).

188. Also, the PRC recommends that the European Commission assesses whether:

- the national law requirements adopted in the case of BG in relation to the assessment of shareholders of PIs and EMIs are in line with the maximum harmonisation nature of the PSD2, given that they go beyond what is required in Articles 5(1)(m) and 11(6) PSD2 (paragraph 132); and
- Sweden's transposition of PSD2 is in line with the requirement in Article 11(3) PSD2 (paragraph 164).

## 5.4 Best practices developed by competent authorities

189. The PRC also identified best practices developed by some CAs that might be of benefit for other CAs to adopt. These include best practices in relation to:
- enhancing the transparency and efficiency of the authorisation process (paragraphs 47 to 52);
  - informing the CAs' assessment of the business plan and the plausibility of the underlying assumptions (paragraphs 106 to 108);
  - ensuring a sound and prudent management of PIs and EMIs (paragraph 124);
  - applying the guidance set out in the Joint EBA and ESMA Guidelines EBA/GL/2017/12 when assessing the suitability of directors and persons responsible for management of PIs and EMIs, and providing clarity on the criteria used (paragraphs 141 and 142); and
  - ensuring that the person in charge of ensuring the applicant's compliance with AML/CFT obligations has the necessary skills to enable them to fulfil this role effectively (see paragraph 154).

## Annex 1. Peer review committee

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Peer reviews are carried out by ad hoc peer review committees composed of staff from the EBA and members of competent authorities, and chaired by the EBA staff.

This peer review was carried out by:

### Co-chairs

Jonathan Overett Somnier  
Head of Legal and Compliance Unit, EBA

Larisa Tugui  
Senior Policy Expert, Consumer, Payments and Conduct Unit, EBA

### Members

Adrienne Coleton  
Legal Expert, Legal and Compliance Unit, EBA

Antonio Barzachki  
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Gabriel Bosch  
Senior Expert Specialised institutions and procedures, Autorité de contrôle prudentiel et de resolution

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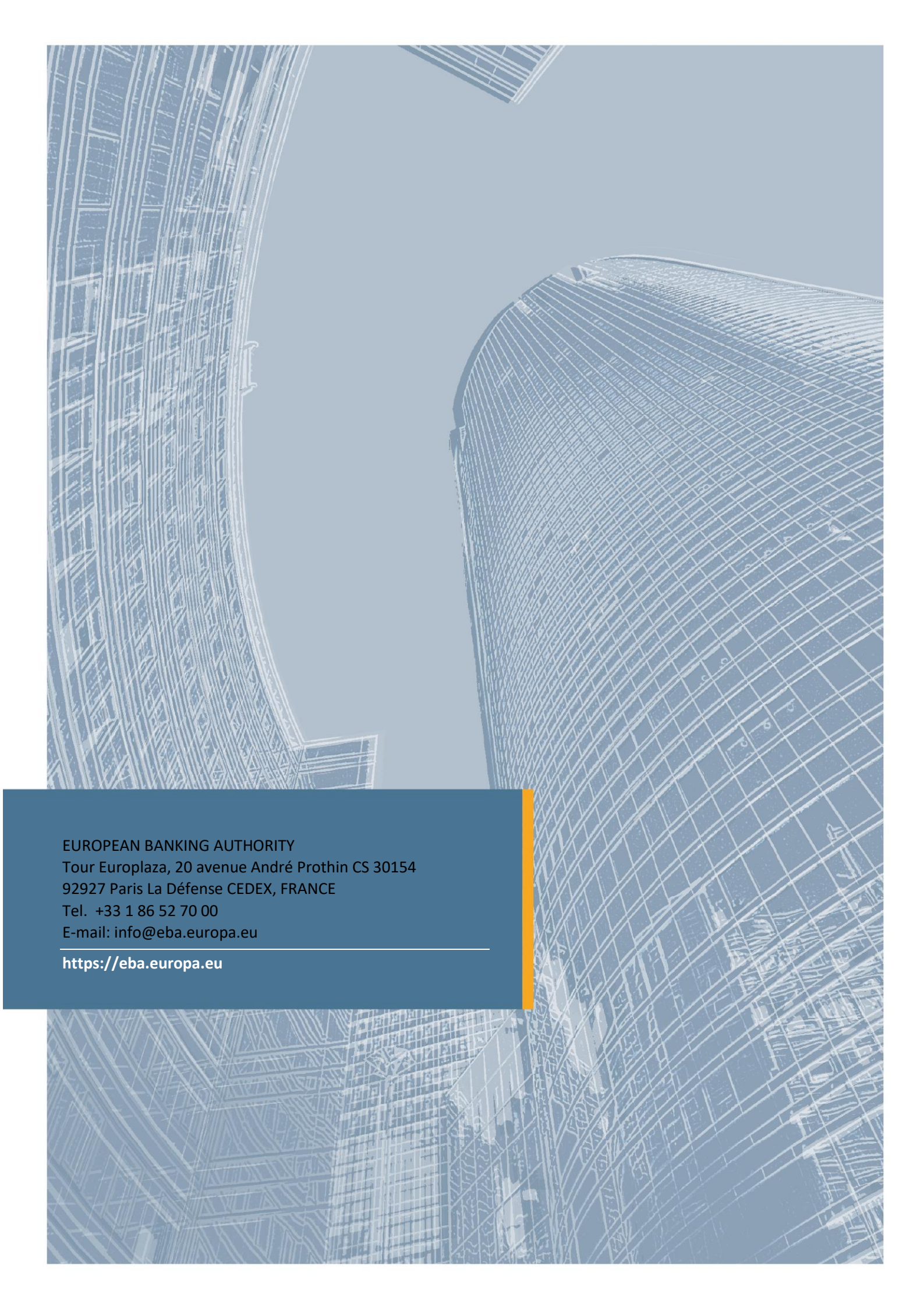
Reinout Temmerman  
Payments Advisor, Surveillance of financial market infrastructures, payment services and cyber risks, National Bank of Belgium

## Annex 2. List of Competent Authorities subject to the peer review

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<b>Country</b>	<b>Competent Authority</b>
AT	Austrian Financial Market Authority
BE	National Bank of Belgium
BG	Bulgarian National Bank
CY	Central Bank of Cyprus
CZ	Czech National Bank
DE	Federal Financial Supervisory Authority (BaFin)
DK	Danish Financial Supervisory Authority
EE	Estonian Financial Supervision and Resolution Authority
EL	Bank of Greece
ES	Bank of Spain
FI	Finnish Financial Supervisory Authority
FR	Prudential Supervisory & Resolution Authority (ACPR)
HR	Croatian National Bank
HU	Central Bank of Hungary
IE	Central Bank of Ireland
IT	Bank of Italy
LI	Financial Market Authority Liechtenstein
LT	Bank of Lithuania
LU	Commission for the Supervision of the Financial Sector (CSSF)
LV	Financial and Capital Market Commission
MT	Malta Financial Services Authority (MFSA)
NL	Dutch Central Bank (DNB)
NO	Financial Supervisory Authority of Norway
PL	Polish Financial Supervision Authority (KNF)
PT	Bank of Portugal
RO	National Bank of Romania
SE	Swedish Financial Supervisory Authority
SI	Bank of Slovenia
SK	National Bank of Slovakia





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