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Additional Information

Level 1 Regulation

Central Securities Depositories Regulation (CSDR) Regulation (EU) No 909/2014- PTR-CSDR

Topic

CSD questions - Requirements for CSD links

Subject Matter

Requirements for CSD links

Question

(a) Article 84(1)(d) of the RTS on CSD Requirements provides that the requesting CSD shall make available to its participants the legal and operational terms and conditions in relation to the link arrangement. Where the receiving CSD is not the issuer CSD and, thus, has itself a CSD link with the issuer CSD (or with another investor CSD), should the requesting CSD

provide its participants with legal and operational terms and conditions applying to these other link arrangements?

(b) Article 84(1)(e) of the RTS on CSD Requirements provides that the requesting CSD shall assess the local legislation applicable to the receiving TC-CSD. Where the receiving TC-CSD is not the issuer CSD and, thus, has itself a CSD link with the issuer CSD (or with another investor CSD), should the requesting CSD perform an assessment of the local legislation applying to these other CSDs?

(c) How should CSDs and their NCAs assess the risks related to a link with an EU CSD which has not been authorised under the CSDR yet?

(d) Are links between CSDs participating in T2S interoperable links as defined in the CSDR?

ESMA Answer

23-03-2018

Original language

[ESMA 70-156-4448 CSDR Q&A 10]

(a) The requesting CSD does not need to provide its participants with information concerning any further CSD links up to the issuer CSD. Article 84(1)(d) of the RTS on CSD Requirements relates to the link with the receiving CSD only and to the legal and operational terms and conditions of this specific link arrangement.

(b) Article 84(1)(e) of the RTS on CSD Requirements requires the requesting CSD to perform an assessment of the local legislation applicable to the receiving TC-CSD which should include asset protection considerations, as per Article 84(1), last sub-paragraph. If necessary, this assessment should thus consider any information about the receiving TC-CSD's further CSD links (as the case may be, up to the issuer CSD) that may have an impact in terms of entitlement of the requesting CSD to the securities or of insolvency proceedings effects (e.g. in case the applicable law would make a *renvoi* to the law of the issuer CSD as

the law applicable to proprietary aspects, or to the nature of the rights of the receiving CSD on the securities).

(c) When assessing the risks related to a link with a CSD established in the EU that has not be authorised yet, CSDs should comply, and their NCAs should verify their compliance, with the requirements set out in Article 48 of CSDR and the related technical standards.

(d) Yes, as Article 2(33) of CSDR defines an interoperable link as a “*CSD link whereby CSDs agree to establish mutual technical solutions for settlement in the securities settlement systems they operate*”, which is the case of CSDs participating in T2S, as they use a common settlement infrastructure.

Furthermore, Article 19(5) of CSDR clearly contemplates the specific case of T2S when referring to “*interoperable links of CSDs that outsource some of their services related to those interoperable links to a public entity*” (thus establishing an exemption for such interoperable links from the authorisation process generally applicable to other interoperable links, and subjecting them to a mere notification procedure).

However, this qualification as interoperable link covers only the T2S-related aspects of the relationship between the respective CSDs, i.e. the settlement of securities through T2S. Two CSDs participating in T2S can have in parallel other types of CSD links between themselves, in relation to different securities not settled through T2S, to the extent allowed by the dedicated legal, regulatory and operational framework referred to in Article 30(5) of CSDR. These other CSD links should not be qualified as interoperable links only because of the participation of the two CSDs in T2S.