THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Ref: CESR 08 –870

# Preliminary Technical Advice by CESR in response to the Mandate from the European Commission on Access & Interoperatibility Arrangements

February 2009

11-13 avenue de Friedland - 75008 PARIS - FRANCE - Tel.: 33.(0).1.58.36.43.21 - Fax: 33.(0).1.58.36.43.30
Web site: www.cesr.eu

## Introduction

In August of 2008 CESR was invited by the European Commission to map the current regulatory arrangements for post-trading infrastructures and advise on possible solutions to bridge any potential differences in these arrangements. This request followed up on previous work in this area, conducted by CESR's Post Trading Expert Group on its own initiative earlier in that year. That exercise was an informal desktop review by regulators, covering a limited number of jurisdictions in order to improve our understanding of the arrangements in place.

With the current mandate, the Commission asked CESR to:

- conclude the mapping exercise on the regulatory and supervisory arrangements (set at national, regional and/or local level) in all CESR members' jurisdictions;
- ensure a consistent and detailed level of information for each CESR member; and
- publish the final results of the mapping exercise.

The current crisis in the financial markets underlines the vital importance of the safe and sound functioning of infrastructures for clearing and settlement of transactions in securities. Consistent with the announcement by CESR of steps to address the market crisis (CESR press release of 1 October 2008, CESR/08-791), the operations of the infrastructures are more closely monitored by CESR members in the current circumstances. So far, the outcome of these enhanced monitoring activities did not give rise to *additional* concerns from a supervisory point of view.

### Framework

The request for technical advice by the Commission was submitted against the background of a wide range of other initiatives in the area of post trading activities, such as the Code of Conduct, the abolition of the Giovannini-barriers, the second advice of the Legal Certainty Group, the second report by the Fiscal Compliance Experts' Group, the public consultation of CESR/ESCB Recommendations for securities settlement systems and central counterparties and – more recently – the statement by Commissioner McCreevy with regard to central clearing for OTC derivatives.

In particular, the second part of the Code of Conduct with regard to access & interoperability aims to facilitate the right to get access or to interoperate with other providers of infrastructures across borders, thus mitigating the absence of a harmonized EU-framework for post trading activities. The absence of a harmonized framework does not imply the total absence of any formal legal rights and obligations. Article 56 of the EU Treaty and the articles 34 and 46 of Directive 2004/39/EC on Markets in Financial Instruments (MiFID) provide elements which facilitate in this respect.

### Process followed

The attached annex gives a detailed overview of the current regulatory arrangements in the various jurisdictions. As a first step to complete the mapping overview – and in order to comply with the Lamfalussy principles as requested in the mandate – CESR issued in September 2008 a call for evidence to collect further information and practical experience from market participants with regard to the arrangements in place.

In response to the call for evidence CESR received 15 responses from providers and users of post trading services and from representative associations. These responses are posted on the website of CESR (http://www.cesr.eu/index.php?page=responses&id=119). The responses fell into two broad groups; some listed a number of specific bottlenecks experienced in a limited number of Member States, while others underlined the aims to establish access & interoperability among providers. The responses underlined that much remains to be done in removing existing obstacles with the aim to creating a single market for post-trading services.

In a second step, CESR-members were invited to explain separately the arrangements in their jurisdiction for central counterparties (CCPs) and central securities depositories (CSDs) that wanted to access or interoperate with another provider of post trading services in another jurisdiction. The overview contains contributions from: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Iceland, Ireland, Italy, Finland, France, Germany, Greece, Hungary, Latvia, Luxembourg, Malta,

Netherlands, Norway, Portugal, Romania, Slovenia, Slovak Republic, Spain, Sweden and the United Kingdom.

**Current requests for access & interoperability**

CESR is aware of the existing backlog of requests for access & interoperability, submitted by providers of infrastructures across Europe, with some of these requests submitted even before MiFID came into effect. The purpose of this mapping exercise however, is not to solve this backlog directly, but to understand the nature of the identified backlog from a regulatory perspective. CESR as such does not have any supervisory powers to deal with any individual requests. These issues will be handled by the respective individual regulators and infrastructure providers involved. Given the high number of outstanding requests, CESR deems it essential that progress in this area is not made at the expense of the safety and soundness of the infrastructures in the respective jurisdictions. Additionally, some communication issues have been identified. For example, there have been instances where an infrastructure provider in one jurisdiction has submitted a request, but regulators in other relevant jurisdictions have not been notified.

**Structure and brief overview of responses to individual questions in the revised survey/mapping exercise**

The current updated survey, used to collect input from all CESR-members, created a clear split between issues of access & interoperability for CCPs on one hand and for CSDs on the other hand. The first three questions for both categories refer to arrangements with regard to: access (Questions 1 and 4), interoperability (Questions 2 and 5) and the capacity to provide services as a participant of a local provider (Questions 3 and 6) for CCPs and CSDs respectively. In addition to that, questions were added with regard to the role of other authorities (Questions 7 and 8), supervisory powers at disposal (Question 9), the existence of cooperative arrangements (Question 10) and provisions to reduce regulatory overlap (Question 11). The summary below is not intended to be exhaustive.

*(1) Access for CCPs*

Responses to Question 1 showed a wide range of (regulatory) approaches for those CCPs wanting access (with or without a legal establishment) to other jurisdictions for the provision of their services. This varied from the absence of any legal regulation to (in the majority of jurisdictions) explicit authorization/notification or recognition to operate in those host-jurisdictions. Some Member States require all CCPs operating on their territory to hold a banking licence. Further analysis is needed to uncover the extent to which exemptions are actively used in the applicable regimes: how the addition of more specific requirements (not necessarily imposed by the same authority) hamper or contribute to the objective of a single market for post trading services: and if so, what approach would be optimal in solving such gaps.

*(2) Interoperability for CCPs*

The overwhelming majority of CESR-members do not impose additional regulatory requirements to those referred to in Question 1 if a CCP from another jurisdiction wants to interoperate (beyond a standardised link) with a local CCP in the other jurisdiction.

*(3) Participation by CCPs*

For the situation that a (foreign) CCP wants to act as a participant in another (local) CCP, some CESR-members do not have any additional requirements, compared to the answers provided to Questions 1 and 2. A number of respondents refer to the fact that the incoming CCP has to meet the participation requirements of the (local) CCP, which may include the need to become a member of the stock exchange.

*(4) Access for CSDs*

Applicable requirements for a CSD with a desire to access (a CCP of a) Regulated Market in another jurisdiction varies from: licensing, being subject to prudential supervision in the host jurisdiction, to approval in other forms. Some jurisdictions require a CSD from another jurisdiction to have a local establishment in the host jurisdiction where it plans to offer services (subject to exemptions). In some jurisdictions the approval process for an (incoming) CSD is similar to the process for an (incoming CCP. In another jurisdiction requirements regarding the suitability of the CSD are imposed indirectly through requirements placed on the relevant CCP.

*(5) Interoperability for CSDs*
In the majority of jurisdictions, legal and/or regulatory requirements are not different if a CSD also wants to establish a customised link with the local CSD, compared to a standard access by an incoming CSD to another jurisdiction.

*(6) Participation by CSDs*
If an incoming CSD wants to become a participant in a local CSD, it has to meet the (regular) membership requirements. In a single jurisdiction, the legal framework does not provide for a CSD participating in the local CSD

*(7) Role of other authorities*
For almost every jurisdiction in the EU, securities regulators point out that central banks have responsibilities in the area of clearing & settlement, mainly from the point of view of oversight of systems. In some cases, a specific task is entrusted by the Ministry of Finance. In a single case, an authority linked to a stock exchange, is having responsibilities, which are separate from the responsibilities of the securities regulator.

*(8) Description of process of cooperation in case of multiple authorities*
Almost all jurisdictions have multiple authorities, but execution of distinct responsibilities is taking place in an independent way. Coordination between the securities regulator and central bank can be facilitated through bilateral arrangements.

*(9) Supervisory powers at disposal*
Securities regulators have a wide range of powers to supervise CCP's and CSD's as providers in the area of post trading. Powers are sometimes equivalent to or linked to powers for prudential supervision and cover to a greater or lesser extent among others: reporting, on- and off-site inspections, giving directions to the supervised entity, administrative fines and suspension or revocation of the authorization.

*(10) Arrangements for cooperation/coordination*
A limited number of CESR members do have arrangements in place for cooperation in supervision of infrastructure providers in case of provision of cross-border services. The majority of CESR-members do not have any arrangement in place and rely on ad-hoc cooperation.

*(11) Provisions to avoid regulatory overlap*
In a large number of jurisdictions, no special provisions are in place in the national legislation to avoid regulatory overlap. Some CESR-members underline that entering into bilateral arrangements is a way to avoid duplication of control.

**Recommendations for bridging differences**
Given the time available for completing this review, this mapping should be considered as a preliminary advice. In case needed, CESR stands ready to provide any additional advice.

- The long-term objective of a single market for post trading services has been considered as a generally accepted view. The way forward to achieve this was discussed, as CESR members' views are divergent on this question. Besides the position that CESR should meet the short-term nature of the mandate, and/or to rely on self-regulation, many CESR members expressed the opinion that the aim of the single European post trading market might be better served within a harmonised EU-framework, whilst others are of the opinion that the CESR/ESCB Recommendations provide a common framework from the CESR perspective [1]. From the point of view of substance, this has not been discussed in CESR at this stage, would require another debate and will therefore not be elaborated by CESR in the context of this advice. Given the fact that this would not help to solve short-term bottlenecks, CESR advises the following ways forward in the short term:

[1] Notably Germany and the United Kingdom are of the opinion that the draft CESR/ESCB Recommendations provide a common framework from the CESR perspective.

- With a view to the adoption of the CESR/ESCB Recommendations in early 2009, a strong political endorsement by the EU-Institutions would assist securities regulators in the implementation of these recommendations with a view to a better alignment of regulatory practices across borders. Future assessment of compliance with these Recommendations, in particular with the various Recommendations related to access and links, could be conducted as a first step.

- In cases where links are or will be established, securities regulators are committed to facilitate these developments by agreeing on arrangements for the exchange of information and, if necessary, other cooperation arrangements among the national authorities involved while respecting their respective domestic legal frameworks.

- The current mandate invited CESR to take the principles set out in the Lamfalussy report of 2001 into account. Article 5.5 of the Charter of CESR requires acting in conformity with the conceptual framework of overarching principles identified in the Stockholm European Council Resolution. In order to meet the principles, CESR ran a brief call for evidence to collect the views from the market. The draft version of the advice was published for a brief review by the industry in December 2008/January 2009. CESR received two contributions, posted on CESR's website, and some drafting suggestions. On substance, the responses received supported the objectives formulated for the short term. For the long-term objective however, opinions differ. One response advocates that more can be done, such as the realization of a homogenous and consistent European regulation for relevant entities, whereas the second response doubts whether any other measures (such as the implementation of a Directive on post-trade services) should be envisaged as the longer term objective.

FINAL OVERVIEW OF PRELIMINARY RESPONSES TO THE REVISED SURVEY ON ACCESS & INTEROPERABILITY ARRANGEMENTS
February 2009

**1. If a CCP from another jurisdiction wants to have access to a Regulated Market/MTF, located in your jurisdiction, for the provision of CCP services, what are the applicable regulatory requirements/arrangements (e.g. license, authorisation, local presence)?**

AUSTRIA

The relevant part of the applicable Act reads as follows:

§ 4 Clearing Agents
(1) The Clearing House may authorize other Clearing Agents to process and forward its instructions to Participating Clearing Members. Furthermore, the Clearing House may permit Clearing Agents the safekeeping of clearing collateral with the exception of guarantees, limited to the group of clients of the Clearing Agent on the condition that it deposits collateral in an equal amount with the Clearing House.
(2) Only the following may act as Clearing Agents:
a) Austrian credit institutions;
b) All credit institutions licensed to operate in a Member State in so far as the relevant EC Directive for credit institutions applies in full to said credit institutions including their branch offices in third countries;
c) All companies whose business consists of receiving cash or other repayable monies for depositing from the public and are licensed to grant loans for their own account, and who have been licensed to carry on this business in other member states as well as in all full member states of the Organisation for Economic Cooperation and Development (OECD) as well as in countries that have entered into agreements with the International Monetary Fund (IMF), in particular, into the IMF's Special Agreement to Borrow, including their branch offices;
d) Recognized investment firms within the scope set out in Art. 2 fig. 31 of the Austrian Banking Act, and
e) Recognized clearing houses pursuant to Art. 2 fig. 33 Austrian Banking Act with their registered offices or licenses in an EEA member state that has signed the European Code of Conduct for Clearing and Settlement. Clearing agents must have own funds of at least EUR 50,000,000 as defined by Article 23 of the Austrian Banking Act.
(3) Clearing Agents as operators of their own (decentralized) clearing systems shall be under the obligation to include in their systems any relevant clearing information and confirmation notices (instructions) of the Clearing House of relevance for their clearing customers (Participating Clearing Members) in their systems and to process these so as to ensure the orderly clearing of CCP-eligible transactions. Vice versa, Clearing Agents shall transmit their clearing customers' instructions to the Clearing House.
(4) When integrating the decentralized systems of the Clearing Agent into the central clearing process organized by the Clearing House, the Clearing Agent shall ensure that the clearing instructions it processes can be allocated to its individual clearing customers. Furthermore, it shall ensure that in the event of netting for technical reasons, the clearing customers are identified and their individual positions can be removed from the netted overall positions upon request of the Clearing House.
(5) The Clearing Agents shall not enter into the transactions of their clearing customers with the Clearing House, nor shall they assume any liability for their settlement and delivery.
(6) The Clearing Agents shall be under the obligation to set up the required cash and securities accounts with the Clearing Bank for the Clearing Members assigned to them pursuant to § 13 par. 2.
(7) The Business Terms of the Clearing Agents shall apply to relations with their clearing customers, unless said terms contradict these Clearing Rules or the Austrian Stock Exchange Act.

BELGIUM

The following institutions may provide clearing services in respect of transactions on a Belgian regulated market or, on the Belgian territory, provide such services in respect of transactions on a foreign regulated market : (1) institutions with registered office in Belgium that are authorized as credit institutions; (2) branches established in Belgium of foreign credit institutions ; and, (3)

institutions not established in Belgium that, in their home country, are subject to a legal status and supervision deemed equivalent by the CBFA and the NBB.

Clearing institutions with registered office in Belgium and which are not authorized as credit institutions, and which desire to provide clearing services in respect of transactions on a Belgian or foreign regulated market, are required to be authorized in advance by the Minister.

Branches established in Belgium of a foreign clearing institution that is not authorized as a credit institution and which desire to provide clearing services in respect of transactions on a Belgian or foreign regulated market are likewise required to be authorized in advance by the Minister.

Therefore, either institutions are authorized or they are subject to a legal status and supervision deemed equivalent by the CBFA and the NBB. Moreover, the initial rules for clearing, as well as amendments to those rules, are subject to prior approval by the Minister, upon the recommendation of the CBFA and the NBB. In any case, those institutions are subject to the prudential supervision of the CBFA in their quality of clearing services providers.

## BULGARIA

According to the Bulgarian Markets in Financial Instruments Act the regulated market may enter into arrangements with a central counterparty, clearing house or settlement system from another Member State for execution of clearing and/or settlement of some or all transactions concluded by participants in the market through its trading system. These arrangements are a subject of prior approval by the deputy Chairperson of the Bulgarian Financial Supervision Commission in charge of the Investment Supervision Division. As for trade in government securities issued on the domestic market the Deputy Chairperson issues such approval after obtaining a prior consent by the Bulgarian minister of finance and the governor of the Bulgarian National Bank. The Deputy Chairperson may refuse to issue an approval of the conclusion of the arrangement if such an agreement poses a threat to the orderly functioning of the regulated market. In exercising its supervisory functions the Deputy Chairperson takes into account the supervision of the clearing and settlement system which has entered into agreement with the regulated market, exercised by the supervisory authority of another Member States.

It should be noted however that at present there is no clearing house or a central counterparty acting on the Bulgarian market and there is no regulatory practice in this aspect.

## CZECH REPUBLIC

According to the Act No 256/2004 Coll., on Business Activities on the Capital Market as subsequently amended (hereafter referred to as „the Act"), rules for access to the regulated market/MTF must be transparent and non discriminatory, based on objective criteria. Regulated markets (hereafter referred to as „RM") may admit as participants an investment firm, a foreign investment firm or other person, who must be fit and proper, have a sufficient level of trading ability and competence, adequate organisational arrangements (where applicable) and sufficient resources for the role they are to perform. These are the only requirements on RM/MTF participants.

The operator of the RM shall enable to its market participants to choose a settlement system, a CCP, a clearing institution and a clearing system according to their choice for the settlement of trades concluded on the RM, if there is a link between the RM and the chosen settlement system, the CCP, the clearing institution and the clearing system, which enables proper and timely settlement of these trades without unreasonable costs.

The Czech National Bank (hereafter referred to as „CNB") may restrict or prohibit the operator of the RM from using the settlement system, the CCP, the settlement agent or the clearing institution from another Member State of the EU for settlement of all or just selected trades with investment instruments concluded on this RM, to the extend that it is necessary for a proper functioning of the RM (CNB shall consider if conditions mentioned in the previous paragraph, are fulfilled).

There is no legal regulation of business activities of a CCP in the Czech Republic. According to the Act, a CCP may act as a participant of the settlement system, which is recognised (and supervised as

well) by CNB. There are no requirements for legal nature of CCP and there is no need of authorization for taking up the business of CCP as well.

**DENMARK**

Depending on an individual judgement a license might be required if a CCP from another jurisdiction wants to have access to a regulated market/MTF located in Danish jurisdiction. If it is decided that a license is required it will be a condition in accordance with the Securities Trading, etc. Act that the CCP from another jurisdiction is incorporated in Denmark.

An operator of a regulated market shall be responsible for the market being conducted in an adequate and appropriate manner (see the Danish Securities Trading, etc. Act part 4) http://www.dfsa.dk/sw7804.asp

**SWEDEN**

If the CCP's operations are conducted in Sweden, an authorisation is necessary. Authorisation for a foreign undertaking to operate a clearing organisation from a branch in Sweden may be granted where the undertaking conducts such operations in its home state and is under the supervision of an authority or other competent body there and there is reason to believe that the envisaged operation will be conducted pursuant to the provisions of the Swedish Securities Market Act and regulations issued pursuant to the aforementioned Act.

If the CCP conducts the clearing operations in its own country but engages a local (Swedish) agent in order to settle the transactions with Euroclear Sweden AB (the Swedish Securities Register Center/the Swedish CSD), then there is no requirement for authorisation, a license or local presence.

A CCP that conducts clearing operations in its own country but wishes to settle the transactions with Euroclear Sweden AB, can by the latter be admitted as a financial instruments account operator (see the answer to Q 4, section 2).

**ICELAND**

At the present time there are no regulatory requirements to provide CCP services in Iceland nor is there any CCP coverage in Icelandic law.

**IRELAND**

A CCP that intends to establish a system in the State would be subject to Part II (Regulation of Payment Systems) of the Central Bank Act 1997, which requires, inter alia, that the rules of the system be submitted to the Central Bank and Financial Services Authority of Ireland (CBFSAI) for approval. In addition, the Act requires that the CBFSAI only approve the rules of a system that is a company incorporated under the Companies Acts, 1963 to 1990. The CBFSAI may exempt a system or a class of system from some or all of the requirements of Part II of the Act. In practice, it may be difficult to determine that a system is established in the State and subject to the 1997 Act. If this is the case the CBFSAI is unlikely to seek to approve the rules of a system that is established in another Member State of the EU and subject to a regulatory/supervisory regime in that state; alternatively it may decide to exempt the system from the requirements of Part II. [In light of experience, a review of the adequacy of the current legislation in this area is anticipated.]
The CCP would need to seek exemption under Section 75A of the Stamp Duties Consolidation Act 1999, which provides for an exemption from stamp duty on a transfer of securities to and from a recognised clearing house.

**ITALY**

**A1**. If a CCP from another jurisdiction (incoming CCP) wants to have access to a Regulated Market/MTF located in Italy (Italian Market), for the provision of CCP services, it should enter into an arrangement with the Italian Market.[2]

[2] To this purpose, Article 70-*ter* of the Legislative Decree No. 58/1998 (**Consolidated Law on Finance**) provides that the Management Company of the Italian regulated markets "may conclude agreements with management companies of central counterparty, clearing and settlement systems of other EU

When receiving a request for access, therefore, the Italian Market shall inform Consob and Banca d'Italia of plans for agreements with the incoming CCP, 45 days prior to the launch of operations under the agreement, including the following information:

- the terms and content of the projected arrangement;

- any links and measures between the CCP and the Market system, including the calculation of risks and the measures adopted for the control of such risks;

- the technical terms identified to guarantee the efficient regulation of transactions concluded on the Market, including specific methodologies for the calculation of risks and proper risk-control measures.

It is not required any *ex ante* authorisation, but, in agreement with Banca d'Italia as far as wholesale markets for government securities are concerned, Consob may oppose such arrangements if this is necessary to preserve the regular and orderly operation of the Italian market.

Italian Markets may reach agreements also with CCPs of non-EU countries, provided that equivalent supervisory measures to those applicable under Italian law are practiced and subject to stipulation of agreements with the corresponding foreign authorities for the exchange of information. Operations under the terms of the agreement shall be subordinate to verification of the existence of the following conditions:

- links and devices exist between the CCP of non-EU countries and the regulated market structure to guarantee effective and economic transactions;

- recognition that the technical conditions for the settlement of transactions concluded on the Italian Market through such CCP allow regular and orderly market operations.

Moreover, should the incoming CCP intend to use the Italian securities settlement system, it is worth considering that a participant in a settlement service cannot settle transactions for CCPs, so that both local and foreign CCPs should participate directly to the settlement process without availing themselves of a settlement agent.[3]

**FINLAND**

A European CCP is free to offer its services to a Regulated Market (currently the only RM is NasdaqOMX Helsinki) or to an MTF (currently none). However the operator of a RM or on MTF is obliged by inform the Financial Supervision (Rahoitustarkastus) and the Central Bank in advance of its intentions to use the services of a CCP and to provided enough information in order to assure that the intended use does not endanger the orderly functioning of the markets. The Supervisory Authority has the powers to prohibit the use of the services of a CCP if the use would be likely to endanger the orderly functioning of the markets.

Local presence is not necessary for the provision of CCP or other clearing services. Only a company established in Finland is allowed to provide services with local presence. Such a provider must have licence granted by the Ministry of Finance.

A European CCP has access to a local CSD (There is currently only one CSD: APK) either as an ordinary clearing and settlement member of the CSD or through an intermediary. As an ordinary member a CCP must fulfil the same requirements as any other member. A CCP is free to negotiate special arrangements with a CSD. If these arrangements do not fit in the present rules of the CSD the changes of the CSD rules have to be approved by the Ministry of Finance.

---

member states for the guarantee, clearance and settlement of certain or all transactions concluded by regulated market participants".

[3] Article 46, para 3, of the "Rules governing central depositories, settlement services, guarantee systems and related management companies", adopted by the Banca d'Italia and Consob on 22nd February 2008 (Regulatory Consolidated Act).

FRANCE

In France, the legislative framework governing CCPs is set out in the French Financial and Monetary Code, and more specifically in Articles L. 440-1 to L.440-10. Under Article L.440-1, a CCP must have a credit institution status.

The regulatory framework for CCP is set out in the AMF General Regulation (Articles 541-1 to 542-9 ).

Under article L.440-3, the Autorité des Marchés financiers (AMF) may prevent a regulated market or an MTF from using the services of a CCP established in another Member State where this would be required to maintain the orderly functioning of the regulated market or the MTF.

Article 512-2 of the AMF General Regulation provides that where transactions on a regulated market are cleared by a clearing house established outside France, this clearing house must meet requirements equivalent to those required by the AMF General Regulation for clearing houses established in France and clearing a French regulated market. Before agreeing to the clearing of transactions executed on a French Regulated market/MTF, by a non domestic CCP, the AMF will ensure that such CCP is able to demonstrate that this equivalence requirement is met. The equivalence requirement applies to non domestic CCP willing to clear transactions on a French MTF.

This answer is provided without prejudice to the arrangements that may be required by the other French competent supervisors/overseers (CECEI in charge of the authorization of credit institutions, Banking Commission responsible for the prudential supervision of credit institution and the Banque de France with an oversight responsibility for seeing to the safety of clearing and settlement systems).

The AMF and the other French competent authorities will seek to enter into an MOU with the competent authorities of the non domestic CCP providing for the role and responsibilities of the respective jurisdiction's competent authorities and for the exchange of information needed for the fulfillment of heir respective responsibilities.

GERMANY

The provision of CCP services is a banking service under the German Banking Act (KWG)[4]:

A central counterparty under the KWG is defined as an (i) entity which interposes itself between buyer and seller in buying contracts in one or more financial markets; (ii) which serves as contractual partner of the buyer side and the seller side and (iii) which counterparty risk against all of its members is collateralized sufficiently.

Thus, in principle a German Banking licence is required. The licence granted by BaFin specifies which kind of services the entity can provide. If the CCP wants to provide additional services this may require an adequate licence. However, the requirements for granting this licence may be identical. But further requirements may arise if the entity wants to administrate individual deposits. The duties which arise of this requirement are in line with EU-banking regulation.

The requirements to obtain a banking licence are similar to any other banks. However, some requirements – e.g. the capital requirements – may differ depending on the services provided.

The requirement of having banking status to provide CCP-services is not harmonized under EU banking regulation. Therefore, a pass porting of an existing licence granted in another EU/EEA-Member is not possible.

According to section 2 (4) KWG BaFin can grant exemptions from obligations under the KWG on a individual basis, provided that the entity in question does not require supervision due to the nature of services provided.

With regard to cross border business, the requirements of such an exemption are set out – on a general basis – in the notes regarding the licensing requirements pursuant to section 32 (1) KWG in

[4] See section 1 (1) S. 2 No. 12 in conjunction with section 32 KWG

conjunction with section 1 (1) and (1a) of the KWG for conducting cross-border banking business and/or providing cross-border financial services[5] dated April 5th 2005.

An exemption from the licensing requirements pursuant to section 2 (4) of the KWG can thus only be considered for cases in which BaFin deems that no need for supervision exists in connection with the conducting of banking and financial services business generally subject to supervision.

In general, this only applies if the company is effectively supervised in its home country by the competent authority/authorities in accordance with internationally recognized standards and the competent home country authority/authorities cooperates/cooperate satisfactorily with BaFin.

Additionally, the applicant company must submit a certificate from the competent authority/authorities of the home country confirming to BaFin that,

the foreign entity concerned has been granted a license for the banking operations and/or financial services that it intends to provide on a cross-border basis in Germany,

the commencement of the intended cross-border services in Germany raises no supervisory concerns and

if such concerns should arise in the future, these will be reported to BaFin

The applicant company must also appoint a German receiving agent.

Given the systemic importance of infrastructures such as CCPs, BaFin intends to check specifically whether the entity in question is supervised in accordance with internationally recognized standards. As no harmonized and accepted international standards are in place yet, BaFin will require – as a policy decision – the following

Compliance with the relevant CPSS/IOSCO recommendations for CCPs or Securities Settlement Systems. The compliance may be confirmed by the home supervisor. In single cases other arrangements with the home supervisor may be developed.

Regulation in place regarding following key principles of the KWG which is broadly comparable – given the specific risk profile of a CCP - to the KWG:

- Fit and properness of the management
- Soundness of the Owners
- Adequate capital
- Adequate liquidity
- Monitoring and limitation of credit exposure (if applicable to the CCP)
- Organisational duties and risk management
- Notification duties and self control
- annual accounts and audit
- crisis measures by the supervisor

**GREECE**

[5] available under http://www.bafin.de/cln_109/nn_721228/SharedDocs/Veroeffentlichungen/EN/Service/Bulletins/mb__050400__crossborder__en.html?__nnn=true

Under the provisions of Law 3606/2007 (Government Gazette A' 195/17.8.2007), namely article 73 a CCP, a Clearing and/or Settlement System that operates in Greece must be licensed by the Hellenic Capital Market Commission (HCMC)[6]. In order to obtain the license a CCP must meet the following requirements (which apply irrespectively to domestic or foreign clearing and/or settlement systems):
The Clearing and/or Settlement System ("System") must have arrangements to identify clearly and manage the adverse consequences of potential conflicts of interests.
The System must be adequately equipped to identify and manage the risks to which it is exposed.
The System must have arrangements for the sound management of its technical operations.
The System must have available, at the time of authorization and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, taking into account the range and degree of the risks to which it is exposed.
The System must have arrangements for the prevention of systemic risks.
The System must have rules which ensure transparency of its clearing or settlement or CCP activities and non-discriminatory direct or remote participation/membership.
The System must have an Operating Rule Book which shall contain provisions to govern its clearing/ settlement/ CCP procedures, the access to it and the obligations of its members and the risk management mechanisms. HCMC approves the Operating Rule Book upon authorization of a Clearing and/or Settlement System.

A HCMC Decision is currently being drafted and will enter into force until 1/5/2009 with a view of setting specific requirements and defining the authorization procedure, as well as the content of the Operating Rule Book of a Clearing and/or Settlement System.

Under article 74 of law 3606/2007 the HCMC also authorizes the operator of a CCP, a Clearing and/or Settlement System. The operator of a System must assume the legal form of a societe anonyme (S.A.) with registered shares and minimum capital of 20 million Euro. The operator of a System must comply with similar requirements as those set forth for the operator of a regulated market (article 42 par. 2-7, ofLaw 3606/2007). In addition, a HCMC Decision is currently being drafted with a view to further define the specific requirements and the procedure for authorization of an operator of a CCP a Clearing and/or Settlement System which will enter into force until 1/5/2009.

Finally, article 58 of Law 3606/2007, transposing article 46 of Directive 2004/39/EC of 21 April 2004 (i.e. the MiFID) allows the HCMC to oppose to the use of a clearing or settlement system by a Greek regulated market when it deems it necessary in order to maintain the orderly functioning of that regulated market.

**HUNGARY**
If a CCP from another jurisdiction wants to have access to a Regulated Market/MTF, located in our jurisdiction, for the provision of CCP services; it shall have an agreement for that service with the relevant RM/RTF, and shall demonstrate that it has EEA supervisory licence for providing CCP services and is able to meet at least those requirements (risk management, safety and soundness, etc.) which are required in case of domestic service providers.

**LATVIA**
Article $39^2$ of the Law on the Financial Instruments Market provides the following "to ensure the settlement of transactions on the regulated market, a market organizer shall be entitled to conclude agreements for the access to the clearing house, the central counterparty or the settlement facility in another member state. The Commission shall be entitled to restrict such agreements only when it can prove that such arrangement hampers appropriate functioning of the regulated market. The Commission shall give due consideration to the oversight and supervision of systems".

We have no CCP services on our financial instruments market.

**LUXEMBOURG**

[6] Law 3606/2008 exempts the Bank of Greece Securities Settlement System (BOGS) of law 2198/1994 (Gaz. 43 A') as well as the Bank of Greece as the operator of the above system

First, it should be noted that the law of 13 July 2007 on markets in financial instruments (the "**MIFID Law**") provides that the Commission de Surveillance du Secteur Financier (the "CSSF") is supervising regulated markets and MTFs operated in Luxembourg. The MIFID Law more specifically provides that both categories of markets should have rules and procedures in place in order to guarantee fair and orderly trading and efficient execution of orders. In addition, they should have effective arrangements to facilitate the efficient and timely finalisation of transactions executed under their systems.

These rules form part of the authorisation process and the CSSF must be informed in advance of any modification to these rules. The CSSF may oppose to any such modification if there are grounds for believing that these modifications may threat the orderly functioning of the market.

Furthermore, article 15 of the MIFID Law provides that regulated markets may agree upon appropriate arrangements, using a settlement system, a clearing house or a central counterparty, whether established in Luxembourg or in another Member State, with a view to providing the settlement or the clearing of some or all trades concluded by their members or participants under their systems.

The CSSF may not forbid regulated markets from using a settlement system, central counterparty or clearing house, unless such ban is necessary to maintain the orderly functioning of the regulated market, having regard to the conditions for settlement systems established hereunder.

In order to avoid undue duplication of control, the CSSF shall take into account the oversight and supervision of the clearing and settlement systems already exercised by the national central banks or by other supervisory authorities with competence in relation to such systems.

Every regulated market must offer its members or participants the right to designate the system for the settlement of transactions in financial instruments undertaken on this market, subject to:

a) such links and arrangements between the designated settlement system and any other system or facility as are necessary to ensure the efficient and economic settlement of the transaction in question, and
b) agreement by the CSSF that the technical conditions for settlement of transactions concluded on this regulated market through a settlement system other than that designated by the regulated market are such as to allow the smooth and orderly functioning of the financial markets.

This assessment of the CSSF shall be without prejudice to the competencies of the national central banks responsible for supervising settlement systems or to that of other supervisory authorities on such systems. The CSSF shall take into account the oversight and supervision already exercised by those institutions in order to avoid undue duplication of control.

Article 24 of the MIFID Law sets out similar provisions for MTFs.

## MALTA

The Malta Stock Exchange is the only licensed person providing the services of a regulated market ('RM') in terms of article 4 of the Financial Markets Act (Chapter 345 of the Laws of Malta). No MTF operates in or from within Malta.

Malta Stock Exchange bye-laws on clearing and settlement arrangements do not currently envisage the role of clearing through a central counterparty ('CCP'). This is specifically allowed under article 34 of MIFiD Directive (DIR 2004/39/EC, hereinafter 'MIFiD') and under the second bullet point of Rule 19 of the European Code of Conduct on Clearing and Settlement in respect of the cash equities market.

On the other hand, Article 10A(2) of the Financial Markets Act allows regulated markets to enter into appropriate clearing arrangements with inter alia a CCP located in another Member State or EEA State (as provided for under Article 46 MIFiD). Hence CCP access in Malta is possible to the extent that a Maltese licensed RM is willing to enter into such arrangements. The Malta Financial

Services Authority ('MFSA') as the competent authority in Malta is legally empowered at that point to intervene by prohibiting any such arrangement if it believes that such arrangement disturbs the orderly functioning of the regulated market. The MFSA has so far not had the occasion of any such intervention since the Malta Stock Exchange has not felt the need to resort to any CCP clearing. In this context therefore, the MFSA has not at this stage determined the regulatory requirements/arrangements that would need to be satisfied with respect to any eventual CCP clearing.

NETHERLANDS

The CCP will be subject to the regulatory (regulation/supervision/oversight) authorities of the Netherlands Authority for the Financial Markets (AFM) and De Nederlandsche Bank (Dutch Central Bank, DNB). It will therefore have to comply with the Dutch requirements for clearing which will be laid down in a specific Regulatory Framework applicable to the CCP. The Regulatory Framework is based on the CPSS/IOSCO recommendations for CCPs. The access process falls in to two sections:

*Initial assessment*

The Regulatory Framework requires the CCP to demonstrate its observance to the requirements (the CPSS/IOSCO recommendations) prior to gaining access to the Dutch RM or MTF. The process to deliver this initial assessment is not laid down in a formal procedure. The regulators and the CCP will decide mutually on the preferred procedure. The CCP is at liberty to provide regulatory assessments and information, if allowed by the 'home regulator', to demonstrate its observance to the recommendations.

Also, AFM and DNB, will establish contact with the 'home regulator' of the CCP. AFM and DNB will consider the supervisory regime of the 'home regulator' to determine its adequacy with regard to the Dutch Regulatory Framework in the absence of a harmonised regime.

If necessary, AFM and DNB may require remedial actions by the CCP to ensure its observance to the Regulatory Framework.

*Ongoing supervision*

The Regulatory Framework allows the regulators to rely on the supervision of the 'home regulator(s)' in so far as this supervisory regime adequately covers the requirements of the Dutch Regulatory Framework. AFM and DNB will have to enter in a MoU with the 'home regulator(s)' to ensure a sufficient exchange of information to achieve comfort and to facilitate reliance on the regulation of the 'home regulator(s)'. Additionally, AFM and DNB will engage in a direct relation with the CCP concerning aspects deemed necessary to maintain comfort with the observance of the CCP with the recommendations.

The Regulatory Framework provides for a 'prior approval' mechanism which requires the CCP to obtain approval from AFM and DNB for significant changes in its functioning as a CCP prior to implementing.

The CCP is not required to have a physical local presence in the Netherlands.

NORWAY

Clearing operations may only be conducted by a clearing house authorised to do so by the ministry. In addition a clearing house shall be organised as a public limited company. The ministry may however make exceptions from this provision. The ministry may therefore give a foreign clearing house that has been authorised to conduct clearing operations and is subject to satisfactory supervision in its home state authorisation to conduct clearing operations in Norway. Foreign clearing houses have to respect regulatory arrangements regarding a clearinghouse's operation, calculation of security, and confidentiality.

PORTUGAL

Access is somewhat configured in the Portuguese Securities Code (Article 281) as a duty of systems used to settle transactions of the regulated market or MTF. MTFs and regulated markets should establish the links necessary for the proper settlement of said transactions, creating a network with, namely:

a) other MTF or regulated market operators;

b) clearing houses and CCPs;

c) CSDs;

d) the Portuguese central bank or credit institutions, if the system operator is not authorised to receive cash deposits; and

e) other settlement systems.

The only specific requirement is that the interconnection agreements should be communicated in advance to the CMVM. The general requirement is obviously that incoming entities should comply with the same rules as local system operators or participants, as applicable.

ROMANIA

The CCP needs to be authorised by the Romanian National Securities Commission (CNVM). At the same time, the rules regarding the organisation and operation of the CCP have to be submitted for approval to CNVM, prior to their entering into force. According to art. 159 of Law no. 297/2004 on the capital market, as subsequently modified (hereinafter referred to as Law no. 297/2004), the clearing house and the central counterparty are legal persons, established as jointstock companies, issuers of nominal shares, fully paid in cash, at the time of submitting the authorisation application. C.N.V.M. regulates the setting up and functioning of the clearing house and/or the central counterparty, to ensure the safety of transactions involving derivative instruments and financial instruments other than derivatives.

According to art. 126 of the CNVM Regulation no. 13/2005 on the authorization and operation of the central depository, clearing houses and central counterparties, as subsequently modified (hereinafter referred to as CNVM Regulation no. 13/2005), the clearing house and central counterparty shall be set up as a joint-stock company issuer of nominative shares in accordance with the Commercial Companies Law no. 31/1990, republished.

As provided by art. 1 para. (3) of the CNVM Regulation no. 13/2005, the central depository and clearing houses/central counterparties authorised to function in Romania shall be registered with the CNVM Register, referred to in art. 2 para. (6) of Law no. 297/2004.

SLOVENIA

According to Slovenian legislation, Regulated Market has freedom to choose CCP. The Regulated Market has to get permission from Securities market Agency to choose CCP for providing of CCP services. If CCP from another jurisdiction wants to provide CCP services, it has to grant a notification for the provision of CCP services from CCP home authorised authority. Securities Market Agency may decide not to grant the permission in case that CCP doesn't assure connections and other requirements or in other cases if it is obviously for regular functioning of regulated market.

SLOVAK REPUBLIC

In case of Regulated Market only the central depository shall ensure the clearing and settlement of stock exchange transactions in financial instruments, and the clearing and settlement of transactions in financial instruments on the client's request; ensuring clearing and settlement of such transactions means organising and operating a system of clearing and settlement for transactions in financial instrument for at least three part participants in the settlement system. However, the central depository does not act as a CCP.
On the territory of the Slovak Republic there is no such CCP which acts as a CCP at the present.

In case of MTF there are no legal requirements on such CCP which wants to provide CCP services. If such CCP will have a license from other state, it will be sufficient; however, the notification in our state will be required.
There are no legal requirements for CCP in our legislation. However, the minimum requirements for eligible counterparties which are set in the Act on Securities and Investment Services (No. 566/2001 Coll.) should be fulfilled. According to this article the following shall be recognized as eligible counterparties:
a) securities dealers and foreign securities dealers;

b) credit institutions and foreign credit institutions;
c) insurance companies, foreign insurance companies and insurance companies from another Member State;
d) asset management companies, foreign asset management companies, mutual funds, European mutual funds, foreign investment firms and foreign mutual funds;
e) pension fund management companies, supplementary pension companies, pension funds, supplementary pension funds, and similar foreign companies and funds;
f) other financial institutions authorized or regulated under the law of the European Union or a Member State;
g) persons mentioned in Article 54(3)(i) and (j);
h) public authority bodies of the Slovak Republic or other countries, including the Debt and Liquidity Management Agency, which are charged with performing certain activities related to the management of public debt and liquidity in accordance with a separate regulation,[49a)] and authorities of other countries that are charged with or intervene in the management of public debt;
i) the National Bank of Slovakia, other national central banks, and the European Central Bank;
j) international organizations;
k) professional clients as referred to in Article 8a(2)(a) to (c) which are not already mentioned in letters (a) to (j);
l) professional clients as referred to in Article 8a(2)(e), at their request, only in respect of the investment services or ancillary services or transactions for which that client could be treated as a professional client.

According to the Stock Exchange Act (No. 429/2002 Coll.) a stock exchange may enter into an agreement with a central counterparty or clearing house and a settlement system of another Member State with a view to providing for the clearing or settlement of transactions concluded by market participants on the regulated market that the stock exchange operates. The operator of a multilateral trading facility may enter into an agreement with a central counterparty or clearing house and a settlement system of another Member State with a view to providing for the clearing or settlement of transactions concluded by market participants on the market that the operator operates.

The National Bank of Slovakia may not prohibit a stock exchange or the operator of a multilateral trading facility from using a central counterparty, clearing house or settlement system in another Member State except where this is necessary in order to maintain the orderly functioning of that stock exchange or multilateral trading facility.

**SPAIN**

The incoming CCP services provider has to respect the Spanish legal and regulatory framework.

1.a) For those foreign CCPs which decide to provide CCP services by establishing in Spain as a CCP

The specific legal provision is stated in Article 44 ter of Securities Market Act (SMA[7]) 24/1988, of 28th July. Whether the incoming CCP services provider is a Spanish CCP or a CCP coming from another jurisdiction Article 44 ter of the SMA requires a previous specific authorization of the Minister of Economy, upon a proposal of the National Securities Market Commission (CNMV) and on the basis of a report by the Bank of Spain (BoS).

This authorisation grants the incoming CCP for operating as interposed parties on their own account with regard to the clearing and settlement of the obligations derived from the participation by the member entities in the clearing and settlement systems of securities or recognised financial instruments in accordance with Act 41/1999, of 12 November, on the securities payment and settlement systems, and with regard to transactions not carried out on the official markets.

The firm or entities so authorised shall perform their activities in accordance with the provisions established by the corresponding Regulation (Rule Book), which must be approved by the Minister of Economy, on the basis of a report by the National Securities Market Commission, the Bank of Spain

[7] SMA can be downloaded from the legislation area of the CNMV website (www.cnmv.es).

and the Autonomous Regional Governments whose Statute of Autonomy empowers them in matters of regulating securities trading venues.

That Rule Book shall determine, at least, the requirements to obtain the status of participant in same and shall establish the technical, operating and regulatory conditions of access to the services provided, the collateral required of member entities and the information that said entities must provide in relation to the transactions which they disclose to it, and the economic systems of the central counterparties.

The CCP shall be subject to supervision by the National Securities Market Commission and the Bank of Spain, in their respective scope of competence and in the terms laid down in Article 88 of the SMA.

Likewise, the CCP shall be subject to the provisions regarding the Spanish CSDs (Systems Company) established in Article 44 bis.8 and 44 bis.9 of this Act, that regulate the bankruptcy of a participant, and also the provisions of Act 41/1999, of 12 November, on finality of the securities payment and settlement systems, as regards the systems regulated therein.

Subject to the provisions of this and other Laws and of the secondary legislation under this Act, the central counterparty may establish agreements with other resident and non-resident entities with similar functions or which manage securities clearing or settlement systems, and it may have a holding in said entities or accept them as shareholders. Such agreements must be approved by the National Securities Market Commission.

In summary Article 44 ter of the SMA establishes high level rules for the CCPs covering their organization and their supervision. The Ministry of Finance is entitled for approving the CCP and their Rule Book upon the previous recommendations of the CNMV and BdE.

1.b) For those foreign CCPs which decide to provide CCP services without establishing in Spain as a CCP

In this case the CCP must comply with Article 44 quáter of the SMA that states that the regulated market located in Spain may enter into arrangements with a central counterparty of another Member State with a view to providing for the clearing of some or all trades concluded by market participants under their systems. For MTF would apply the same legal provision, in this case included in Article 125 of the SMA.

The National Securities Market Commission may oppose such arrangements where it considers that they may be detrimental to the orderly operation of the market, having regard to the conditions of the settlement systems envisaged in paragraph 1 of Article 44 quinquies that in turn state:

Establishment, between the settlement system designated by the regulated market and the clearing system designated by the member, of such procedures, links and technical and operating mechanisms as may be necessary to ensure the efficient and economical settlement of the transaction in question and,

Recognition by the National Securities Market Commission that the technical conditions for settlement of transactions conducted in that market through a system other than the designated one enable the smooth and orderly functioning of the financial markets, having regard in particular to the way in which relations are assured between the various record-keeping systems for transactions and financial instruments. This assessment by the National Securities Market Commission shall be without prejudice to the competencies of the Bank of Spain as supervisor of payment systems or other supervisory authorities of such systems. The National Securities Market Commission shall take into account the oversight/supervision already exercised by those institutions in order to avoid undue duplication of control.

For MTF would apply the same legal provision, in this case included in Article 125 of the SMA.

**UK**

In the UK there is a recognition regime which applies specifically to exchanges, clearing houses and settlement providers. The recognition requirements that will need to be satisfied are part of a specialist sourcebook within the FSA handbook labelled REC. This can be found in its entirety, online at:

http://fsahandbook.info/FSA/html/handbook/REC

Clearing and settlement providers offering services in the UK can apply either for recognised clearing house (RCH) status or for recognised overseas clearing house (ROCH) status. In the latter case, the clearing provider will typically be based outside the UK and will be subject to supervision by a financial regulator other than the FSA.

RCH:

A clearing provider applying for RCH status will have to demonstrate their ability to satisfy the REC requirements on an on-going basis. These include, amongst others, appropriate arrangements with respect to financial resources, custody, and systems and controls. The FSA will typically engage on a close and continuous basis with an RCH. Currently in the UK, Euroclear UK & Ireland Limited, European Central Counterparty Ltd, ICE Clear Europe Limited and LCH.Clearnet Limited are Recognised Clearing Houses.

ROCH:

In the case of a ROCH application, the FSA will assess whether the incoming clearing and/or settlement provider is providing equivalent investor protection under its local, home state regulation. Where gaps between the home state regime and the UK recognition requirements are found, the FSA considers the procedures and controls an applicant has in place and assesses whether these provide equivalent investor protection. The legal status of a ROCH applicant in their home jurisdiction (i.e. bank or other) will not preclude it from being recognised.

Any application will also have to be sanctioned by the Office for Fair Trading and the Treasury who is ultimately responsible for granting the recognition order.

On an ongoing basis the FSA relies mainly on the home state regulator who remains responsible for the day-to-day supervision of the ROCH. To facilitate this, the FSA will seek to establish a dialogue with the home regulator to enable co-operation and exchange of information. In addition, the FSA requires an annual report outlining any substantial events and/or changes that have occurred during the year from the entity. Currently in the UK, SIX x-clear AG, Eurex Clearing AG, ICE Clear US Limited and The Chicago Mercantile Exchange have ROCH status.

**2. If such CCP from another jurisdiction wanting to act as a CCP for transactions executed on a RM/MTF in your jurisdiction also wants to establish a customised link (interoperability) with a local CCP in your jurisdiction, would there be regulatory requirements different from or additional to the one provided for under Q1? If so, please explain.**

**AUSTRIA**
No

**BELGIUM**
No, the requirements would be the same as the Belgian framework is built upon the concept of "clearing services". In the case foreseen by the question, all information would have already been requested in order to authorize the institution to act as a CCP for transactions executed on a regulated market in Belgium. In other cases, a specific file should be submitted to the CBFA by the applicants. For foreign entities, it is aimed notably at demonstrating the equivalent status of their legal and supervisory environment as well as ensuring the orderly functioning of the Belgian regulated market.
A CBFA circular is being drafted to specifically deal with such "access and interoperability" requests (content of the submission file, treatment procedures and conditions to be filled in by applicants).

**BULGARIA**

There are no specific provisions different from those provided in A1. As mentioned in A1 presently there are no local CCPs on the Bulgarian market.

**CZECH REPUBLIC**

See the answer above.

**DENMARK**

This situation has not been relevant in Denmark so far. The Danish legislation does not consider this situation.

**SWEDEN**

There are no additional requirements than the one provided for under Q1.

**ICELAND**

See answer to question 1.

**IRELAND**

There are no specific requirements in respect of links.

**ITALY**

If such incoming CCP, wanting to act as a CCP for transactions executed on an Italian Market, also wants to establish a customised link (interoperability) with a local CCP in Italy, it should be subject to supervisory measures equivalent to those in the Italian legal system.[8]

Furthermore, the local CCP shall inform[9] the Banca d'Italia and Consob without delay of:

- projects involving links accompanied by an analysis of the risks and a description of the planned control measures and, where appropriate, of the ways of participating that differ from those generally applicable;

- copies of the draft contracts governing the links;

- projects for substantial changes to existing agreements;

- copies of the contracts governing the links and every subsequent amendment thereto.

Consob and Banca d'Italia are empowered to require changes to projects for links, risk limitation measures and contracts sent in advance, if they are considered not adequate with respect to the supervision of the performed activities.

**FINLAND**

There are currently no local CCP:s in operation. Transactions are cleared and settled in the CSD on gross basis. However links with such a CCP would fall under the same regime as above. The Securities Market Act does not differentiate a clearing organisation from a settlement organisation in this respect.

**FRANCE**

The provisions described above in Q1 also apply to an incoming clearing house willing to act as a CCP for transactions executed on a French regulated market/ MTF through a "peer to peer" link with an existing French CCP.

[8] Article 63 of the Regulatory Consolidated Act.
[9] Article 64 of the Regulatory Consolidated Act

In addition to the above, the AMF will seek to ensure, together with the other French authorities involved, that the potential link to be set up with a French CCP does not weaken the operational and financial soundness of the CCP established in France nor, as a consequence, affect the orderly functioning of the said French regulated market/MTF.

GERMANY

There are no regulatory requirements different from Q 1.

GREECE

According to the forthcoming HCMC Decisions (see answer 1) the obligations and requirements that a foreign CCP must meet in order to establish a link with a CCP that operates in Greece will be set out in the aforementioned Operating Rule Book of the local CCP which will be approved by the HCMC. Moreover a CCP asking for authorization shall inform the HCMC about the links that it will establish with other Clearing and Settlement Systems and CSDs and the management of potential risks arising from these links.

HUNGARY

In addition to the situation in Q1, we examine thoroughly whether the participation of the incoming CCP poses unacceptable level of risk or likely to increase systemic risk by generating contagion effect among different markets.

LATVIA

See answer to Q 1.

LUXEMBOURG

Supervision in relation to entities subject to such links should be done in accordance with provisions set out in some kind of formal agreements between competent authorities which may already be in place in accordance with the provisions set out above in our answer to question 1.

MALTA

To our knowledge, no CCP from another jurisdiction has sought to establish any link with or become a participant in any local CCP. In this context, the MFSA has not determined at this stage any regulatory requirement that would apply in such a scenario.

NETHERLANDS

No, the requirements will remain the same. Both CCPs will continue to have to maintain their observance to the Regulatory Framework applicable to them.

NORWAY

A customised link would be dealt with in accordance with the requirements in The Securities Trading Act. See answer under Q1 and Q3. The same operational requirements would apply for foreign CCPs as for Norwegian CCPs.

PORTUGAL

The notion of customised link should be defined. Under Portuguese securities law and in our regulatory practice there is no such distinction in access to a system. The relevant distinction is between direct and indirect participants only.

ROMANIA

According to art. 193 of the CNVM Regulation no. 13/2005, the clearing house/central counterparty may establish cooperation relationships and electronic links with other clearing houses/central counterparties in Romania or in Member States. As provided by art. 194 of the CNVM Regulation no. 13/2005, cooperation relationships and electronic links between clearing houses/central counterparties shall be established based on contracts which shall specify at least the following:

a) the rights and obligations of each party;

b) the type of electronic links considered;

c) the responsibilities of each party towards the clearing members who use that link.

These contracts shall be concluded after the clearing house/central counterparty assesses the potential risks of establishing electronic links with another clearing house/central counterparty.

The clearing houses/central counterparties shall submit to CNVM's prior approval any contract concluded with respect to establishing electronic links with other clearing houses/central counterparties. The clearing house/central counterparty shall transmit to CNVM the contracts within 2 working days from their signing and shall make them available to clearing members, non clearing members and investors.

As provided by art. 195 of the CNVM Regulation no. 13/2005, the clearing house/central counterparty, party to a contract which ensures the establishing of electronic links with another clearing house/central counterparty, shall fulfil, in due time, its obligations both to the other party to the contract and to the clearing members of the latter, that use the respective electronic link. The connecting of the clearing house/central counterparty to the clearing-settlement system of another clearing house/central counterparty shall not exempt it from the responsibility to fulfil in due time its obligations towards its own clearing members that do not use the respective electronic link.

According to art. 196 of the CNVM Regulation no. 13/2005, the potential operational, credit and liquidity risks to which two clearing houses/central counterparties, parties to the contract which establishes an electronic link, are exposed shall be monitored and managed on an ongoing basis.

(2) Communication systems and mechanisms between contracting parties shall be established so as to ensure operational security and so as not to generate operational risks from one system to the other.

As provided by art. 197 of the CNVM Regulation no. 13/2005, for the purpose of preventing the risk entailed by the application of two different legal systems, the contract based on which the electronic link is established shall include clauses at least with respect to the following issues:

a) novation or any other means of intervention by the central counterparty;

b) clearing;

c) margin requirements;

d) settlement finality;

e) conflict of laws.

SLOVENIA

It is the same procedure and CCP has also to fulfil other requirements.

SLOVAK REPUBLIC

See answer above.

SPAIN

According with Article 44 ter the authorized CCP may establish agreements with other resident and non-resident entities that perform similar functions, with central counterparties and others, subject to the provisions of SMA, of its secondary legislation and of the Regulation (Rule Book), and it may have a holding in said entities or accept them as shareholders. Such agreements must be approved by the National Securities Market Commission.

United Kingdom
No, there are no further requirements over and above the ones set out in Question 1.

**3. If such CCP from another jurisdiction wanting to act as a CCP for a RM/MTF in your jurisdiction wants to become a participant in a local CCP in your jurisdiction, would there be regulatory requirements different from or additional to the one provided for under Q1? If so, please explain.**

AUSTRIA
Yes, for application of CCP, a participant the CCP needs to fulfil the requirements of § 5, §6 of the clearing rules. This includes, that the CCP needs to become an exchange Member. The requirement for exchange members are regulated in the exchange rules.

§ 5 Requirements for Clearing Members
(1) There are Participating Clearing Members and Non-participating Clearing Members. All clearing members must be exchange members.
(2) Before starting clearing activities, all Participating Clearing Members must enter into a standardised agreement with the Clearing House, permit a credit review and furnish proof to the Clearing House of the following:
a) Payment of the requested amount to the Clearing Fund;
b) Have installed the required technical equipment suited for the respective type of clearing membership;
c) Have professionally trained staff available; and
d) Have given instructions to set up the required automatic debit/credit facility; have granted the required authorizations to sign and the letters of commitment;
e) Have the required cash and securities accounts available, and
f) Belong to one of the categories pursuant to § 2 Financial Collateral Act
(Finanzsicherheitengesetz, FinSG).

§ 6 Participating Clearing Members
(1) Exchange members may be Participating Clearing Members or General Clearing Members.
(2) Participating Clearing Members shall be permitted to clear transactions, which are either proprietary trades or agent trades for their own account, but may not clear transactions of exchange members who are not clearing members. They shall
a) set up the required cash and securities accounts with the Clearing Bank (or, in the case of cash accounts, with a recognized bank), and if applicable, do so through a Clearing Agent;
b) have own funds of at least EUR 2,500,000 as defined by § 23 of the Austrian Banking Act.
(3) General Clearing Members are those clearing members who in addition to the clearing of their own trades agree to the clearing of transactions of exchange members (irrespective of whether proprietary or agent trades) who are not members of the clearing system. They
2.3 CCP.A Clearing Rules | 09.10.2008 Page 10 of 43
a) enter into trades of these Non-participating Clearing Members for their own account;
b) sign the standardised general clearing agreement as a special type of clearing agreement with the Clearing House, and shall set up the required cash and securities accounts with the Clearing Bank (or, in the case of cash accounts, with a recognized bank), and if applicable, set up the required cash and securities accounts through a Clearing Agent;
c) have own funds of at least EUR 5,000,000 as defined by § 23 of the Austrian Banking Act.

BELGIUM
The approach would be different. The screening of participants is performed through the prudential supervision exercised on the clearing institution(s) authorized in Belgium.

BULGARIA

See A1 and A2.

CZECH REPUBLIC
See the answer above.

DENMARK

Same answer as number 2.

SWEDEN
Yes, the CCP shall, as a participant, have satisfactory capital strength, an organisation suited to the purpose of the operation, necessary risk management routines, secure technical systems and otherwise be suitable to participate in the clearing operations at the clearing organisation. A clearing participant may participate in the clearing operations on its own account but also on behalf of another party.

A clearing participant must provide the clearing organisation with the information necessary to allow the clearing organisation to fulfil its obligations pursuant to the Swedish Securities Market Act or any other statutory instrument.
If the clearing participant fails to do so, notwithstanding demands by the clearing organisation, then the latter shall determine whether the participant may no longer participate in the trading.

A clearing participant who is not under the supervision of Finansinspektionen (FI – the Swedish Financial Supervisory Authority) or corresponding supervision in his or her home state shall, upon request by the Authority, be obliged to provide information regarding the circumstances which pertain to participation in the clearing operation. The Authority may order such a participant to provide the requested information.

ICELAND
See answer to question 1.

IRELAND
There are no specific requirements for a CCP from another jurisdiction to participate in a CCP in this jurisdiction.

ITALY
No.

FINLAND
See Q1.

FRANCE
If a CCP from another jurisdiction wanting to act as a CCP for a French RM/MTF wants to become a participant in a French CCP for that purpose, that CCP would have to meet the participation requirements in French CCPs. Under article 541-13 of the AMF General Regulation, participation in a French CCP by a credit institution or an investment firm established outside an EEA jurisdiction or by a legal person whose sole or main purpose is the clearing of financial instruments established outside France is subject to the AMF prior authorization

The AMF ensures that those entities are subject, in their domestic jurisdiction, to rules governing clearing activities and supervision equivalent to those that prevail in France.

The AMF would seek to ensure that such additional CCP for a French regulated market/MTF would not undermine the orderly functioning of the regulated market.

The AMF and the other French competent authorities will seek to enter into an MOU with the competent authorities of the non domestic CCP setting out the role and responsibilities of the respective jurisdiction's competent authorities and providing for the exchange of information needed for the fulfillment of their respective responsibilities.

GERMANY
If a CCP wants to provide CCP services to German customers according to the definition mentioned under Q 1, there is the need for a banking licence or an exemption as described above.

To become a General Clearing Member of a CCP, however, a licence or authorisation by BaFin is not needed.

GREECE
Under article 75 of law 3606/2007, a CCP, a Clearing and/or Settlement System or operators of Clearing and/or Settlement Systems may have access as remote members in Clearing and/or Settlement Systems that operate in Greece. Systems operating in Greece may admit as members Systems from another jurisdiction if they fulfill the requirements set out in their Operating Rule Book. According to article 73 of law 3606/2007 the rules of a System with respect to direct or remote membership must be non-discriminatory (see answer 1).

HUNGARY
If a CCP from another jurisdiction seeking to act as a CCP for a RM/MTF in our jurisdiction wants to become a participant in a local CCP, it shall meet the membership requirement of the local CCP as laid down in its General Terms of Business.

In addition to that we examine thoroughly whether the participation of the incoming CCP poses unacceptable level of risk or likely to increase systemic risk by generating contagion effect among different markets.

LATVIA
See answer to Q 1.

LUXEMBOURG
According to the MIFID Law, access by credit institutions and investment firms authorised in another Member State to the central counterparties, clearing houses and settlement systems established in Luxembourg shall be subject to the same non-discriminatory, transparent and objective criteria as those applied to Luxembourg participants. Such central counterparties, clearing houses and settlement systems may not restrict their use with regard to clearing and settling transactions in financial instruments undertaken on an authorised regulated market or MTF operated in Luxembourg.

MALTA

See answer to Q2 above.

NETHERLANDS
No, the requirements will remain the same. Both CCPs will continue to have to maintain their observance to the Regulatory Framework applicable to them. This may impede the possibility to become a participant in another CCP since this might be in conflict with the observance of certain CPSS/IOSCO recommendations.

NORWAY

A clearing house may not discriminate against foreign participants from another EEA state with regard to participation in the clearing arrangement etc., but a clearing house has the right to refuse, on a justified commercial basis, to make requested services available. Participation in a clearing arrangement on behalf of clients is confined to investment firms and credit institutions or other undertakings engaged in business activity encompassed by the securities trading act.

PORTUGAL

Obtaining transaction feeds (Q1) and becoming a participant (Q3) both benefit from the regime described under Q1.

ROMANIA

There are two entities providing central counterparty services on the Romanian capital market for derivatives transactions: S.C. Casa Română de Compensaţie S.A acting as clearing house and central

counterparty for derivatives traded on the Sibiu Financial-Monetary and Commodity Exchange, and S.C. Casa de Compensare Bucureşti S.A. acting as clearing house and central counterparty for derivatives traded on the Bucharest Stock Exchange. So far, CNVM has not authorised a central counterparty for transferable securities transactions, as there has not been a request from the market in this respect.

According to art. 160 of the CNVM Regulation no. 13/2005, the requirements for admitting clearing members to the clearing-settlement system managed by the clearing house/central counterparty shall be established by means of procedures, based on objective criteria enabling free and undiscriminatory access, and shall include at least the following:

a) minimum capital requirements for clearing members;

b) requirements regarding the qualification and professional experience of the staff of the clearing members appointed to represent them as part of the relationship with the clearing house/central counterparty;

c) requirements regarding the ongoing monitoring of the permanent compliance with the conditions imposed on clearing members.

The clearing members shall conclude contracts with the clearing house/central counterparty to the purpose of fulfilling their payment obligations, as well as of complying with the margin requirements specified under the CNVM Regulation no. 13/2005 and shall establish internal rules regarding the risk management policies which shall be reviewed by the Board of Directors on an ongoing basis.

As provided by art. 204 of the CNVM Regulation no. 13/2005, foreign legal persons admitted to the system as clearing members shall be registered with the CNVM Register - the „intermediaries" section. The clearing house/central counterparty shall submit to CNVM any application regarding admission to the system of clearing members - foreign legal persons.

SLOVENIA

In case that a CCP would like to become a member it could become the member with the limited access. Conditions to become such a member are listed in local CCP rules book.

SLOVAK REPUBLIC

If such CCP from another jurisdiction wants to become a participant in a local CCP the conditions of operating rules of central depository shall be fulfilled. See also the answer to Q1.

SPAIN

If a CCP of another jurisdiction wants to access as participants of a Spanish CCP it must comply with the conditions established in the local CCP Rule Book mentioned in Article 44 ter of the SMA, that should determine the requirements to obtain the status of participant in same and shall establish the technical, operating and regulatory conditions of access to the services provided, the collateral required of member entities and the information that said entities must provide in relation to the transactions which they disclose to it, and the economic systems of the central counterparties.

United Kingdom

No, there are no regulatory requirements over and above the ones set out in Question 1. However the CCP in question might also need to meet the membership requirements of the local CCP if it wished to become a participant.

**4 If a CSD from another jurisdiction wants to have access to a (CCP of a) Regulated Market/MTF, located in your jurisdiction, for the provision of settlement services, what are the applicable regulatory requirements/arrangements (e.g. license, authorisation, local presence)?**

AUSTRIA

A banking license according to Austrian law is required. There are no other general rules. However, the CCP cannot be forced to open account with a specific CSD.

BELGIUM

The following institutions may provide settlement services in respect of transactions on a Belgian regulated market or, on the Belgian territory, provide such services in respect of transactions on a foreign regulated market : (1) institutions with registered office in Belgium that are authorized as credit institutions ; (2) the branches established in Belgium of foreign credit institutions ; (3) institutions recognized as central depositaries pursuant to Royal Decree 62 of 10 November 1967 on promotion of the circulation of securities ; (4) institutions indicated by the King to provide settlement services in respect of transactions in book-entry securities, pursuant to Article 468 of the Code on Companies ; and, (5) institutions not established in Belgium that, in their home country, are subject to a legal status and supervision deemed equivalent by the CBFA and the NBB.
Therefore, either the applicant has been specifically authorized or the applicant is subject to a legal status and supervision deemed equivalent by the CBFA and the NBB. The latter is assessed on the basis of the requirements applicable to settlement institutions as defined by the Royal Decree of 26 September 2005. In any case, those institutions are subject to the prudential supervision of the CBFA in their quality of settlement services providers.

BULGARIA

The regulated market applies a system for settlement of transactions in financial instruments to ensure their efficient and timely finalization. The regulated market may authorize its members and participants to determine a system for settlement of transactions (regardless whether home or such from another member state) if the following conditions are met:

1. Necessary connections and arrangements between the settlement system and another system or a settlement method in order to achieve efficient and economic settlement of transactions are in place;

2. the Deputy Chairperson has issued approval for the settlement of transactions in financial instruments concluded on the regulated market to be effected through a settlement system other than that applied by the regulated market. The Deputy Chairperson refuses to issue the above mentioned approval if the technical means for settlement of transactions concluded on the regulated market do not ensure smooth and orderly functioning of financial markets. Upon issue of an approval the Deputy Chairperson takes into account the supervision exercised over the participants in the settlement system. The powers of the Deputy Chairperson to issue an approval do not affect the supervisory functions of the relevant central bank or of another authority exercising supervision over the settlement system.

CZECH REPUBLIC

If a CSD from another jurisdiction wants to operate a settlement system in the territory of the Czech Republic, it must be licensed and have registered office and actual office situated in the territory of the Czech Republic. To act as a CSD in the territory of the Czech Republic it must be licensed and have registered office in the territory of the Czech Republic. See also the answer to Q1.

DENMARK

There is only one CSD operating in Denmark.
If a CSD from another jurisdiction wants to have access to a regulated market located within the Danish jurisdiction, a license as a central securities depository will be required.
There will be the same conditions to achieve a license as described at question 1.
The activities of a CSD must bee conducted in an adequate and appropriate manner (see the Danish Securities Trading, etc. Act part 20) http://www.dfsa.dk/sw7804.asp.

SWEDEN

Authorisation for a foreign undertaking to operate as a central securities depository in Sweden may be granted where the undertaking conducts such operations in its home state and is under the supervision of an authority or other competent body there and there is reason to believe that the envisaged operation will be conducted pursuant to the Swedish Financial Instruments (Account Operators) Act. In addition to this, the operation must be conducted from a branch in Sweden.

If the CSD operates in its own country, then there is no requirement for authorisation, etc. The financial instruments must, however, be registered with Euroclear Sweden AB.
Most of the public companies are CSD companies. Each CSD company has a CSD register for which Euroclear Sweden AB maintains and stores the share register, examines matters concerning the entry of shareholders into the share register, etc. Each CSD register consists of CSD accounts that are established for the holders (owners) of financial instruments.
Each holder of financial instruments, who is registered pursuant to the Financial Instruments (Account Operators) Act, shall have one or several CSD accounts unless his or her financial instruments are not asset manager-registered.
The registration with Euroclear Sweden AB is executed by account operators who have been authorised by Euroclear Sweden AB. They are then called financial instruments account operators and may register financial instruments with Euroclear Sweden AB on their own account or on behalf of another party.
A foreign CSD can be admitted by Euroclear Sweden AB as a financial instruments account operator if the undertaking in its home state is authorised to conduct operations which are comparable with central account operators and is under the supervision of an authority or other competent body.

A foreign CSD can also engage a local (Swedish) agent who is an account operator to execute the registration of financial instruments with Euroclear Sweden AB.

ICELAND
According to Article 3 of Act No. 131/1997 on electronic registration of title to securities The Minister of Commerce shall grant a central securities depository an operating licence upon receiving the opinion of the Financial Supervisory Authority, Iceland (FME). Application for an operating licence must be made in writing. Such a licence shall only be granted to registered limited-liability companies which fulfil the following conditions:

1. paid-up share capital shall be at least ISK 65 million, with such amount being indexed to the buying rate for the European Currency Unit and based upon the official rate of exchange on the date of the entry into force of this Act (1. January 1998);
2. an adequate operating budget is provided, based on sound operational premises, in addition to an organisational chart and description of security measures;
3. the conditions of Article 30 of this Act concerning a guarantee fund are fulfilled.

The applicant shall be informed in writing of the decision of the Minister concerning the application for an operating licence as promptly as possible and no later than three months after his receipt of the complete application. Rejection of such application by the Minister shall be reasoned. A central securities depository may not commence operation until its share capital is fully paid-up. A central securities depository may not carry out activities other than those provided for in this Act or normally connected with such.

According to Article 30 of Act No. 131/1997 the total guarantee fund of a central securities depository shall never amount to less than ISK 650 million in the form of guarantees or other arrangements.

According to Article 4 of Act No. 131/1997 a central securities depository shall have at least three members on its Board of Directors, who shall be permanent residents of Iceland, be of legal age, have unblemished reputation, be competent to manage their own finances, and may not, during the last five years, have been convicted of an offence connected with a commercial activity which is punishable under the Criminal Code or Acts on limited-liability companies, private limited-liability companies, bookkeeping, annual accounts, bankruptcy or public levies. Nationals of States parties to the Agreement Establishing a European Economic Area are exempt from the residence requirement,

provided that such nationals are residents of an EEA Member State. The Minister may grant this same exemption to residents of other states.

According to Article 5 of Act No. 131/1997 individuals and legal entities shall notify the Financial Supervisory Authority of any direct or indirect participation in a central securities depository representing at least 10% of its share capital or voting rights, or less if such entails a significant influence on the management of the company, and the extent of such participation. Should a shareholder with a holding in a central securities depository of the size indicated in the first paragraph exercise it in a manner to the detriment of the sound and secure operation of the central securities depository the Minister may, upon receiving a proposal from the Financial Supervisory Authority, decide that this holding shall not be entitled to voting rights or instruct the central securities depository to take suitable measures. Should the Minister decide, pursuant to the second paragraph, that holdings shall not be entitled to voting rights, such holdings shall be excluded in calculations of the proportion of voting rights represented at shareholders meetings.

**IRELAND**

A CSD wishing to operate a system for the transfer of title of Irish securities, other than government bonds, must apply for approval to be an approved operator of a relevant system in accordance with the Companies Act, 1990 (Uncertificated Securities) Regulations 1996.

A CSD that intends to establish a system in the State would be subject to Part II (Regulation of Payment Systems) of the Central Bank Act 1997, which requires, inter alia, that the rules of the system be submitted to the Central Bank and Financial Services Authority of Ireland (CBFSAI) for approval. In addition, the Act requires that the CBFSAI only approve the rules of a system that is a company incorporated under the Companies Acts, 1963 to 1990. The CBFSAI may exempt a system or a class of system from the requirements of Part II of the Act. In practice, it may be difficult to determine that a system is established in the State and subject to the Act. If this is the case the CBFSAI is unlikely to seek to approve the rules of a system that is established in another Member State of the EU and subject to a regulatory/supervisory regime in that state.

**ITALY**

If a CSD from another jurisdiction (incoming CSD) wants to have access to a Regulated Market/MTF located in Italy (Italian Market), for the provision of settlement services, the applicable regulatory requirements/arrangements are the same described in A1. [10]

**FINLAND**

There are currently no CCPs in Finland. If there would be a domestic CCP, it would have to be operated by a company established in Finland. Access by a cross border CSD would fall under the rules of such a CCP. A cross border CSD cannot have local presence in Finland. A cross border CSD is free to offer its services to a local RM or MFT under the same conditions as a cross border CCP. In practice a CSD not offering clearing services would have to agree with the provision of the clearing services with the RM / MTF and a third party.

All shares admitted to trading on a Finnish RM must be dematerialised in a Finnish CSD. In addition Finnish natural and legal persons must record their ownership of such shares directly on individual accounts in a Finnish CSD. Therefore a cross border CSD servicing a Finnish RM would need some access to a Finnish CSD and would not be able to offer full service to Finnish owners.

**FRANCE**

The French regulatory framework operates a distinction between CSDs s and Settlement systems

The AMF General Regulation (Article 550- 1 and following) sets out the conditions for authorization of CSDs and of their operating rules by the AMF.

[10] Apart from the requirement specifically concerning the CCPs indicated in the aforesaid Article 46, para 3, of the Regulatory Consolidated Act.

The legal and regulatory framework for settlement systems is set out in the French Financial and Monetary code (Articles L.330-1, L.330-2 and L.621-7) and in the General regulation of the AMF (Article 560-1 and following), without prejudice to the oversight competence of the Banque de France.

The AMF General Regulation sets out the principles governing the organization and functioning of settlement system.; The AMF approves the rules of such systems.

Article L.440-3 of the Financial and Monetary Code, the Autorité des marchés financiers (AMF) may prevent a regulated market from using a settlement system established in another Member State where this would be required to maintain the orderly functioning of the regulated market.

If presented with a request such as described in Q4 by a non domestic CSD or a settlement system, the AMF would asses the equivalence of the rules governing the requesting CSD/settlement system with the requirements set out in the AMF General regulation for CSDs/settlement systems and would seek to ensure that the operational arrangements do not affect the orderly settlement of transactions executed on a French regulate market.

This answer is provided without prejudice to the competence of the Banque de France and its oversight responsibility regarding the safety of settlement systems.

The AMF and the other French competent authorities will seek to enter into an MOU with the competent authorities of the non domestic settlement system setting out the role and responsibilities of the respective jurisdiction's competent authorities and for the exchange of information needed for the fulfilment of their respective responsibilities.

GERMANY

The applicable regulatory framework depends on the services provided. In Principle, acting as a CSD should at least constitute the provision of custody business under the German Banking Act. Depending on the nature of services provided by the CSD, other services may require a banking licence as well (e.g. granting of credit). However, if and which kind of services necessitate a banking needs considerations on the single case.

In difference to a CCP such business is harmonized under EU law. Thus, pass porting is an option regarding the specific services in question.

If the CSD in question does not have banking status, an exemption under section 2 para 4 KWG is not possible as long as the potential pass porting reaches.

GREECE

The legislative framework does not provide for an authorization procedure for CSDs acting as Registrys. According to article 39 of Law 2396/1996 the shares of Greek companies that are admitted to trading in an exchange that operates in Greece should be dematerialized and registered in the Dematerialized Securities System (DSS). Under article 2 of the Regulation on the Operation of the DSS (HCMC Decision 3/304/10-6-2006) dematerialized securities traded in a regulated market licensed by the HCMC shall be registered in the DSS. Securities traded in a M.T.F. may be registered in the DSS. According to law 3606/2007 (article 83 par. 4) Hellenic Exchanges S.A is the operator of the DSS. Hellenic Exchanges S.A. may transfer the administration of the DSS to a third Party. HCMC may, upon approval of this transfer, specify the requirements that must fulfill the new operator and impose specific conditions in order for the transfer to take place.
For the provision of settlement services and the authorization as a Settlement System, see answer 1.

HUNGARY

If a CCP from another jurisdiction wants to have access to a (CCP of a) Regulated Market/MTF, located in our jurisdiction, for the provision of settlement services; it shall have an agreement for that service with the relevant CCP/RM/RTF, and shall demonstrate that it has EEA supervisory

licence for providing settlement services and is able to meet at least those requirements (risk management, safety and soundness, etc.) which are required in case of domestic service providers.

LATVIA

1) Latvian Central Depository (LCD) is the sole central securities depository in Latvia and administers the central register of Latvian publicly issued securities (on the regulated market).
According to Article 92 of the Law on the Financial Instruments Market, the Latvian Central Depository exclusively shall be entitled to:
- make book entries of and account the publicly circulated financial instruments (on the regulated market) in the cases referred to in this Law and in due course thereof;
- make operations for transferring financial instruments among the financial instruments accounts of investment brokerage firms and credit institutions opened with the Central Depository;
- arrange and manage settlement operations with publicly circulated financial instruments (on the regulated market) and etc.

However, Latvian jurisdiction does not provide for any restrictions on cross-border settlement operations for depositories of other countries under the terms of contract.

For instance, cross-border settlement payments have been authorized free of charge between Estonian, Latvian and Lithuanian depositaries for several years already. The above free transfer operation between Baltic depositories is now supplemented by securities delivery versus payment thus ensuring settlements for transactions performed in any of Baltic stock exchanges. In practice, a member of a stock exchange shall have the money and securities account only in one the Baltic States. Cross-border cash settlements have been ensured by a bank or a brokerage firm chosen by the member.

In April 2006, a uniform settlement schedule for transactions in stock exchanges was introduced in the Baltic States.

2) See answer to question 1.

Article 36 of the Law on the Financial Instruments Market provides the following:
"A market organizer shall ensure that for concluding transactions on the regulated market, its members are entitled to choose another settlement system instead of the system offered by the market organizer.
- The rights referred to in Paragraph 10 hereof shall apply to cases when:
1) there is a link or a mechanism between the financial instrument settlement system offered by the market organizer and the one chosen by the member whereby effective and economic settlement is ensured;
2) the technical conditions for the settlement of a transaction concluded on the regulated market by using another settlement system instead of the one offered by the market organizer ensures a proper operation of the financial market".

3) See answer to question 6.

LUXEMBOURG
See our answer for CCPs above.

MALTA

Any person operating a CSD in or from Malta must be authorised by the MFSA in terms of article 24 of the Financial Markets Act (Chapter.345 of the Laws of Malta). Such an authorisation is issued where a person satisfies the requirements set out in Part IV of the Act and applicable regulations. New regulations applying to all CSDs are currently being considered.

NETHERLANDS

See Q1. Although formally Dutch regulation is applicable, the level of enforcement will be judged on a case by case basis. Aspects relevant for such an assessment are the impact on the orderly functioning, stability and safety of the Dutch financial system, the existence of a local CSD in which most settlements relevant for the Dutch financial market will take place, the (much) less risk based nature of CSDs and the existence of a harmonised asset segregation regime in Europe (in which CSDs play an important role).

NORWAY

Business that comprises registration of financial instruments with effects as provided in the Securities Register Act may only be operated by institutions authorised by the Ministry of Finance. A securities register must be organised as a public limited company, and satisfy the requirements set out in the Securities Register Act. However foreign securities registers that satisfy requirements in rules laid down by the ministry are not subject to this plc-organisation requirement.

Besides it is important to be aware of that in Norway all shares admitted to trading on a Norwegian Regulated Market must be dematerialised in a CSD. In Norway, Verdipapirsentralen ASA (VPS) is the only company licenced as a CSD. The registration with VPS takes place in a transparent system where maintenance of the securities account is executed by account operators who have been authorised by VPS. The account operators register securities with VPS on behalf of clients on individual accounts in the clients name. A foreign CSD in an EEA-state can be admitted by VPS as an account operator according to the commercial terms of VPS.

A foreign CSD can also, if it fulfils the nominee requirements, be approved by the FSA of Norway as a nominee. In such a case the foreign CSD is entered into the account as a nominee instead of a the beneficial owner. However, when it comes to shares the restrictions for the book entry of Norwegianshareowners would apply to a forreign as well as Norwegian CSD operating as a nominee in VPS. Only forreign natural or legal persons can be recorded by nominee registration.

Securities settlement systems are subject to separate approval granted by the FSA of Norway in order to have legal protection and security for clearing and settlement agreements. The provisions for legal protection and security may also, subject to separate approval granted by the FSA of Norway, apply for securities settlement systems established in another EEA-state. Approval shall only be granted if the system's rules are deemed to be appropriate.

PORTUGAL

Same as under Q1.

Additionally, CCP operators are free to determine access conditions for CSDs. CCP rules should however be transparent and non-discriminatory, based upon objective criteria (Articles 264 and 265 of the Portuguese Securities Code).

ROMANIA

The CSD needs to be authorised by CNVM. CNVM regulates the setting up and the operation of the CSD. The rules regarding the organisation and operation of the CSD have to be submitted for approval by CNVM, prior to their entering into force. At the same time, the prior approval of the National Bank of Romania (BNR) is neccesary for any change to the clearing-settlement system and its regulations.

Art.143 para. (1) of Law no. 297/2004 specifies the following: the general conditions regarding clearing and settlement operations, as well as gross settlement operations for transactions involving financial instruments other than derivatives, which may take place within the clearing-settlement system are established by CNVM together with the National Bank of Romania and other competent authorities, as the case may be.

As provided by art.144 para. (1) of Law no. 297/2004, the authorisation and supervision of the system referred to in art. 143 and of the company which manages this system shall be carried out by CNVM with the National Bank of Romania and the other competent authorities, as the case may be.

According to art. 1 para. (3) of the CNVM Regulation no. 13/2005, the central depository and clearing houses/central counterparties authorised to function in Romania shall be registered with the CNVM Register, referred to in art. 2 para. (6) of Law no. 297/2004.

As provided by art.146 para. (1) of Law no. 297/2004, the central depository is a legal person established as a joint-stock company, issuer of nominal shares in accordance with the Commercial Companies Law no. 31/1990, authorised and supervised by CNVM, which deposits securities and carries out other related operations. According to art. 146 para. (2) of Law no. 297/2004, the central depository shall perform clearing-settlement operations related to securities transactions, according to the provisions laid down in art. 143 of the same law.

In accordance with art. 9 para. (3) of the CNVM Regulation no. 13/2005, the central depository shall begin to perform clearing and settlement operation on the date of issuance by

BNR of the functioning authorisation for the clearing and settlement system, pursuant to the BNR Regulation no. 1/2005 regarding the payment system enabling the clearing of funds.

SLOVENIA
See Q 1.

SLOVAK REPUBLIC
According to the Act on Securities and Investment Services (No. 566/2001 Coll.) the central depository is a joint stock company having its registered office in the territory of the Slovak Republic, governed by relevant provisions of the Commercial Code, unless otherwise provided in this Act. Any transformation of the central depository is prohibited. The central depository shall have a minimum share capital of SKK 250,000,000 (approx. € 8,298,480).

A licence shall be required to establish and operate the central depository. The licence shall be granted on the basis of an application by the founders of the central depository, unless otherwise provided in the Act on Securities and Investment Services (No. 566/2001 Coll.)

SPAIN

Article 44 quáter of the SMA implements Article 46 of MIFID regarding regulated markets, CSDs y CCPS, establishes the right of the Spanish regulated markets to enter into arrangements with CSD of another Member State for providing Clearing and settlement services. For MTF would apply the same legal provision, in this case included in Article 125 of the SMA.

CNMV may oppose the use of settlement systems where it considered that they may be detrimental to the orderly operation of the market, having regard to the conditions of the settlement systems envisaged in paragraph 1 of Article 44 quinquies already mentioned in the response 1.b).

Should the CSD from other jurisdiction want to have access through a Spanish CCP then Article 44 ter of the SMA would apply. This article states that a Spanish CCP may establish agreements with other resident and non-resident entities with similar functions or which manage securities clearing or settlement systems (CSDs), and it may have a holding in said entities or accept them as shareholders. Such agreements must be approved by the National Securities Market Commission, subject to the provisions of this and other Laws and of the secondary legislation under this Act.

United Kingdom

The UK Recognition Requirements Regulations require UK Recognised Bodies (Recognised Investment Exchanges and Clearing Houses) to ensure that satisfactory arrangements are made for securing the timely discharge of the rights and liabilities of the parties to relevant transactions. Therefore a CSD from another jursidiction will only be permitted to have access through a UK CCP if the Recognised Body and the FSA are satisfied that this requirement continues to be met.

In addition, we note that the rules of a UK Recognised Investment Exchange must permit a user or member of a regulated market operated by it to use whatever settlement facility they chooses for a transaction, but only when the following conditions are satisfied:

- such links and arrangements exist between the chosen settlement facility and any other settlement facility as are necessary to ensure the efficient and economic settlement of the transaction; and

- the exchange is satisfied that the smooth and orderly functioning of the financial markets will be maintained.

**5. If such CSD from another jurisdiction wanting to act as a CSD for transactions executed on a RM/MTF in your jurisdiction, also wants to establish a customised link (interoperability) with a local CSD in your jurisdiction, would there be regulatory requirements different from or additional to the one provided for under Q4? If so, please explain.**

AUSTRIA
No.

BELGIUM
No, the requirements would be the same as the Belgian framework is built upon the concept of "settlement services".

BULGARIA

There are no regulatory requirements different from A 4.

CZECH REPUBLIC

At present, the register of book-entry securities in the Czech Republic is maintained by the Securities Centre. Nonetheless, the Act predicts the formation of the CSD. The CSD will maintain the central register of all book-entry securities issued in the Czech Republic (taken over from the Securities Centre) and operate a settlement system at the same time. After the formation of the CSD, it will be possible for CSD from another jurisdiction to establish a customised link with a local CSD unobstructed, provided that this CSD from another jurisdiction does not operate as a settlement system or does not act as a CSD in the territory of the Czech Republic. In that event it will have to be authorised by CNB as mentioned above.

DENMARK

Same answer as number 2.

SWEDEN
No.

ICELAND
According to paragraph 2 of Article 8 of Act No. 131/1997 a central securities depository can make an agreement for cooperation with another company carrying out similar activities and providing information to the latter party, provided it is also bound by comparable provisions on confidentiality.

The central depository in Iceland has already established a link with Værdipapircentralen A/S (The Danish Securities Centre). That implies that a registered investor with the Central depository in Iceland can if he chooses to hold Danish securities in his Icelandic account and receive dividends payments and other services in same manner as they were still in Denmark.

IRELAND
There are no specific requirements in respect of links.

ITALY

If such incoming CSD, wanting to act as a CSD for transactions executed on an Italian Market, also wants to establish a customised link (interoperability) with a local CSD in Italy, the applicable regulatory requirements/arrangements are the same described in A2.

Moreover, an incoming CSD can also operate on the basis of a specific designation made by a participant in an Italian Regulated Market,[11] provided that:

- links and devices exist between the designated CSD and the regulated market structure to guarantee effective and economic transactions;

- Consob (or Banca d'Italia in the case of wholesale government security markets) has recognised that the technical conditions for the settlement of transactions concluded on the Italian Market through the incoming CSD allow regular and orderly market operations.

To such extent, the Regulated Market shall inform Consob (or Banca d'Italia in the case of wholesale government securities markets) of the designations of its market participants and report every relevant information.

FINLAND

Such a customised link would only be subject to the rules of the Finnish CSD. Potential changes in the rules would have to be approved by the Ministry of Finance. In addition the restrictions for the book entry of Finnish owners would ably.

FRANCE

See answer to Q4. See also answer to Q6 as it is likely that the requesting CSD/settlement system would ask to become a participant in the French settlement system.

GERMANY

There are no regulatory requirements different from Q 4.

GREECE

The existing legal framework does not cover the above situation According to a draft law under consideration, the operator of the DSS may conclude agreements to register securities held in book-entry form or establish links with foreign clearing and/or settlement systems, CSDs or banking institutions acting as custodians. The requirements, the conditions and the procedure of linkage are to be specified inter alia in the Regulation on the Operation of the Dematerialized Securities System, which will be issued by HCMC.

HUNGARY

No.

LATVIA

1) See answer to question 4.
2) If a depository from another jurisdiction wants to establish a customized link with LCD for cross-border transactions, this activity can be established on the basis of the agreement.

LUXEMBOURG

See our answer for CCPs above.

MALTA

[11] Article 70-*bis*, para 2, of the Consolidated Law on Finance provides that "the management company of the Italian Regulated Market shall guarantee the right of participants in its regulated markets to designate a clearing and settlement system for transactions on financial instruments executed on said markets, other than that designated by the market"

In terms of article 26 of the Financial Markets Act (Chapter 345 of the Laws of Malta) a CSD may provide access to and interoperable links with other CSDs. Currently there is no such access or link and in this context, the MFSA has not determined at this stage any requirements that would apply.

NETHERLANDS

The establishment of links between the local CSD and another CSD is subject to prior regulatory approval. The assessment will focus on the issue whether the linked CSD offers an equal asset protection regime as the local CSD.

NORWAY

A customised link would be dealt with in accordance with the requirements in the Securities Register Act. See also answer in Q4. The same operational requirements would apply for foreign providers as for Norwegian providers. However the Ministry of Finance have provision to issue rules that applies to foreign securities registers not being Norwegian public limited companies.

PORTUGAL

Same as under Q4.

ROMANIA

As provided by art. 101 of the CNVM Regulation no.13/2005, the central depository may conclude contracts with similar entities in Member States and non-Member States, to the purpose of issuing common procedures to manage the securities issued by issuing companies located in Member State or non-Member States and kept in the central depository systems in a centralised manner. The central depository may establish electronic links with other entities which operate clearing-settlement systems, provided that these links shall not affect the duration of the settlement cycle and settlement shall be still carried out based on the DVP principle, with settlement finality within the same day. The central depository shall assess the financial soundness and the operational trustworthiness of each clearing-settlement system with which it intends to establish an electronic link.

According to art. 104 of the CNVM Regulation no.13/2005, the central depository shall request the prior approval of CNVM in order to conclude the contracts mentioned under art.101 of the same regulation.

SLOVENIA

See Q 2.

SLOVAK REPUBLIC

CSD from another jurisdiction can established a customized link only in case of notification and if the conditions of operating rules of central depository are fulfilled.

SPAIN

In this case would apply Articles 44 quáter and 44 quinquies of the SMA (see please the response to question 4). For MTF would apply the same legal provision, in this case included in Article 125 of the SMA.

Also would apply Article 44 bis paragraph 7 of the SMA which states that Spanish CSDs may establish agreements with non-resident CSDs entities that perform similar functions, subject to the provisions of the said Act, of its secondary legislation and of the Regulation envisaged in paragraph 4 above, with regard to the opening and keeping of accounts or other activities of the Spanish CSD.

Additionally, the establishment of a customized link with Iberclear (the Spanish CSD) would require the authorization of the CNMV. Although such a case is not expressly foreseen in the applicable regulations, it is analogous to the one ruled in article 76.4 of Royal Decree 116/1992.

United Kingdom

No, there are no further requirements over and above the ones set out in Question 4.

**6. If such CSD from another jurisdiction wanting to act as a CSD for a RM/MTF in your jurisdiction wants to become a participant in a local CSD in your jurisdiction, would there be regulatory requirements different from or additional to the one provided for under Q4? If so, please explain.**

AUSTRIA

No

BELGIUM

The approach would be different. The screening of participants is performed through the prudential supervision exercised on the settlement institution(s) authorized in Belgium.

BULGARIA

According to the Bulgarian Law on Public Offering of Securities, membership of the Bulgarian Central Depository is limited to:

1. banks;

2. investment intermediaries;

3. management companies;

4. regulated markets or market operators where they are persons other than regulated markets;

*5. foreign depositary and clearing institutions.*

No member of the Central Depository has any privileges over any other member. Each member of the CSD is obligated to pay an entrance and an annual contribution to the guarantee fund which is functioning within the CSD for indemnification of any detriment that might be incurred upon the performance of the operation of the Central Depository. The terms and procedures for the admission of members and for the suspension or expulsion, for the performance of activities and provision of services, for the imposition of penalties on the members of the CSD are provided for the Rules of the Central Depository.

CZECH REPUBLIC

According to the Act, a participant of the ("Czech") CSD may be a foreign CSD. Generally, a participant of the CSD may not be a person:
a) whose restructuring has been permitted, the same shall apply for 5 years following the conclusion of the restructuring proceeding;
b) in respect of whose assets bankruptcy has been adjudicated, the same shall apply for 5 years following the cancellation of the bankruptcy proceedings or due to the lack of debtor's assets;
c) whose debt's plan has been permitted by the court, the same shall apply for 5 years following the discharge of the debt's plan;
d) in respect of which an insolvency petition has been rejected by the court due to the lack of asset, the same shall apply for 5 years following the rejection of the petition.

DENMARK

Same answer as number 3 (2).

SWEDEN

See the answer to Q4.
The following shall also apply: Euroclear Sweden AB's settlement system is approved pursuant to the Swedish Act on Systems for Settlement on the Financial Market (1999:1309) and is registered with

the European Commission. Participants in a settlement system are allowed to be, inter alia, clearing organisations. A participant in a registered settlement system is obligated to provide each and everyone who has a legitimate business interest with information regarding in which system the participant participates and the main provisions for these systems' operations. A participant has rights and obligations in the settlement system. In the event of an insolvency proceeding against the participant, these rights and obligations are determined in accordance with Swedish legislation. Even if a collective insolvency proceeding has been initiated against a participant in a registered settlement system, the transfer order against a third party applies, if it has been registered in the system before the decision on the procedure has been notified. A transfer order may not be cancelled by a participant in a registered settlement system or by a third party after the time stated in the applicable regulations for the system.

ICELAND

According to Article 5 of Act No. 131/1997 individuals and legal entities shall notify the Financial Supervisory Authority of any direct or indirect participation in a central securities depository representing at least 10% of its share capital or voting rights, or less if such entails a significant influence on the management of the company, and the extent of such participation. Should a shareholder with a holding in a central securities depository of the size indicated in the first paragraph exercise it in a manner to the detriment of the sound and secure operation of the central securities depository the Minister may, upon receiving a proposal from the Financial Supervisory Authority, decide that this holding shall not be entitled to voting rights or instruct the central securities depository to take suitable measures. Should the Minister decide, pursuant to the second paragraph, that holdings shall not be entitled to voting rights, such holdings shall be excluded in calculations of the proportion of voting rights represented at shareholders meetings.

According to paragraph 2 of Article 7 of Act No. 131/1997 a merger of a central securities depository with another company is prohibited except with the prior authorisation of the Minister, given upon receiving the opinion of the Financial Supervisory Authority. The same shall apply to any splitting up of a company into two or more companies.

According to paragraph 2 of Article 12 of Act No. 131/1997 a regulation issued by the Minister upon receiving proposals from the Boards of central securities depositories operating on the basis of this Act, may provide for:

1. foreign central securities depositories and foreign commercial banks, saving banks, enterprises in securities services and lending institutions other than commercial and savings banks authorised to hold assets, which are authorised to operate in this country and are subject to surveillance by public authorities, to serve as intermediaries in registration in a central securities depository with legal effect as provided for in Chapter IV. upon receiving the approval of the Financial Supervisory Authority;
2. the authorisation of a central securities depository, upon receiving the approval of the Financial Supervisory Authority, to act as intermediary in the registration in domestic and foreign central securities depositories;
3. granting parties other than account operators the right to seek information concerning their own accounts directly from a central securities depository on the basis of a participation agreement which the party in question has concluded with the central securities depository.

According to paragraph 1 of Article 11 of Act No. 131/1997, those listed in the second paragraph of Article 12 shall conclude an agreement of association with a central security depository, which shall be a condition for their authorisation to serve as intermediaries in the registration, or to have access to the central securities depository.

According to paragraph 2 of Article 2 of Regulation No. 397/2000 on electronic registration of securities in a central securities depository, should a foreign party, authorised to act as an asset depository and as an intermediary for the registration of title to securities, cf. Article 12 of Act No. 131/1997, request to be associated with an Icelandic central securities depository, the Board of the central securities depository shall seek approval of the Financial Supervisory Authority before

granting its association. The same shall apply if a central securities depository requests to act as an intermediary for registration of title in another central securities depository in Iceland or abroad.

**IRELAND**
There are no specific requirements for a CSD from another jurisdiction to participate in a CSD in this jurisdiction.

**ITALY**
No.

**FINLAND**

No.

**FRANCE**

Such CSD would have to meet the CSD/ settlement system participation requirement. Under article 550-1 of the AMF General Regulation governing participation in a CSD and article 560-1 governing participation in a settlement system, where such CSD would be established in non EEA jurisdiction, such CSD participation in a domestic CSD or settlement system is subject to the AMF non-objection within one month following receipt of the non-EEA CSD request by the AMF. Please note that article 560-1 is currently under revision.

**GERMANY**

If a CSD wants to provide CSD services to German Customers according to the definition mentioned under Q 3, there is the need for a banking licence as described above.

To become a participant of a CSD, however, a licence or authorisation by BaFin is not needed.

**GREECE**

The existing legal framework does not provide for a CSD in general to participate in the DSS. According to the actual Regulation on the Operation of the Dematerialized Securities System, in the DSS may only participate :

Investment Firms which have been licensed by the competent authority to provide the service of article 4 par. 2(a) of Law 3606/2007 and are members of the market where securities registered at the DSS are traded.

Credit institutions authorized to provide legally in Greece the investment service of safekeeping and administration of securities, including custodianship..

Hellenic Exchanges Holding S.A., which is the CCP for the derivatives market, exclusively for the purposes expressly provided for under the DSS Regulation.

**HUNGARY**
If a CSD from another jurisdiction seeking to act as a CSD for a RM/MTF in our jurisdiction wants to become a participant in the local CSD in your jurisdiction, it shall meet the membership requirements of the local CSD as laid down in its General Terms of Business.

**LATVIA**
1) See answer to question 4.

2) According to Article 95 of the Law on the Financial Instruments Market:
- A participant of the LCD shall be a legal person that has signed an agreement with the LCD to the effect that the LCD makes book entries of issues of financial instruments, opens financial instrument accounts or services transactions in respect of financial instruments.

- An investment brokerage firm that is licensed by the Financial and Capital Market Commission (Commission) to provide investment services and therefore entitled to hold financial instruments or a credit institution that is licensed by the Commission to engage in the business of credit institutions and holds financial instruments shall be entitled to become a participant of the LCD.
- An investment brokerage firm registered in a member state that provides investment services in the Republic of Latvia shall be entitled to become a participant of the Central Depository as of the day it is entitled to start providing investment services in the Republic of Latvia in due course of this Law, provided that it is duly authorized to hold financial instruments in its registration country.
- A credit institution registered in a member state that provides investment services in the Republic of Latvia by opening a branch shall be entitled to become a participant of the Central Depository as of the day it is entitled to engage in the business of credit institutions in the Republic of Latvia in due course of this Law, provided that it is duly authorized to hold financial instruments in its registration country.
- An undertaking that is registered in a third country and provides investment services shall be entitled to become a participant of the Central Depository only upon its registration with the Commission in due course of this Law, provided that this undertaking is authorized to hold financial instruments in its registration country.

LUXEMBOURG
See our answer for CCPs above.

MALTA

Participation in a clearing and settlement system is governed by objective, transparent and non-discriminatory rules governing such system. Such system rules are overseen by the Central Bank of Malta in terms of article 34 of the Central Bank of Malta Act (Chapter 204 of the Laws of Malta) and to the extent that such a system also functions as a CSD, such rules/bye-laws are also approved by the MFSA. Hence participation in a Maltese settlement system/domestic CSD by a CSD from another jurisdiction would not be subject to any requirements in addition to or different from those under Q4, provided that such participation would not disturb the orderly functioning of a RM/MTF.

NETHERLANDS
Admission to the local CSD is subject to regulatory approval (applicable for any admission request). Admission is generally approved if the applicant observes the admission criteria.

NORWAY

PORTUGAL

Same as under Q4.

ROMANIA

As provided by art. 42 para. (1) letter c) of the CNVM Regulation no.13/2005, central depositories and/or companies which operate clearing-settlement systems in Member States and non-Member States are considered members and are admitted to the central depository system, in accordance with its procedures. According to art. 42 para. (2) of the same regulation, the central depository shall notify CNVM, within one working day, with regard to the admission of these members into the system.

In accordance with art. 43 of the CNVM Regulation no.13/2005, the rules of admission to the central depository system shall include at least the following:

a) objective, clear and undiscriminatory access criteria, which shall include the financial (minimum capital requirements), operational and staff resources, as well as the technical equipment and risk management measures required, including for intermediaries authorised in Member States, in accordance with art. 42 of Law no. 297/2004;

b) criteria for exclusion/suspension from the system of the members that no longer meet the admission requirements;

c) fees charged by the depository in exchange of the services provided.

According to art. 44 of the CNVM Regulation no. 13/2005, the central depository may not deny a member authorised in a Member State access to the system it operates, except for the case in which it considers that the orderly and efficient operation of its activity would be affected. At the same time, according to art. 45 para. (1) of the same Regulation, the denial of access to a member into the system shall be justified in writing, by indicating the access criteria that the respective member does not meet. We would like to underline that, according to art. 45 para. (2) of the same Regulation, a member shall not be admitted into the system unless it meets the minimum technical, operational, human and financial resources requirements, as specified in the rules of the central depository approved by CNVM.

As provided by art. 104 of the CNVM Regulation no.13/2005, the central depository shall request CNVM, in advance, its principle agreement, with a view to admitting to its system a central depository authorised in a Member State.

SLOVENIA

See Q 3.

SLOVAK REPUBLIC

According to the Act on Securities and Investment Services (No. 566/2001 Coll.) any of the following may be a member of a central depository:

a) a stock brokerage firm authorised to provide investment services), and, in so doing, to use the client's funds or financial instruments;
b) a foreign stock brokerage firm, licensed, which is authorised to provide investment services in the territory of the Slovak Republic, and, in so doing, to use the client's funds or financial instruments;
c) a foreign stock brokerage firm which has its registered office in a Member State under the same conditions as a securities dealer which has its registered office in the Slovak Republic;
d) the National Bank of Slovakia;
e) another central depository;
f) a foreign legal person whose business is equivalent to that of a central depository

According to the Act on Securities and Investment Services (No. 566/2001 Coll.) a member shall perform the following activities:

a) register owners of book-entry securities and changes thereof, as well as other information relating to such owners;
b) keep records of information pursuant Article 99(3)(d), in owner's accounts;
c) give orders to the central depository for accounting entries to debit or credit owner's accounts or holder´s account of a member;
d) give orders to the central depository and to another member for registration of transfers in accordance with Articles 22 and 23;
e) give other orders to the central depository, except for orders specified under paragraphs (c) and (d) for clearing and settlement of transactions in financial instruments;
f) perform the activities mentioned in Article 99 (4) (a).

A member shall perform the above mentioned activities within a system for technical data processing operated by the central depository subject to conditions stipulated in the Act on Securities and Investment Services (No. 566/2001 Coll.) and in accordance with the operating rules.

SPAIN

If a CSD from another jurisdiction want to access as participants of a Spanish CSD the general procedure is established in Article 44 bis paragraph 4 of the SMA and is developed in Article 78 of Royal Decree 116/1992 and in the Ministerial order of the 6th July 1992. Participation in the CSD will be effective after its approval by the CNMV.

United Kingdom
No, there are no further requirements over and above the ones set out in Question 4. However, the CSD in question would also need to meet the membership requirements of the local CSD if it wished to become a participant.

**7. For each of the above situations, specified under Q1 – Q6; which are the other relevant authorities in your jurisdiction with regulatory/supervisory or oversight powers (e.g. competition authority, central bank, bank regulator, ministry of finance)?**

AUSTRIA

Apart from the FMA (responsible for the supervision of CCPs and CSDs), the Oesterreichische Nationalbank (OeNB) has to be mentioned as competent authority for payment system's oversight. The OeNB's oversight activities are based on Articles 44a and 82a of the Federal Act on the Oesterreichische Nationalbank (NBG). Article 44a para 4 NBG defines a payment system which is subject to oversight as "any system in accordance with Article 2 of the Settlement Finality Act (SFA), as well as any commercial framework for the electronic transfer of funds among at least three participants".

Since the Austrian CSD (CSD.Austria) and the Austrian CCP (CCP.Austria) are designated in accordance with the SFA, these systems are overseen by the OeNB.

In addition, the OeNB is in charge of designating and keeping record of the systems (as defined by the SFD) as well as of notifying them to the European Commission.

Oversight can only have a cross-border dimension if the operator of a system that is governed by Austrian law is not domiciled in Austria but in any other member state of the EEA. However all issues in connection with supervision have to be dealt with by the home country regulatory authority of this operator and, thus, do not fall into the scope of the OeNB.

BELGIUM
For both clearing and settlement institutions, the other main authority involved is the central bank (NBB) which is competent for the oversight of the systems. With regard to the clearing services, the third authority involved, notably in the context of the approval of the rule book, is the Ministry of Finance. It should be noted that the CBFA is an integrated authority and acts as banking regulator and market supervisor.

BULGARIA

According to the Bulgarian Law on Government Debt the Bulgarian National Bank, under an agreement with the Minister of Finance is a government debt agent and among others obligations is responsible for the settlement of the Bulgarian Government Bonds.

The supervision of the trading and post- trading in all other financial instruments is under the jurisdiction of the Financial Supervision Commission.

CZECH REPUBLIC
In addition to CNB, which has been mentioned above, the Financial Analytical Unit of the Ministry of Finance and The Office for the Protection of Competition would be involved in regulation/supervision or oversight. The Financial Analytical Unit covers work for which the Ministry is responsible under Act No. 253/2008 Coll., on Selected Measures against the Legalisation of the Proceeds of Crime. It collects and analyses information on suspicious transactions that are identified and reported by the parties responsible, and performs other work resulting from those analyses. The Office for the Protection of Competition is the central authority of state administration responsible for creating conditions that favours and protects competition, supervision over public procurement and consultation and monitoring in relation to the provision of state aid.

**DENMARK**

Other relevant authorities within the Danish jurisdiction could be competition authorities and the central bank (Nationalbanken). If the CCP or CSD needs to be a member of payments systems it is required for the CCP or CSD to have an agreement with the central bank (Nationalbanken).

**SWEDEN**

The Swedish Ministry of Finance is, inter alia, responsible for the regulation of the financial markets and for the work in the financial field within the EU.

FI and the central bank describe VPC (the Swedish CSD) as an institution of importance for the stability of the financial system. The CSD is under the supervision of FI but also under the oversight of the central bank.

CCP services are provided by Nasdaq OMX for trading in derivatives. Nasdaq OMX operates regulated markets for trading in shares, bonds and derivatives and is an authorised clearing organisation and thus supervised by FI.

**ICELAND**

There are no relevant authorities other than The Financial Supervisory Authority.

**IRELAND**

- The CBFSAI is responsible for the regulation, or oversight, of payment systems (including securities clearing and settlement systems).
- The Department of Enterprise Trade and Employment is responsible for the approval of operators of relevant systems under the Companies Act, 1990 (Uncertificated Securities) Regulations 1996.
- The Office of the Revenue Commissioners is responsible for the granting of exemptions from stamp duty.

**ITALY**

The other relevant authority in Italy with regulatory/supervisory and oversight powers is the National Central Bank (Banca d'Italia).

For competition issues, the relevant authority in Italy is the "Autorità Garante della Concorrenza e del Mercato" (Antitrust).

**FINLAND**

The Competition Authority has general competence over competition issues. The Bank of Finland has oversight power as part of the ESCB over clearing and settlement. The Ministry of Finance grants licences to RMs, CCPs and other clearing organisations as well as for CSDs. The Ministry also approves the rules of these. The Supervisory Authority (Rahoitustarkastus) has sole supervisory powers.

**FRANCE**

For CCPs: see answer provided in Q1, 2 and 3.
For CSDs: see answer to Q3 and Q5 above.

**GERMANY**

Q1:

Exchange Supervisory Authority/Stock Exchanges

The preconditions for giving clearing and settlement providers access to regulated markets and MTFs organized at the exchange by the operating entity (Freiverkehr) are defined by the German Exchange Act (BörsG). According to section 21 BörsG the Exchange Rules of the Exchange in question may provide for the connection of external clearing and settlement systems to the trading system of the exchange if:

The clearing and settlement system has the necessary technical facilities;

The operator of the system has met the necessary legal and technical requirements for the connection to the trading system;

The orderly and economically efficient clearing and settlement of exchange transactions is ensured.

In filling this frame, especially with respect to the orderly and economically efficient clearing and settlement, the Exchange Council of the Frankfurt Wertpapierbörse (FWB) has defined a draft catalogue of minimum requirements for Clearing houses and CSDs requesting access to the FWB under the code of conduct.

This Draft i.a. includes requirements regarding

- Product spectrum
- Transactions types and member relationship
- Transaction efficiency
- Risk management
- Interoperability
- Fails management
- Operational requirements
- Governance

The preliminary version of this catalogue was received in April 2008 by the parties inquiring access under the Code of Conduct.

German securities Exchanges are administrative-law institutions with their own executive bodies (Board of Management, Exchange Council, Trading Surveillance Office, Disciplinary Committee). The Exchange Council is the common representative body of all market participants (banks, fund managers as well as other investors, lead brokers and listed companies) and is elected by them every three years. All executive bodies act in a sovereign capacity. This includes the power to apply coercive measures under administrative law.

According to Sec. 24b Paragraph 1 KWG companies which run a system in the sense of the Settlement Finality Directive have to notify the German Central Bank accordingly.

Other Exchanges may introduce different interpretations in these issues.

With regard to the access to MTFs not organized by the operating institution of the Exchange there are no requirements under the German Exchange Act.

Q2:

Please refer to Q 1 above

Q3:

If a CCP wants to become a member of another CCP in the meaning of a General Clearing Member, it has to fulfil the respective requirements under civil law. In case of the Eurex Clearing AG these are laid down in the clearing conditions.

Q 4:

Exchange Supervisory Authority/Stock Exchange

The preconditions for giving clearing and settlement providers access to regulated markets and MTFs organized at the exchange by the operating entity (Freiverkehr) are defined by the German Exchange Act. According to section 21 German Exchange Act the Exchange Rules of the Exchange in question may provide for the connection of external clearing and settlement systems to the trading system of the exchange if:

- The clearing and settlement system has the necessary technical facilities;
- the operator of the system has met the necessary legal and technical requirements for the connection to the trading system;
- The orderly and economically efficient clearing and settlement of exchange transactions is ensured.

The above mentioned Exchange Council of the FWB has set up a draft catalogue for providing CSD services, especially to fill the frame of orderly and economically efficient clearing and settlement. This catalogue i.a. includes requirements regarding:

- Product Spectrum
- Transaction Types
- Settlement Services
- Use of central bank money/ commercial money
- Compliance with German Custody Law

The German Custody Act ("DepotG") states that a CSD in that sense has to be a bank of status Wertpapiersammelbank. To obtain the status Wertpapiersammelbank it is necessary to receive recognition by the competent authority of the relevant State (Bundesland) where the Wertpapiersammelbank is seated. The competent authority may impose conditions on this recognition. However, no further explicit regulation is in place. For the time being it is assumed that an incoming CSD do not need to obtain the status of a Wertpapiersammelbank, but instead it is considered sufficient that the incoming CSD holds a collective safe custody account within a resident Wertpapiersammelbank to ensure the transfer of ownership on this account in favour of its customers.

Other Exchanges may introduce different interpretation on these issues.

With regard to the access to MTFs not organized by the operating institution of the Exchange there are no requirements under the German Exchange Act.

Q 5:

Please refer to Q 4 above

Q 6:

If a CSD wants to become a member of another CSD it has to fulfil the respective requirements. In case of the Clearstream Banking Frankfurt AG, they are laid down in the General Terms and Conditions.

**GREECE**

HCMC is the only relevant authority for the above situations. The only exception is the Bank of Greece Securities Settlement System (BOGS) which is the central depository and the securities settlement system for all debt instruments in EUR issued by the Hellenic Republic in the Greek market. By law, the BOGS is subject only to the authorization, supervision and oversight of the Bank of Greece. For competition issues the relevant authority is the Hellenic Competition Commission.

HUNGARY

Yes. There are two authorities involved in the supervisory process relating to post trading service providers:

- HFSA [regulation and supervison of service providers] and
- National Bank of Hungary (NBH) [oversight of systems].

Both authorities are obliged by the law to closely cooperate with each other. For example, the HFSA when licensing and supervising clearing houses, central counterparties (CCPs) and central depositories shall act in concert with the NBH (in practice: HFSA ask for the opinion of the President of NBH). There is an on-going cooperation between the institutions (regular meetings, exchange of information, joint on-site inspections, etc.).

As far as the licensing process between the relevant authorities is concerned, the HFSA is the single entry point for licensing and authorising post trading service providers. The service provider or the would-be service provider communicates with the HFSA and submits any request to it. Then the HFSA checks the completeness of the submitted documents and reviews their content. Simultaneously, the HFSA sends the documents to the NBH in order to inform it and to seek its opinion. At the end of the process, the HFSA will grant licence and/or authorise the post trading service provider after due consideration of all relevant aspects, including the opinion of the President of the NBH.

LATVIA

According to Article 100 of the Law on the Financial Instruments Market, supervision of the Central Depository activities on the financial instruments market is managed by the Commission:

- The Commission shall be entitled to inspect the operation of the Central Depository, including carrying out on-site inspections in the Central Depository. Duly authorized representatives of the Commission shall be entitled to see all documents, accounting registers and databases of the Central Depository and make extracts and duplicates (copies) of those documents.
- Upon receipt of a motivated written request by the Commission, the Central Depository shall submit duplicates (copies) of documents or other information related to its operation to the Commission.
- The Commission shall be entitled to convene meetings of the managing bodies of the Central Depository, establish the agenda and participate in the meetings of the managing bodies of the Central Depository without the right to vote.
- The Commission shall be entitled to cancel, fully or in part, the decisions taken by the managing bodies of the Central Depository.
- The Commission shall be entitled to suspend the members of the management board or the council of the Central Depository from office and duly authorize the Commission's representatives to exercise the functions of the managing bodies of the Central Depository until all violations are rectified.

LUXEMBOURG

The Luxembourg Central Bank may have certain specific competencies in relation to these entities.

MALTA

As already mentioned above, the Central Bank of Malta has oversight functions in terms of article 34 of the Central Bank of Malta Act in respect of payment and settlement systems. Regulated Markets and CSDs are regulated and supervised by the MFSA.

NETHERLANDS

The Ministry of Finance grants a license to the operator of a regulated market. The requirements for a regulated market (and a MTF) include the requirement to have adequate arrangements for post-trading). The Ministry of Finance also formally approves the implementing of a CSD-link.
In all cases AFM and/or DNB will provide the Ministry of Finance with an advice regarding the relevant matter.
The competition authority, NMa, has extensive powers with regard to safeguarding markets against un-competitive behaviour.

NORWAY

Other relevant authorities are the Ministry of Finance who is in charge of authorising CCPs and CSDs and The Central Bank of Norway who has oversight powers of the payment system, being a part (one leg) of the securities settlement system. The Central Bank of Norway oversees and promotes efficiency in the payment systems and in this respect it continuously assesses the impact of securities settlements on financial stability. Securities settlement systems are subject to separate approval granted the FSA of Norway.

PORTUGAL

Apart from CMVM, there may be intervention from the Portuguese central bank (Banco de Portugal, in what regards (i) the incorporation of foreign branches of financial institutions; and (ii) the regulation of its systems). The Ministry of Finance shall intervene in the case of clearing and settlement but not access (mainly in what regards new systems and system liquidation).

ROMANIA

According to art. 144 of Law no. 297/2004, the authorisation and supervision of the system referred to in art. 143 and of the company which operates this system shall be carried out by CNVM together with the National Bank of Romania and other competent authorities, as the case may be. For this purpose, CNVM shall be able to require the administrators of the clearing-settlement system, the employees of the company which operates the clearing-settlement system and the participants to the clearing-settlement system, to provide the necessary information as regards the clearing and the settlement of transactions. CNVM may organise inspections at the premises of the company which operates the clearing-settlement system.

As provided by art. 13 para. (3) of Law no. 253/2004 on settlement finality in payment and securities settlement systems (hereinafter referred to as Law no. 253/2004), all the systems that, according to the law, are authorised by CNVM and are dedicated to setttling securities operations, fall under the scope of Law no. 253/2004. CNVM shall communicate to BNR all the securities settlement systems authorised by CNVM, and BNR shall automatically designate these systems as falling under the scope of Law no. 253/2004. According to art. 13 para. (4) of the same law, BNR shall oversee the payment systems and the securities settlement systems that settle through payment systems of systemic importance.

SLOVENIA

There is no other relevant authority.

SLOVAK REPUBLIC

In the Slovak Republic the National Bank of Slovakia performs supervision of the financial market in accordance with the Act on Supervision of the Financial Market (No. 747/2004 Coll.). As part of its supervision of the financial market, the National Bank of Slovakia inter alia performs supervision of banks, branch offices of foreign banks, securities dealers, branch offices of foreign securities dealers, intermediaries of investment services, stock exchanges, central depositories, asset management companies, branch offices of foreign asset management companies, mutual funds, foreign collective investment undertakings, insurance companies, reinsurance companies, branch offices of foreign insurance companies, branch offices of foreign reinsurance companies, intermediaries of insurance, intermediaries of reinsurance, pension asset management companies, pension funds. The purpose of supervision of the financial market is to contribute to the stability of the financial market as a whole, as well as to its safe and smooth operation, in the interest of maintaining the credibility of the financial market, the protection of customers, and compliance with the rules of competition.

SPAIN

The Minister of Economy is entitled for approving a CSD or CCP established in Spain as such and their Rule Books upon the recommendation of the CNMV and Bank of Spain.

If CSD o CCP request access and/or interoperability the CNMV will approve the request provided that if fully complies with applicable legal provisions. If the access and/or interoperability requested

would entail changes in the provisions of the Rule Books of the receiving Spanish CSD o CCP the necessary amendments would be subject to the Spanish Ministry of Finance approval upon previous reports by the CNMV and the Bank of Spain.

The summary would be, besides the National Securities Markets Commission (CNMV):

Q1.a Minister of Economy, Bank of Spain, Autonomous Regional Governments whose Statute of Autonomy empowers them in matters of regulating securities trading venues

Q1.b Bank of Spain

Q4. Bank of Spain (only for the alternative who requires the compliance with Article 44 ter of the SMA).

Q5. Bank of Spain

United Kingdom

In addition to the approval of the FSA, HMT and the OFT (as mentioned above), CCPs and CSDs with significant UK business may also be subject to oversight by the Bank of England in relation to any payment systems embedded within their operations.

**8. If there is more than one authority in your jurisdiction involved in the decision process, which authority is leading the process? Please describe the decision procedure.**

AUSTRIA
Please see question 7.

BELGIUM
The assessment would be conducted jointly with the NBB. It should be noted that periodical meetings (of the so-called "Comité C&S") are organized between the CBFA and the NBB in the field of clearing and settlement in order notably to share information, harmonize control plans and discuss issues of common interest. Those meetings involve Executive Members of both the NBB and the CBFA.
Regarding the rule book of clearing institutions, the decision is made by the Ministry of Finance, on the basis of the advice of both CBFA and NBB.

BULGARIA

N/A.

CZECH REPUBLIC
N/A.

DENMARK

The Danish Financial Supervisory Authority is the only authority involved.

SWEDEN
Only one authority has the powers to grant or revoke licenses to operate clearing and settlement services or make other decisions that directly relates to the operator, and that is FI.
However, FI cooperates and has also an obligation to confer with the central bank before approving a settlement system according to the Swedish Act on Systems for Settlement on the Financial Market.

ICELAND
See answer to question 7.

**IRELAND**
There are currently no specific arrangements for co-ordinating the decision-making process between authorities.

**ITALY**
The supervision and oversight over CCPs and CSDs is carried out by the Banca d'Italia, as regards stability and systemic risk containment, and Consob, as regards transparency and investor protection.

With specific reference to A5, recognition pursuant to Article 70-*bis*, para 2 b), (e.g. that the technical conditions for the settlement of transactions concluded on the Italian Market through the incoming CSD allow regular and orderly market operations) is adopted by Banca d'Italia in case of access to Markets for the wholesale trading of government securities and by Consob in case of access to the other Markets, after consulting Banca d'Italia in cases of access to markets for the wholesale trading of private and public bonds, other than government securities, and in case of access to regulated markets for options, futures, swaps, futures contracts on interest rates and other derivative contracts linked to securities, currency, interest rates or returns, or other derivatives, financial indices or measures that may be settled by the physical delivery of the underlying asset or by cash payment of differentials[12] and for derivatives on public securities, interest rates and currency.

For the remaining situations, including the regulatory process, Consob and Banca d'Italia share their powers and formally agree any relevant measure to be adopted.

**FINLAND**

The Ministry of Finance is obliged to ask the opinion of the Supervisory Authority and the Central Bank before exercising its powers. The Central Bank and the Supervisory Authority are free to exercise their powers without consultation, but depending on the issue they are likely to seek the opinion of either or both of the other two main authorities.

**FRANCE**

For CCPs: although the AMF is typically the entry door, the decision procedure will be based on a joint and cooperative effort involving all the competent authorities through joint meetings with, and coordinated responses to, the incoming CCPs. The requirements are clear and the procedure straightforward. The length of the process substantially depends on the speed and quality of the documents provided by the incoming CCPs to ensure compliance with regulatory requirements, including equivalence with the requirements set out in the AMF General Regulation.

For CSDs: the incoming CSD/settlement system would contact the AMF and the AMF would coordinate with the Banque de France.

**GERMANY**

BaFin, the Exchange Supervisory Authority and the respective Stock Exchanges as public bodies act within their respective competences independently. Thus, there is no leading authority with regard to the respective regulatory decisions.

**GREECE**

See Q7.

**HUNGARY**
HFSA leads the process and it is the single entry point for licensing and authorising post trading service providers. The service provider or the would-be service provider communicates with the HFSA and submits any request to it. Then the HFSA checks the completeness of the submitted documents and reviews their content. Simultaneously, the HFSA sends the documents to the NBH in

[12] Pursuant to Article 1, para 2, d) of the Consolidated Law on Finance

order to inform it and to seek its opinion. At the end of the process, the HFSA will grant or will not grant licence and/or authorise the post trading service provider after due consideration of all relevant aspects, including the opinion of the President of the NBH.

LATVIA
N/a
See answer to Q7.

LUXEMBOURG
For market surveillance purposes, the CSSF is the leading authority in the process.

MALTA

The MFSA is the competent authority in respect of all matters governed by the Financial Markets Act. In respect of payment and settlement systems, the leading authority is the Central Bank of Malta. Moreover, the Financial Intelligence and Analysis Unit is the leading authority in respect of all matters governing the prevention of money laundering and terrorist financing.

NETHERLANDS
See Q 7 with regard to the Ministry of Finance. Decisions with regard to the Regulatory Framework are a shared responsibility of AFM and DNB.

NORWAY

In the case of authorisation of CCPs and CSDs the FSA of Norway and the Ministry of Finance is involved in the decision process. The FSA of Norway makes the necessary evaluations and brings a formal decision proposal to the Ministry of Finance. The Ministry will make the final decision based upon The FSA's recommendation. However approval of securities settlement systems is granted by the FSA of Norway solely.

PORTUGAL

CMVM. However, the decision procedure is very much delegated in the systems themselves (in what regards access to those systems). Please refer to Q1-Q7.

ROMANIA

CNVM is the authority leading the decision making process. BNR is involved in the prior authorisation of the clearing and settlement system as well as of the gross settlement system for transactions involving financial instruments other than derivatives. The prior approval of BNR is also necessary for any change to the clearing-settlement system and its regulations.

As provided by art. 13 para. (3) of Law no. 253/2004, all the systems that, according to the law, are authorised by CNVM and are dedicated to setttling securities operations, fall under the scope of Law no. 253/2004. CNVM shall communicate to BNR all the securities settlement systems authorised by CNVM, and BNR shall automatically designate these systems as falling under the scope of Law no. 253/2004. According to art. 13 para. (4) of the same law, BNR shall oversee the payment systems and the securities settlement systems that settle through payment systems of systemic importance.

The framework for cooperation between CNVM and BNR is ensured by the Memorandum of Understanding for cooperation with a view to promoting the stability of the financial system as a whole as well as of its components concluded between BNR, CNVM, CSA (Insurance Surveillance Commission), in March 2006. The Memorandum was amended in December 2006 in order to include the newly formed CSSPP (Commission for the Supervision of the Private Pensions System). The Memorandum of Understanding is based on the following cooperation principles:

- clear division of responsibilities;

- transparency and professionalism;
- cooperation regarding the process of drawing up specific legal initiatives and regulations;
- efficiency and ongoing exchange of information;
- confidentiality.

We would also like to mention the Agreement concluded by the Ministry of Economy and Finance (MEF), BNR, CNVM, CSA and CSSPP for cooperation in the field of financial stability and of financial crisis management. The Agreement was signed in June 2007.

Both the Memorandum of Understanding and the Agreement mentioned above take into account the specific responsibilities and objectives of each of the public authorities involved according to the relevant legal provisions in force.

SLOVENIA
There is no other authority.

SLOVAK REPUBLIC
N/A

SPAIN

Article 88 of Securities Market Act 24/1988, established that, in all cases where the powers of surveillance and supervision of the National Securities Market Commission and the Bank of Spain overlap, both institutions shall coordinate their actions on the understanding that oversight of the relevant financial institutions' solvency rests with the institution keeping the respective register and that oversight of the operation of the securities markets rests with the National Securities Market Commission. In order to coordinate their respective powers of surveillance and supervision, the National Securities Market Commission and the Bank of Spain shall sign agreements specifying their respective responsibilities.

National Securities Markets Commission and Bank of Spain have signed an agreement for that purpose.

In practice, when other authorities are involved, the National Securities Markets Commission leads all the processes related to supervision. In turn, the process of compliance with the legal requirements is led by the Minister of Economy provided it requires its final decision.

United Kingdom

The FSA will lead the process, but the application will follow the same procedure regarding the other relevant authorities as mentioned above with the Treasury ultimately responsible for granting the recognition order.

**9. What are the supervisory powers at your disposal to conduct supervision (e.g. collecting information, sanctioning)? Describe the applicable methods for supervision (of local and incoming CCP's or CSD's) conducted by your authority (on site/off site, available powers).**

AUSTRIA

In addition to defining OeNB's legal mandate to review system stability, Article 44a NBG specifies the OeNB's authority to issue regulations, perform inspections (both on-site and off-site), including the assessment of legal, financial, technical and organisational system security, and to regularly collect statistics on the type and volume of the payments processed through the systems.

The OeNB may furthermore impose the prohibition of the operation of the systems or the revocation of the recognition of the systems in accordance with Article 2 SFA. Article 82a NBG governs the sanctions the OeNB may impose on systems which fail to fulfill the disclosure and reporting requirements set forth in Article 44a (i.e. fines of up to Euro 7,000).

Moreover, in context with the above mentioned SFA, the OeNB monitors as competent authority the rules and regulations of all applicants for designation. This survey is conducted before the formal designation and comprises the respective systems rules concerning the moment after which transfer orders may not be revoked. According to Article 21 SFA, participants, including indirect participants, also have to declare themselves as participants or indirect participants towards the OeNB.

**BELGIUM**

The supervisory powers of the CBFA are broadly equivalent to those that prevail for credit institutions. With the exception of clearing and settlement institutions that are authorized as credit institutions established in Belgium, for which the prudential supervision of the CBFA is organized by virtue of the Banking Law, an implementing Royal Decree has been taken as of 26 September 2005 for settlement institutions and should still be developed for clearing institutions in order to define the rules, as well as the corrective measures, regarding CBFA supervision, and the minimum requirements in respect of organization, operation, financial position, internal control and risk management.

For example :

Supervisory Powers :

If the CBFA considers that a settlement institution is not operating in accordance with the provisions of the Law and its implementing decrees and regulations, that its management policy or its financial position is likely to prevent it from honouring its commitments or does not offer sufficient guarantees for its solvency, liquidity or profitability, or that its management structure, administrative and accounting procedures or internal control systems present serious deficiencies, it will determine the deadline within which the situation must be rectified. If the situation has not been rectified by the deadline, the CBFA may : (1) suspend, for the period determined by the CBFA, the direct or indirect exercise of all or part of a settlement institution's activities or prohibit these activities altogether ; (2) order the institution's managers or directors to be replaced within a period determined by the CBFA, failing which, replace the institution's decision making or management bodies with one or more temporary managers or directors who will, individually or jointly where applicable, have the same powers as those replaced. The CBFA will publish its decision in the Belgian Official Gazette ; (3) revoke the authorization.

Additionally, the CBFA can also impose administrative sanctions.

Supervisory Methods :

The CBFA may request information to be provided on their financial position, their transactions, the manner in which they are organized and the way in which they function.

The CBFA may carry out on-site inspections, and inspect and copy, at the institution's premises, any information in the institution's possession in order to :

1° ascertain that the laws and regulations governing the status of settlement institutions are complied with, and that the accounting system, the annual accounts, the statements and other information supplied by the institution reflect a true and fair view ;

2° ascertain that the institution's management structure, administrative and accounting procedures and internal control systems are appropriate ;

3° satisfy itself that the management policy of the institution is sound and prudent, and that its position or transactions are not likely to operate to the detriment of its liquidity, profitability or solvency.

**BULGARIA**

The FSC has a broad range of supervisory powers, such as:

- obligate a supervised entity to take specific action as may be necessary for prevention and rectification of the violations, of the prejudicial consequences of the said violations or of the jeopardy to the interests of investors within a time limit set by the FSC;

- convene a General Meeting and/or schedule a meeting of the management bodies or supervisory bodies of the supervised entity with an agenda set by the FSC for decision-making on the action which must be taken;

- inform the public of any activities jeopardizing the interests of investors;

- order in writing a supervised entity to remove one or more persons authorized to manage and represent the said entity, and divest any such person or persons of the managerial and representative powers held thereby until removal;

- appoint conservators in the certain cases;

- appoint a registered auditor to conduct a financial or other examination;

- impose fines;

CZECH REPUBLIC

Baseline monitoring is undertaken for all firms continuously. It involves analysing a firm's financial and other returns, and checking compliance with notification requirements. CNB also has a planned schedule for on-site verification and off-site inspections to the firm throughout the regulatory period.

Subject to supervision by CNB are:
a) the discharge of duties by individuals or legal entities as laid down in the Act on Supervision in the Capital Market Area,
b) the discharge of duties laid down in special legislative acts,
c) the discharge of duties and conditions laid down in the enforceable decisions of CNB and
d) the discharge of duties laid down by directly applicable regulations of the European Communities.

CNB is entitled to request information from everyone including auditors, to request an explanation of the facts from any person, to request the submission of records, messages or related data transmitted via electronic communication networks from a person that is subject to its capital market supervision, to request the provision of operational and localisation information from a person operating a public communication network or providing a publicly available electronic communication service, and to conduct an on-site inspection pursuant to a special legislative act in a person that is subject to its capital market supervision; CNB may invite an auditor, audit company or expert to the performance of the inspection.

In the exercise of supervision, CNB is entitled to impose sanctions and corrective remedial measures on a person that is subject to supervision and who has violated the Act or a decision issued pursuant to this Act or by directly applicable regulations of the European Communities; this measure shall correspond to the nature and gravity of the violation. In addition CNB may:
a) order an extraordinary audit to be carried out,
b) order a change of auditor,
c) suspend an activity that is subject to state supervision for not longer than five years,
d) prohibit an activity that is subject to supervision,
e) suspend trading in securities,
f) introduce forced administration,
g) change the scope of a licence granted pursuant to the Act,
h) withdraw a licence or approval, cancel a registration or erase tied agents from the list,
i) prohibit or suspend public offering of transferable securities or admission of a transferable securities to trading on an RM/MTF for not longer than ten days,

j) prohibit or suspend presentation or announcement of public offering or admission of a transferable security to trading on an RM or
k) order to change the director.

CNB shall prohibit a person or persons acting in concert to whom it has granted its consent to the acquisition of a holding in an investment firm, a operator of a RM or a CSD, and who no longer meets the conditions for the granting of such consent from exercising voting rights or from otherwise exercising a significant influence over their management.

When determining the amount of a fine to be imposed on a legal person, the gravity of the administrative offence in question, especially the manner, consequences and circumstances of such an offence, are taken into consideration.

**DENMARK**

The supervisory powers at the disposal of the Danish FSA appear from the Danish Securities Trading, etc. Act. Section 86, 87, 88, 89 and 92.

For example, The Danish FSA may ask for any information deemed necessary for the activities of the Danish FSA. The CCP's and CSD's are under supervision both offside and onside.

The Danish FSA may withdraw the license for example were the company grossly or repeatedly neglects its obligations under the Danish Securities Trading, etc. Act http://www.dfsa.dk/sw7804.asp

**SWEDEN**

*Supervision regarding local CCPs and CSDs*

Clearing organisations shall provide FI with information regarding their operations and circumstances appurtenant thereto, pursuant to regulations which are issued pursuant to the Swedish Securities Market Act. In addition to the above-mentioned information, clearing organisations shall provide FI with such information requested by the Authority.

FI may request that:

- an undertaking or other party provide information, documents or other material and
- the party who is expected to be able to provide information in the matter appear for questioning at a time and place determined by the Authority.

The above-mentioned does not apply to the extent that the provision of information would be in contravention of an attorney's legally mandated professional secrecy obligation. FI may order a party who fails to comply with a request to make rectification.

When necessary, FI may conduct an inspection at a clearing organisation.

FI shall, in its supervisory operations, co-operate and exchange information with competent authorities to the extent which follows from the Directive on Markets in Financial Instruments and the Transparency Directive.

The Authority is entitled to appoint one or more auditors to participate, together with other auditors, in an audit of a Swedish clearing organisation. The Authority may, at any time, revoke such appointment and appoint a new auditor.

FI may convene the board of directors of a Swedish clearing organisation. The Authority may also request that the board of directors convene an extraordinary general meeting. Where the board of directors fails to comply with such a request, the Authority is entitled to convene such a meeting.

Representatives of the Authority are entitled to be present at the general meeting and at meetings of the board of directors convened by the Authority and to participate in the deliberations.

*Supervision regarding foreign undertakings which conduct clearing operations from a branch in Sweden*

The supervision covers the undertaking's compliance with such laws and other statutory instruments which apply to the undertaking's operations in Sweden.

Furthermore, FI has the same supervisory powers at its disposal as mentioned above with the exception of the regulations which apply specifically to Swedish clearing organisations.

*Interventions against Swedish clearing organisations*

FI shall intervene where a Swedish clearing organisation has disregarded its obligations pursuant to the Swedish Securities Market Act, other statutory instruments which govern the undertaking's operation, the undertaking's articles of association, statutes or rules or internal instructions which are based on legislation governing the undertaking's operations.
FI shall thereupon issue an order to limit the operations in any respect within a certain time; an order to reduce the risks therein within a certain time; and order to take any other measure in order to rectify the situation; a prohibition on the execution of decisions; or a remark.
Where the violation is serious, the undertaking's authorisation shall be revoked or, where sufficient, a warning shall be issued.
FI may refrain from intervention where a violation is insignificant or excusable, where the undertaking makes rectification or where any other body has taken steps against the undertaking which are deemed sufficient.

Where any party who is a member of the board of directors of a Swedish clearing organisation, or is a managing director thereof and does not fulfil the requirements set forth in the Swedish Securities Market Act, FI shall revoke the undertaking's authorisation. However, this may not occur unless the Authority first informs the undertaking that the person does not fulfil the requirements and such person remains on the board of directors or as managing director after the expiry of a time period determined by the Authority, not to exceed three months.
Instead of revoking authorisation, FI may order that a member of the board of directors or managing director may no longer hold that position. The Authority may thereupon appoint a replacement. The replacement's mandate shall be valid until the undertaking has designated a new board member or new managing director. The above- mentioned requirements shall also apply to a deputy managing director.

FI shall revoke the authorisation of a Swedish clearing organisation where:

1. the undertaking has been granted authorisation by providing false information or in any other inappropriate manner;
2. within one year from when the authorisation was granted, the undertaking has not commenced the operations to which the authorisation pertains;
3. the undertaking has declared that it declines the authorisation;
4. during a consecutive six-month period, the undertaking has not conducted such operations to which the authorisation pertains; or
5. with respect to a Swedish limited company which has been granted authorisation to conduct clearing operations, the company's shareholder's equity is less than two-thirds of the registered

share capital and the deficiency has not been covered within three months from the date on which it became known to the company.
In the cases referred to in 1, 2, 4 and 5, a warning may be issued where such is sufficient.
Where authorisation is revoked, FI may order the way in which the operation shall be wound up. A revocation decision may also include an injunction against continued operations.

Where a Swedish clearing organisation has been notified of a decision regarding a remark or warning pursuant to certain sections of the Swedish Securities Market Act, FI may order the undertaking to pay a fine that shall be not less than SEK 5,000 and not more than SEK 50,000,000. The fine may not exceed ten per cent of the undertaking's turnover for the immediately preceding financial year. In determining the amount of the fine, particular consideration shall be taken of the seriousness of the violation which has given rise to the remark or warning and the duration of the violation. The fine accrues to the Government.

FI may order a clearing organisation to pay a delay fine not to exceed SEK 100,000 where the undertaking does not provide the information in a timely manner as prescribed pursuant to a particular requirement in the Swedish Securities Market Act.

Where FI issues an order or injunction pursuant to the Swedish Securities Market Act, the Authority may impose a conditional fine.

*Intervention against foreign undertakings which conduct clearing operations*

Where a foreign undertaking which is authorised to conduct clearing operations from a branch in Sweden has violated a provision of the Swedish Securities Market Act or other statutory instruments which govern the undertaking's business in Sweden, FI shall intervene and thereupon issue an order to limit the operations in any respect within a certain time; an order to reduce the risks therein within a certain time; and order to take any other measure in order to rectify the situation; a prohibition on the execution of decisions; or a remark.

Where the violation is serious, the undertaking's authorisation shall be revoked or, where sufficient, a warning shall be issued.

FI may refrain from intervention where a violation is insignificant or excusable, where the undertaking makes rectification or where any other body has taken steps against the undertaking which are deemed sufficient.

ICELAND
According to item 8 of Article 2 of Act No. 87/1998 on official supervision of financial operations, supervision in accordance with this law applies to central securities depositories (CSDs).

According to paragraph 1 of Article 8 of Act No. 87/1998, The Financial Supervisory Authority shall ensure that the activities of parties subject to supervision are in accordance with laws, regulations, rules or by laws governing such activities, and that they are in other respects consistent with sound and proper business practices. According to the third paragraph of Article 8, the provision ot this Act apply, where appropriate, to supervision by the Financial Supervisory Authority, its inspections and gathering of information in accordance with provisions of special legislation. The operating permit of the Financial Supervisory Authority is further defined in special legislation.

According to paragraph 1 of Article 9 of Act No. 87/1998, The Financial Supervisory Authority shall inspect the operations of parties subject to supervision as often as is deemed necessary. They are

obliged to grant the Financial Supervisory Authority access to all their accounts, minutes, documents and other material in their possession regarding their activities which the Financial Supervisory Authority considers necessary.

According to paragraph 1 of Article 11 of Act No. 87/1998, The Financial Supervisory Authority may resort to sanctions in the form of daily fines, if the party subject to supervision does not provide requested information or heed requests for corrective action within a certain time limit. According to paragraph 4 of Article 11, The Financial Supervisory Authority can impose liquidated damages on a party subject to supervision in violation of decisions made by the Financial Supervisory Authority.

According to Article 31 of Act No. 131/1997 The Financial Supervisory Authority shall see to it that activities of central securities depositories comply with the provisions of this Act and rules or Regulations issued in accordance with it. The Financial Supervisory Authority shall thus have access to all data and information on the activities of central securities depositories and account operators which it considers necessary for purposes of supervision in accordance with this Act. The Act on Official Supervision of Financial Operations and the Act on Securities Transactions shall apply, as appropriate, to such supervision.

According to Article 32 of Act No. 131/1997 The Financial Supervisory Authority may revoke the rights of the party in question to make registrations in a central securities depository, should The Financial Supervisory Authority be of the opinion that an account operator has committed repeated or serious infringements against the provisions of this Act, the Act on Securities Transactions or rules or Regulations adopted in accordance with them, or that the conduct of an account operator deviates in other respects from normal, sound and trustworthy business practice.

According to Article 34 of Act No. 131/1997, The Financial Supervisory Authority may impose administrative fines on any party violating several Articles of this Act.

The Financial Supervisory Authority regularly asks the central securities depository for information and data. Furthermore The Financial Supervisory Authority carries out on-site inspections on a regular basis.

**IRELAND**

Generally, there is nothing in the legislation relating to supervision that specifically applies to central counterparty's and central securities depositaries, although as the supervisory authority for regulated markets and/or MTFs, there is an implicit power to enquire into the suitability of the CCPs and the CSDs that such markets use in their operations. However, the following should be noted:

*Payment systems*

Under Part II of the Central Bank Act 1997, it is a criminal offence for a person to establish or operate a payment system whose rules have not been approved by the CBFSAI.

Persons who are guilty of an offence may be liable-

(i) on summary conviction, to a fine not exceeding £1,500 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or

(ii) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding five years, or to both, and

(iii) if the contravention, breach or failure in respect of which such person, payment system or member was convicted is continued after conviction, that person, system or member shall be guilty of an offence on every day on which the contravention, breach or failure continues after conviction in respect of the original contravention, breach or failure and for each such offence that person, system or member shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £5,000.

In the approval process, the CBFSAI can impose conditions or requirements on any or all of the activities of an approved payment system in the interests of the proper and orderly regulation of the system. Requirements and conditions may extend to the ongoing provision of information to the CBFSAI as well as allowing the CBFSAI to supervise and enforce compliance with such requirements and conditions.

The CBFSAI may seek court injunctions to secure compliance with the requirements and conditions. Non-compliance may lead to the revocation of an approval.

*Approved operators of a transfer-title system*

If at any time it appears to the Minister that certain requirements are not being satisfied by an approved operator, or that an approved operator has failed to comply with any obligation, the Minister may apply to the court for relief, or give to the operator such directions (which may enforced in court) as the Minister thinks fit for securing that the relevant requirement is satisfied or obligation complied with.

The fundamental sanction for non-compliance is withdrawal of approval, thereby losing the entitlement to operate a system that allows for transfer of securities in an uncertificated manner, and thereby operate as a CSD.

*MiFID*

The Financial Regulator in Ireland, as supervisory authority for regulated markets and/or MTFs is entitled to review the suitability of the CCPs and the CSDs that such markets use in their operations as part of the overall assessment such entities.

**ITALY**

Banca d'Italia and Consob dispose of a broad range of on-site and off-site supervisory powers over local CCPs and CSDs.

They may require CCPs, CSds and intermediaries to provide information and records, periodically or otherwise, concerning the clearing, settlement and guarantee of transactions.

Pursuant to Article 69 of the Regulatory Consolidated Act, CCPs and CSDs shall send annual financial statements and, where they are drawn up, consolidated financial statements to the Banca d'Italia and Consob within 30 days of their approval by the shareholders' meeting. The financial statements shall be accompanied by the minutes of the approval by the shareholders' meeting or the supervisory board, the management board's report on operations, the report of the board of auditors, where one exists, and the report of the external auditors. Copies of the annual financial statements of subsidiaries and a table summarizing the essential data of the financial statements of subsidiaries must also be sent.

CCPs and CSDs shall send to Consob and Banca d'Italia an annual report on the organizational measures taken concerning, among others:

- the safeguards put in place to ensure the reliability and integrity of accounting and operational data;

- the risk-limitation measures adopted, highlighting any shortcomings found in their operation;

- the separation between operational and control functions and management of possible conflicts of interest;

- the reporting procedures at the different levels of the corporate structure, with a specific indication of the reports on the anomalies discovered and the steps taken to eliminate them, including as regards outsourced activities.

At least once a year CCPs and CSds shall test the technological and IT structures of significance for the performance of their services. The results shall be notified to the Bank of Italy and Consob, together with the measures taken or to be taken by the company to eliminate the problems found and the timetable for their implementation.

Consob and Banca d'Italia check CSDs' service rules to ensure that they are likely to achieve the objectives of transparency, investor protection, stability and containment of systemic risk and may require CSDs to amend their service rules with a view to eliminating any problems found.

Consob and Banca d'Italia may require CCPs and CSDs to adopt specific measures to ensure the orderly, secure, continuous and efficient functioning of the services and systems. In extreme cases of necessity and as a matter of urgency, for the purposes of stability and systemic risk containment, the Banca d'Italia may adopt ad-hoc regulation including acting in the place of the managers of CCPs and CSDs.

Consob and Banca d'Italia may carry out on site inspections.

FINLAND

The Supervisory Authority (Rahoitustarkastus) has access to all information from the local RM, CCP or CSD it deems relevant for the discharge of its duties. It conducts onsite and offsite supervision. The Supervision Authority has minimal sanctioning powers with respect to the operators of these systems.
Since local presence is not possible, this question is not relevant in such a context.
The Supervisory Authority has no direct powers over cross border providers of clearing and settlement services.

FRANCE

For CCPs: the AMF is responsible for seeing that French CCPs meet the professional obligations they are subject to by law or regulation. To fulfill this responsibility, the AMF can use the range supervisory powers at its disposal (periodic reporting, adhoc request for information, on site visits, sanctioning power). As for an incoming CCP, the AMF would strongly rely on the supervision of the incoming CCP regulator, depending on the terms of the MOU, but reserves the right to ask for information that may be relevant regarding the orderly functioning of a French regulated market or an MTF and the operation of a French CCP.

For CSDs: The AMF is responsible for seeing that CSDs and operators of settlement systems meet the professional obligations they are subject to by law or regulation. To fulfill this responsibility, the AMF can use the range of supervisory powers at its disposal (periodic reporting, adhoc request for information, on site visits, sanctioning power).

GERMANY

If incoming CCPs/CSDs operates with a German Banking licence, normal banking supervision within the EU-Framework applies.

In the other cases BaFin in principle abstains from intensive own supervision on the respective entity and rely on the home supervision. However, the exemption granted under section 2 (4) KWG may be subject to conditions based on the single case in question.

GREECE

The supervisory powers of th HCMC on clearing and settlement systems and their operators are stated in article 80 of Law 3606/2007. The same article determines the investigative and sanctioning powers of HCMC.

The investigative powers of HCMC include the rights to:

- have access to any document in any form whatsoever and to receive a copy of it;

- demand information from any person and if necessary summon and question a person with a view to obtaining information;

- require existing telephone and existing data traffic records.

The sanctioning powers of HCMC include the rights to:

- require the cessation of any practice that is contrary to the existing legal framework;

- prohibit temporarily, for a period that cannot exceed 5 years, the professional activity;

- require auditors to provide information;

- require the suspension in trading in a financial instrument;

- require the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements.

HCMC may impose a fine up to 3 million euro to any person and/or entity which does not comply with the legal framework. Moreover HCMC may impose a fine up to 500.000 euro to any person and/or entity which does not cooperate in an investigation. Finally, HCMC may disclose to the public any measure or sanction that will be imposed for infringement of the legal framework, unless such disclosure would seriously jeopardize the financial markets or cause disproportionate damage to the parties involved.

HUNGARY

The HFSA has a very broad range of supervisory tools, e.g:

- requesting information;
- on site/off site inspections;
- warning notice;
- supervisory fine;
- initiating the dismissal of the executive member(s) of the management;
- prohibiting certain activities;
- suspension of voting rights;
- appointing regulatory commissioner;
- ordering the transfer of pending contractual obligations to other service provider(s);
- suspension of licence;
- revoking authorization.

As we indicated above, the HFSA is empowered to conduct on-site and off-site investigation as well.

We would like to indicate that pursuant to Section 299/D part b) of our Criminal Code, unauthorized CCP, clearing house and/or CSD activities are prohibited and may be sanctioned with up to 3 years of imprisonment.

LATVIA

1) See answer to Q7.

2) Pursuant to the approved plan the Commission shall carry out inspections in LCD on a regular basis, both on-site and off-site.
During the inspection, the Commission's experts shall analyze LCD activities, operation of its internal control system, and assess potential risks.
In case of necessity, the Bank of Latvia shall also take part in the inspection.

LUXEMBOURG

Article 31 of the MIFID Law provides that the CSSF is given all the supervisory and investigation powers that are necessary for the exercise of its function. These powers include for example the right to have access to any document, to request information from any person, to carry out on-site inspections or investigations with persons subject to its prudential supervision, market operators,

regulated markets and MTFs. Administrative sanctions are detailed under article 41 of the MIFID Law and include for example fines and making public provisions.

**MALTA**

Please refer to the "Financial Market Rules for Regulated Markets" and the "Financial Market Rules stipulating Financial Resources and Financial Reporting Requirements applicable to Regulated Markets and Central Securities Depositaries" which can be viewed on the MFSA website at www.mfsa.com.mt or the following link: mfsa financial market rules

**NETHERLANDS**

AFM and DNB have a range of instruments to fulfil their supervisory responsibilities. Preferably the soundness and stability of the Dutch financial markets is achieved through communication and dialogue with the market infrastructure providers. The pre-approval process provides a strong instrument to achieve this. Other instruments include directions, overturning board-decisions, limiting access to infrastructure providers by participants or prohibiting the Regulated Market or MTF to use the services of the infrastructure provider.

**NORWAY**

The FSA of Norway can collect any information it needs whereby the institution is obliged to answer and give the necessary information. The FSA of Norway can also conduct off-site inspections, on-site inspections, issue public remarks after finishing an inspection, give notice of a formal imposition, give a formal imposition, give notice of a possible recommendation to the Ministry of Finance regarding withdrawal of licence, give a recommendation to the Ministry of Finance regarding withdrawal of licence. In the case of more serious punishable actions The FSA of Norway can also report the institution to the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime or to the local police for further criminal investigation and prosecution.

**PORTUGAL**

Most CMVM powers regard ongoing supervision. The Minister of Finance has the power to grant authorisations to new system operators, which should be public companies (sociedades anónimas) incorporated and managed in Portugal.

System operators (both trading and post-trading) may be self-regulated whenever no specific regulation applies.

CMVM supervises system operators both ex-ante (prudential supervision) and ex-post (ongoing supervision).

As regards ex-ante supervision, the Minister of Finance has the power to grant authorisations to new system operators, which should be public companies (sociedades anónimas) incorporated and managed in Portugal.

CMVM may notably:
a) monitor the activity of system operators and the corresponding systems;
b) supervise legal and regulatory compliance;
c) approve acts and grant authorisations laid down by law;
d) proceed to registrations laid down by law;
e) provide information for claims and punishment of offences within the CMVM's jurisdiction;
f) give orders and formulate concrete recommendations;
g) disseminate information (particularly online);
h) publish studies;
i) regularly assess and disclose, after consulting with the relevant stakeholders, the market practices that may be accepted or not, reassessing the same whenever necessary, as well as their characteristics, terms and conditions in conformity with the legally binding principles, transmitting the respective decision to CESR.

CMVM shall notably take into account the possible effects of the practices in question on the market's liquidity and efficiency, their transparency and adequacy to the nature of the markets and trading mechanisms adopted, the national and international interplay of the various markets and the various risks inherent therein.

During supervision, the CMVM will take all the necessary steps to safeguard, as much as possible, the autonomy of the entities subject to its supervision and to ensure the following principles:

The supervision carried out by the CMVM should comply with the following principles:
a) investor protection;
b) efficient and orderly functioning of the markets in financial instruments;
c) information control;
d) systemic risk prevention;
e) prevention and repression of actions contrary to laws or regulations; and
f) independence before any entity, whether under its supervision or not.

During supervision, the CMVM may adopt the following procedures:
a) request any details and information, examine books, registers and documents, whereby the supervised entities may not invoke professional confidentiality;
b) hear any individual, summoning them when necessary;
c) require that the parties responsible for the premises, where instructions for claims or other proceedings are issued, makes same available to its agents for the execution of said tasks, in suitable condition;
d) request the cooperation from other persons or entities, including the police authorities, when such is shown to be necessary or appropriate for performing its functions, namely, in the event of opposition to the said performance or based on technical expertise of the matters in question;
e) replace any system operators (trading / post-trading) when same does not adopt the necessary measures to regularise anomalies that put at risk the regular functioning of the market, activity carried out or the investors' interests;
f) replace supervised entities in their duty to inform; and
g) publicly disclose the fact that an issuer is not performing its duties.

In the most situations, persons contacted by CMVM become subject to the duty of not disclosing the contents or the occurrence of the action to clients or third parties.

In the appeals against decisions made by the CMVM, the exercise of its powers of supervision, it is presumed, until proven to the contrary, that the suspension of the said decision will cause serious damage to public interest.

As regards sanctioning, actions may be considered under a criminal perspective or an administrative perspective. In the case of criminal offences CMVM prepares a detailed report to be delivered to the Public Prosecutor, which shall either prosecute (bring to court) or archive the proceedings (mainly market manipulation and insider trading).

Additionally, disobedience is considered a crime. Whoever refuses to abide CMVM orders issued within the scope of its supervisory functions, and whoever by any form creates obstacles to the carrying out of such orders, may be considered under the scope of a qualified disobedience crime. Those who fail to meet obligations hinder or defraud the execution of the accessory sanctions or the precautionary measures, imposed in an administrative offence process, should incur the same penalty.

Apart from the crimes referred to above, general penalties apply (the Criminal Code), as well as supplementary penalties (under the Securities Code), such as:
a) disqualification, for a maximum period of five years, from the practice as agent of the profession or activity associated with the crime, including prohibition of the practice of management, administration, control or supervision and, in general, representation of any financial intermediary, within the scope of some or all intermediary activities in securities or other financial instruments; and

b) publication of the conviction, at the expense of the defendant, at appropriate locations and in compliance of the legal system and protection of the securities or other financial instruments market.

Where an offence generates transitional or permanent economic benefits for an indicted person or a third party for whose account the indicted person trades, including interest, profits or other economic benefits, the same shall be seized during the proceedings or, at least, declared forfeited in the decision convicting such persons. The economic benefits generated by an offence include capital gains effectively realised and expenses and losses avoided by committing the offence, irrespective of the final application thereof by the indicted person and even if he has subsequently lost them. Any amounts seized in the terms of preceding numbers shall be applied to remedy the persons who have incurred damages and submitted their claims in the context of criminal proceedings, 60% of the remainder being declared forfeited in favour of the State and 40% in favour of the investor compensation scheme.

When investigating the CMVM may:

a) ask any persons or entities for any clarification, information, documents, irrespective of their form, items and particulars necessary to confirm or reject the suspicion of a crime against the securities market or that of other financial instruments;
b) seize, freeze or inspect any documents, irrespective of their form, valuables, items related to the suspected crimes against the securities or securities market or that of other financial instruments or seal items not seized in the facilities of persons and entities subject to its supervision, to the extent the same prove to be necessary to investigate the suspected crime against the securities market or that of other financial instruments;
c) request the competent judiciary authority, in a duly reasoned way, to authorise that fixed or mobile telecommunications service providers or Internet service providers be asked for any existing records of telephone calls and data transmissions;
d) request fixed or mobile telecommunications services providers or Internet service providers for any existing records of telephone calls and data transmissions.

CMVM may request the collaboration of other entities, the police authorities and criminal investigation police bodies. In the event of an emergency or danger arising from any delay, even before starting any preliminary enquiries, CMVM may perform the actions referred to in paragraph b) above, including seizure and freezing of valuables, irrespective of the place or organisation in which the same are located.

As regards administrative sanctions, different fines apply depending on the seriousness of the infraction:

a) Between € 25,000 and € 2,500,000 when qualified as very serious;
b) Between € 12,500 and € 1,250,000, when qualified as serious;
c) Between € 2,500 and € 250,000, when qualified as less serious.

These penalties concern both the breach of duties laid down in the Securities Code and any regulations thereon and the breach of duties laid down in other domestic or EC laws and any regulations thereon. As regards post-trading systems, typical offences are as follows (and qualified as very serious administrative infractions):

a) carrying out the functions of the clearing house, central counterparty and settlement system outside the cases and terms prescribed by law or regulation, particularly, when carried out by an entity not authorized for said purpose;
b) the functioning of the clearing house, central counterparty or settlement system in accordance with rules that are not registered with the CMVM or not published;
c) the carrying out of certain transactions on financial instruments and without intervention by the central counterparty;
d) failure to make timely provision of financial instruments or cash for the settlement of transactions;
e) breach, by the entity that assumes the functions of the clearing house and central counterparty, of the duty to adopt the necessary measures for protecting the market, minimise the risks and protect the clearing system.

Breach, by the entity that assumes the functions of the clearing house and central counterparty, of the following duties constitutes a serious administrative infraction:
a) identify and minimise the sources of operational risk;
b) monitor the access requirements of clearing members;
c) adopt an accounting structure that would ensure the appropriate asset segregation between the values of its members and that belonging to the clients of the latter.

In addition to fines and notwithstanding those set out in the general laws on administrative offences, the following ancillary sanctions:

a) apprehension and loss of the object of the offence, including the benefit obtained by the infringer by the practice of the offence;
b) temporary suspension of the exercise by the infringer of the profession or the activity to which the offence refers;
c) disqualification from the exercise of the function of administration, management, control, supervision and, in general, representation of any financial intermediary within the scope of any or all activities of intermediation in securities or other financial instruments;
d) publication by the CMVM, at the expense of the infringer and in places suitable for the accomplishment of the aims of general prevention of the legal system and protection of securities or other financial instruments markets, of the sanction imposed in view of the offence; and
e) revocation of the authorisation or cancellation of the registration necessary for the performance of the activities of financial intermediation in securities or in other financial instruments.

The sanction described in paragraphs b) and c) above may not be greater than five years from the final decision. The publication described under d) may be made completely or partially, in accordance with CMVM's decision.

The determination of the actual fine and accessory sanctions is done pursuant to the material illegality of the act, agent's negligence, benefits obtained and prevention requirements. Whether the agent is an individual or legal entity, is also taken into account.

In the determination of the material illegality of the act and the negligence of legal entities and similar entities, the following circumstances, among others, are taken into consideration:
a) the danger or damage caused to investors or the market of securities or other financial instruments;
b) the occasional or repeated nature of the offence;
c) the existence of the concealment of acts which tend to impair discovery of the offence;
d) the existence of acts by the agent, on own initiative, aiming at, repairing the damages or preventing the dangers caused by the offence.

In the determination of the material illegality of the act and negligence of individuals, beside those described in the sub-article above, the following circumstances are taken into consideration:
a) level of responsibility, scope of functions and role in the said legal entity;
b) intention to obtain, for itself or another entity, an illegitimate benefit or damages caused;
c) the special duty of not committing the offence.

In the determination of the applicable sanction, the agent's economic situation and previous conduct are also taken into consideration.

The CMVM may request delivery of or seize, freeze or inspect any documents, valuables or items related to offences, irrespective of their form, and seal items not seized in the facilities or persons or entities subject to its supervision, to the extent the same are necessary for investigating or supporting any proceedings entrusted to it.

When it becomes necessary for the instruction of proceedings, the defence of the securities or other financial instruments market or the protection of the investors' interests, the CMVM may order one of the following interim measures:
a) the preventive suspension of one or some of the activities or functions carried out by the defendant;
b) the exercise of functions or activities subject to certain conditions, necessary for this exercise, namely, compliance with the duty to inform;
c) seizure or freezing of valuables, irrespective of the place or organisation in which the same are located.

The order described above comes into force, according to the following cases:
a) until its revocation by the CMVM or final decision; or
b) until enforcement of an ancillary sanction equivalent to the measures contemplated in the preceding number.

The order of preventive suspension may be published by the CMVM.

Detailed procedural rules apply (both on criminal and administrative offences). They are not included on this survey and are available under request and have also been included in former CESR surveys (most notably the market abuse directive report – please refer to CESR document 07-762).

ROMANIA

According to art. 153 of Law no. 297/2004, CNVM supervises the activity of the central depository to ensure the transparency of operations, the smooth development of activities and the protection of investors. CNVM may require the modification of the regulations issued by the central depository. C.N.V.M. may require the central depository to periodically send data, information and documents, may organise on-site inspections of the central depository and may request to be provided with all the necessary documents by certain deadlines. As provided by art. 166 of the same law, CNVM may require the modification of the regulations issued by the clearing house and the central counterparty.

In accordance with art. 271 of Law no. 297/2004, the breach of the provisions of Law no. 297/2004 and of the regulations adopted in its application is sanctioned administratively, disciplinarily, contraventionally or penally, as the case may be. As provided by art. 272 of the same law, the following deeds are considered offences:

a) breaching the provisions of Law no. 297/2004 or of the regulations issued by CNVM in its application;

b) carrying out any activities or operations for which Law no. 297/2004 or the CNVM regulations require authorisation, without an authorisation, or by breaching any conditions or restrictions provided by the authorisation;

c) failing to comply with prudential rules and rules of conduct;

d) failing to comply with the measures established by inspections or following inspections;

e) failing to comply with the obligation to audit financial statements or their auditing by unauthorised persons.

As provided by art. 273 of Law no. 297/2004, the offences referred to in art. 272 of the same law are sanctioned by:

a) warning;

b) fine;

c) complementary sanctions, applied accordingly:

1. suspension of authorisation;

2. withdrawal of authorisation;

3. temporary prohibition of carrying out certain activities and services which fall under the scope of this law.

C.N.V.M. may make available to the public any measure or sanction imposed for the failure to comply with the provisions of Law no. 297/2004 and of the regulations adopted in its application, except for the situations when, by public disclosure, the normal functioning of the market might be jeopardised or significant damage might be caused to the parties involved.

According to art. 274 of Law no. 297/2004, the offences referred to in art. 272 of the same law shall be acknowledged by natural persons, mandated to this purpose by CNVM, who exercise powers regarding the supervision, investigation and control of compliance with the capital market legal provisions and regulations. Upon receipt of the documents in proof from its agents, CNVM may decide to extend the investigations, to take preservation measures and/or to interview the persons under investigation, or to sanction the offences that constitute the subject of investigation.

SLOVENIA

Securities market agency has a supervisory power under CCP or CSD:

1. by monitoring, collecting and investigating the information, reports and messages of the central clearing and depository house and other entities that, in line with this or another act, are obliged to report to the agency,

2. by reviewing the operations of the central clearing and depository house and the persons closely connected with the central clearing and depository house, persons to which a central clearing and depository house transferred a significant portion of its business processes and from the holders of qualifying holdings in a central clearing and depository house,

3. by issuing supervisory measures.

Until now Agency hasn't had any experiences with CCP or CSD form other jurisdiction which would like to provide CCP or CSD services in Slovenia.

SLOVAK REPUBLIC

In performing supervision of supervised entities, the National Bank of Slovakia shall ascertain relevant particulars concerning supervised entities and their activities, especially shortcomings in the activities of supervised entities, causes of the shortcomings revealed, consequences of the shortcomings revealed and persons responsible for the shortcomings revealed. In performing supervision, procedure in accordance with the Act on Supervision of the Financial Market (No. 747/2004 Coll.) shall be followed, unless provided otherwise by a separate law.
The National Bank of Slovakia performs on-site and off-site supervision of supervised entities.
On-site supervision shall mean the acquisition of information, usually directly at the supervised entity's location or from its employees, and evaluation of information so obtained; on-site supervision shall not be the on-site acquisition and evaluation of information through any action of the National Bank of Slovakia in proceedings conducted by the National Bank of Slovakia pursuant to the Act on Supervision of the Financial Market (No. 747/2004 Coll.) - Articles 12 to 34 and pursuant to separate laws.
Off-site supervision shall mean the acquisition and evaluation of information about a supervised entity in ways other than through on-site supervision, such as through the acquisition and evaluation of information submitted to the National Bank of Slovakia at its written request and of information stated in returns, statements and other supporting documentation submitted to the National Bank of Slovakia under this Act or under separate laws; off-site supervision shall not be off-site acquisition and evaluation of information through any action of the National Bank of Slovakia in proceedings conducted by the National Bank of Slovakia pursuant to the Act on Supervision of the Financial Market (No. 747/2004 Coll.) - Articles 12 to 34 and pursuant to separate laws.

**SPAIN**

According with article 85 of Securities Market Act 24/1988, of 28th July, the National Securities Market Commission shall be given all supervisory and investigatory powers that are necessary for the exercise of its functions.

The National Securities Market Commission's powers of supervision and inspection shall include, in the form and subject to the limitations established by law, the right at least to request, to have access to any document in any form whatsoever and to receive a copy of it, to demand information from any person and if necessary to summon and question a person with a view to obtaining information, to perform inspections on site in any office or premises of the firms and companies, to demand existing telephone and data traffic records, to demand the cessation of any practice that is contrary to the provisions established in this Act and its secondary legislation, to request the sequestration or freezing of assets, request temporary prohibition of professional activity, to obtain from the auditors of investment firms and of the governing companies of official secondary markets any information they may have obtained in the course of their duties, to adopt any type of measure to ensure that investment firms and official secondary markets continue to comply with legal requirements, to order the suspension or limitation of the type or volume of transactions or activities that natural or legal persons may perform in the securities markets, to order the suspension or exclusion from trading of a financial instrument, on either an official secondary market or a multilateral trading facility, to refer matters for criminal prosecution, etc.

The National Securities Market Commission can order, in writing or verbally, the persons and entities listed under article 84 of the SMA (that includes all the Spanish CSDs and CCPs created according to the provisions of the SMA).

In order to obtain such information or to check its veracity, the Commission may carry out such inspections as it deems necessary. The entities are obliged to supply any books, registers and documents, regardless of their format, which the Commission deems pertinent, including computer programs, magnetic and optical disk files and any other type of files.

Verification and investigation may take place in any of the following locations, at the discretion of the National Securities Market Commission:

In any office, department or premises of the firm being inspected or of its representative.

At the premises of the National Securities Market Commission.

The National Securities Market Commission can oblige firms to disclose any information it deems pertinent regarding their activities in the securities market or any activities which might influence the market.

Articles 102, 103 and 104 of the SMA establish the different sanctions be imposed upon any offender committing a very serious infringement, a serious infringement or a minor infringement of the SMA, respectively.

The National Securities Markets Commission (CNMV) receives on a daily basis the relevant information of activity from Iberclear (the Spanish CSD) and MEFFCLEAR (the Spanish CCP for repo traded in the MTF SENAF).

The information daily sent by Iberclear includes the situation of all the transactions pending to be settled, its daily multilateral settlement accounts, the additional collateral requested to their individual participants, the own account and aggregate clients' account positions for every participant in each of the ISIN codes, the penalties imposed to the participants.

The CNMV receives on-line information from MEFFCLEAR in order to check the activity, the open positions and the collateral requested to the participants.

The supervision activities are mainly addressed to control the efficiency in the clearing and settlement performance (both on the CSD/CCP and on their individual participants level), to check

the delays and failed transactions occurred in the clear and settlement processes, the adequacy of the collateral requested to the participants and the new operational procedures proposed for those institutions.

The on-site inspection activities are specifically oriented to operational risk issues (including contingency plans and backup facilities), the adequacy of the supervision arrangements put in place for the abovementioned institutions and the practical application of their operational Rule Books. The last on-site inspection of Iberclear was done in 2005-2006. MEFFCLEAR received its last on-site inspection in 2006-2007. Both inspections were carried out by specialized expert teams of the CNMV that included IT staff. The Bank of Spain provided staff that collaborated with the inspection teams.

The Secondary Markets Directorate of the CNMV has special units for supervising the Spanish CSDs/CCPs.

United Kingdom

The FSA uses Close and Continuous supervision in its assessment of the local CCPs/CSDs ongoing suitability and adherence to REC and the FSA's principals. This Close and Continuous program enhances the decision making process. There are a number of options open regarding supervisory powers. These include, but are not limited to:

i. Moral Suasion; or

ii. Regulatory requests for information; or

iii. Giving directions - Under section 296 of the Act (FSA's power to give directions), the FSA has the power to give directions to a recognised body to take specified steps in order to secure its compliance with the recognition requirements or other obligations in or under the Act or, in the case of a UK RIE, the MiFID implementing requirements. In the case of a UK RIE those steps may include granting the FSA access to the UK RIE's premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any regulated activity by the UK RIE for the period specified in the direction; or

iv. Revoking recognition - Under section 297 of the Act (Revoking recognition), the FSA has the power to revoke a recognition order relating to a recognised body.

Regarding overseas recognised bodies which (following an assesment that they are subject to equivalent standards of protection in their home jurisdiction) have been licensed as a 'Recognised Overseas Clearing House' (ROCH) in the UK; the FSA relies mainly on the home state regulator who remains responsible for the day-to-day supervision of the ROCH. To facilitate this, the FSA will seek to establish a dialogue with the home regulator to enable co-operation and exchange of information. In addition, the FSA requires an annual report outlining any substantial events and/or changes that have occurred during the year from the entity.

In addition, the FSA may revoke a recognition order under section 297 of the Act (Revoking recognition) if an overseas recognised body is failing, or has failed, to comply with the recognition requirements or any other obligation in or under the Act.

**10. Is there an arrangement in use for cooperation/coordination with authorities from other jurisdictions in the above situations described in Q1 – Q6?**

AUSTRIA
No.

BELGIUM
Yes. The CBFA has signed MoUs with the relevant authorities (i.e. France, The Netherlands, UK) for both Euroclear Group and LCH-Clearnet.

BULGARIA

There are no specific arrangements in use for cooperation with other authorities relating to clearing and settlement.

CZECH REPUBLIC

There are some rules arising from Directive 2004/39/EC on markets in financial instruments ("MiFID"). Provisions in Chapter II of MiFID were adopted unchanged.

Generally speaking, CNB may request the cooperation of the competent authority of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation and vice versa. CNB is also entitled to request/provide information from/to the competent authority of another Member State. CNB shall inform (and be informed by) home Member State that an investment firm acting within its territory under the freedom to provide services breaches the obligations arising from the provisions adopted pursuant to the MiFID. CNB may also request information from foreign participants of a RM and shall inform a competent authority of their home Member State. CNB may on request of a competent authority of another Member State on cooperation in a supervisory activity or for a on–the–spot verification, carry out this by itself or provide a cooperation with carrying out to the competent authority or to experts and auditors authorized by this Member State. Without undue delay, CNB supplies on the request of the competent authority of another Member State with all requested information related to supervision in the capital market (in some cases may CNB refuse the request of cooperation). CNB is also obliged to inform in detail the authority of another Member State of every legitimate suspicion of breaching obligations by provision of investment services, organizing the RM or protection against market abuse in this Member State. If CNB receives a notification of breaching obligations by provision of investment services, organizing of the RM or protection against market abuse in the Czech Republic from the authority of another Member State, CNB keeps this authority informed and informs of the results.

DENMARK

There is no specific arrangements.

SWEDEN

Euroclear Sweden AB is the parent company of its Finnish counterpart, Euroclear Finland Oy. There is a memorandum of understanding between the Swedish and the Finnish supervisory authority.

ICELAND

No.

IRELAND

The CBFSAI has entered into Memorandums of Understanding with the authorities in Belgium and the United Kingdom that are responsible for the oversight of securities settlement systems settling Irish securities.

ITALY

Specific Memoranda of Understanding between the Italian Authorities and the corresponding foreign Authorities are put in place, following the arrangement mentioned under A1 and A4, in order to compare how the foreign CCP or CSD is supervised and overseen in its jurisdiction with respect to the Italian jurisdiction, to coordinate the supervision and oversight activities and to arrange the exchange of information.

FINLAND

The current arrangements relevant in this context are the MoU between the Finnish and Swedish Supervisory Authorities over the supervision of the NCSD group and the MoU on the Supervision of the Nordic operations of NasdaqOMX between the Supervisory Authorities in Denmark, Finland, Iceland and Sweden. Since both the OMX and the NCSD are either already a part of a large group or in the process of becoming parts in such a group the MoU arrangements are under revision.

**FRANCE**

For CCPs: there are arrangements in place with the competent authorities involved in the supervision of the French CCP, LCH Clearnet SA, which act as a CCP for their domestic markets, and with the competent authorities involved in the supervision of LCH.Clearnet Ltd, the UK CCP which is part of the same group as LCH ClearnetSA.

For CSDs: There are arrangements in place with the other competent authorities for the Euroclear Group.

**GERMANY**

The above mentioned notes regarding the licensing requirements pursuant to section 32 (1) KWG in conjunction with section 1 (1) and (1a) of the KWG for conducting cross-border banking business and/or providing cross-border financial services dated April 5th 2005 foresee that the home supervisor has to cooperate with BaFin.

**GREECE**

There are no specific arrangements in use for cooperation with other authorities relating to clearing and settlement.

**HUNGARY**

There are no specific arrangements in use for cooperation/coordination with authorities from other jurisdictions in the above situations described in Q1 – Q6.

The main reason for that is the fact that currently our domestic market is serviced by purely domestic post trading service providers, there are no cross-border elements. If any changes in the present circumstances occur, the HFSA will not hesitate to contact the relevant authority and initiate closer cooperation in respect of post trading matters.

**LATVIA**

Cooperation/coordination with Regulator from other jurisdictions takes place at the level of exchange of information and it has been regulated by the Law on the Financial Instruments Market (Section G) and if required by signing an agreement.

**LUXEMBOURG**

Cooperation discussions have taken place and are continuing with the French authorities in relation to the services provided by the French LCH.Clearnet in relation to transactions carried out on the Luxembourg Stock Exchange.

**MALTA**

See response to Q11 below.

**NETHERLANDS**

The Dutch regulators extensively use MoU's to co-ordinate and co-operate with authorities in other jurisdictions with regard to post-trade infrastructure providers.

**NORWAY**

There are no arrangements in use for cooperation/coordination with authorities from other jurisdictions in the above situations described in Q1-Q6.

**PORTUGAL**

There are no specific agreements for clearing and settlement, although general MoUs may apply depending on the jurisdiction, the circumstances and the issues at stake.

**ROMANIA**

According to art. 6 para (2) of The Statute of CNVM adopted by the Government Emergency Ordinance no. 25/2002, approved with subsequent amendments by Law no. 514/2002, as subsequently modified, CNVM may, on mutual basis, provide assistance to foreign regulators that need such assistance for the fulfilment of their supervisory objectives. This form of assistance may include the following:

- provision of public or non-public information about or in connection with a natural or legal person subject to the regulation, supervision and control of CNVM;
- provision of copies of the records held by the supervised entities;
- co-operation with the persons who have information about the subject of an inquiry.

The CESR Multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Activities provides the cooperation framework in the field of supervision between the CESR members.

The Memorandum of Understanding on Cooperation between the Financial Supervisory Authorities, Central Banks and Finance Ministries of the European Union on Cross-Border Financial Stability provides the cooperation framework for the management of cross-border crises.

SLOVENIA

Agency hasn't any special arrangement.

SLOVAK REPUBLIC

There are no specific arrangements in use for cooperation with other authorities relating to clearing and settlement. In generall: According to the Act on Supervision of the Financial Market (No. 747/2004 Coll.) the National Bank of Slovakia may conclude a written agreement on co-operation and provision of information between the National Bank of Slovakia and the respective authority or person; the National Bank of Slovakia may conclude such an agreement with a foreign supervisory authority only on reciprocal basis.

SPAIN

Apart from the multilateral and bilateral MoUs signed between the Spanish CNMV and other securities regulators of the European Union there are not other arrangement in use for the above situations. However, the situations described in questions 3 and 5 do not require any kind of special cooperation/coordination arrangement to be put in place among the relevant securities regulators of the jurisdictions involved.

Article 91 of the SMA establishes the cooperation/coordination framework between the National Securities Market Commission and the competent authorities of European Union.

United Kingdom

As in question 1 above: Under the ROCH regime the FSA relies mainly on the home state regulator who remains responsible for the day-to-day supervision of the ROCH. To facilitate this, the FSA will seek to establish a dialogue with the home regulator to enable co-operation and exchange of information. In addition, the FSA requires an annual report outlining any substantial events and/or changes that have occurred during the year from the entity.

- There is often also a college of supervisors, where supervisors from countries that oversee a cross-border CCP/CSD can liaise with each other more directly and regularly on key issues, such as risk management.

**11 What, if any, provisions exist within your national legislation to minimize regulatory overlap for incoming clearing and settlement providers that are subject to regulation in their 'home' jurisdiction?**

**AUSTRIA**
No.

**BELGIUM**
For both clearing and settlement services, the Belgian legislation foresees an equivalency principle (i.e. entities should be subject to a legal status and supervision deemed equivalent by the CBFA and the NBB) that will influence the authorization as well as the intensity of the on-going supervision. Moreover, the national legislation envisages that, with the agreement of the Minister, the CBFA and the NBB may, on the basis of reciprocity, conclude agreements with competent foreign supervisory authorities concerning more detailed rules for co-operation in respect of supervision and the mutual exchange of information.
Finally, by virtue of article 23bis of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, that transposes the provisions of articles 34 and 46 of the MiFID in Belgian law, the CBFA should consider, in the exercise of its competences, the supervision and/or the monitoring already exerted by other authorities.

**BULGARIA**
In exercising its supervisory functions the Deputy Chairperson takes into account the supervision of the clearing and settlement system which has entered into agreement with the regulated market, exercised by the supervisory authority from another Member States.

**CZECH REPUBLIC**
There are no such provisions

**DENMARK**
There is no such legislation.

**SWEDEN**
There are no specific provisions regarding this matter.

**ICELAND**
Not applicable.

**IRELAND**
There are no specific provisions.

**ITALY**
In order to avoid duplicate controls, Consob and Banca d'Italia shall take into account the supervision of incoming clearing and settlement providers by the competent supervisory Authorities of other EU member states.[13] Regulatory overlaps may be minimized also trough the Memorandum of Understanding described under Q10.

**FINLAND**
There are no such powers unless the fact of not having any direct powers is considered as such.

**FRANCE**

[13] Article 14, para 5, of the Regulation containing implementation rules of Italian Legislative Decree no. 58 of 24 February 1998 on markets (adopted by Consob with Resolution no. 16191 of 29 October 2007 and later amendments.

For CCPs: Under Article 440-3 of the Financial and Monetary Code, the AMF takes into account the supervision exercised by other competent authorities when deciding whether or not to allow a French regulated market to use a non-domestic CCP. See also answer to Q 9a and 10a

For CSDs: Under Article 440-3 of the Financial and Monetary Code, the AMF takes into account the supervision exercised by other competent authorities when deciding whether or not to allow a French regulated market to use a non domestic settlement system.

GERMANY

Please refer to Q 9.

GREECE

There are no specific provisions to minimize regulatory overlap for incoming clearing and settlement providers.

HUNGARY

We do not have such a system for the incoming clearing and settlement providers, they shall abide by the domestic Hungarian legal provisions.

LATVIA

No specific solution to the above problem is specified in our jurisdiction.
To resolve the problem:
Taking into account that the European central depositories are subject to different regulatory requirements it would be useful to set uniform cooperation principles because it is impossible to conform to the regulatory requirements of each country. This would be partly resolved upon the implementation of T2S.

See answer to question 1.

LUXEMBOURG

As already set out in our answer to question 1, article 15 of the MIFID Law inter alia provides that, in order to avoid undue duplication of control, the CSSF shall take into account the oversight and supervision of the clearing and settlement systems already exercised by the national central banks or by other supervisory authorities with competence in relation to such systems.

MALTA

Section 18 of the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta), provides that "The Central Bank of Malta and the Authority (MFSA) shall on request exchange information in their possession which is necessary for the discharge by the Central Bank of its duties under the Central Bank of Malta Act, and by the Authority under this Act or any other law. The Authority may, subject to such conditions it may deem fit to impose and to such procedures as may be applicable according to law, disclose information to overseas central banks and other authorities responsible for monetary policy and, where appropriate to other overseas public authorities responsible for overseeing payment systems, where such information relates and is connected to their respective functions in terms of law.

Sections 36 to 38 of the Central Bank of Malta Act provide for the exchange of information between the Central Bank and the Malta Financial Services Authority.

On the 4th February 2003, the MFSA and the Central Bank concluded a Memorandum of Understanding concerning their co-operation and exchange of information in the field of financial services.

A separate Memorandum of Understanding was concluded on the 16th May 2003 by the two institutions in respect of Payment and Securities Settlement Systems.

NETHERLANDS

Dutch legislation is in line with MiFID regulation to limit double regulation of infrastructure providers. One option to adhere to this requirement is through the use of a MoU with the authorities in the home jurisdiction. The Dutch regulators also have the ability to adjust the level of regulation relative to the impact of the infrastructure provider with regard to a.o. the stability of the Dutch financial system.
Note that this is different from imposing regulatory control. In the absence of a harmonised EU regulatory framework, the Dutch authorities will need to retain sufficient regulatory control to safeguard the orderly functioning, stability and safety of the Dutch financial system.

NORWAY

See answer to Q1, Q3 and Q4.

PORTUGAL

N/A. The momentum is still very preliminary for interoperability. CMVM always makes an effort to reduce red-tape and foster the non-duplication of requirements, as provided by MiFID. The approach will therefore be, most probably, case-based, and upon agreement of CMVM and the home regulator.

The main regulatory documents applicable to regulated markets, MTFs and clearing and settlement in Portugal are as follows.(i) Portuguese Securities Code; (ii) Decree-Law 357-C/2007 on regulated market, MTF, clearing and settlement system operators; (iii) CMVM Regulation 5/2007 on clearing, CCPs and settlement; (iv) CMVM Regulation 4/2007 on regulated market operators; and (v) Regulation 14/2000 on securities registration systems.

ROMANIA

There are no specific provisions in this respect in the Romanian capital market legislation. Cooperation and coordination between CNVM and similar competent authorities in other states can be achieved through bi-lateral/multi-lateral agreements.

SLOVENIA

Under Slovenian legislation the agency to avoid unnecessary duplication of supervision, it must take into account the supervision of the central counterparties or clearing houses and settlement systems of other Member States, which is carried out by the central bank of those Member States or another supervisory authority competent and responsible for the supervision over the clearing and settlement systems.

SLOVAK REPUBLIC

See the answer to Q 1 and Q 4.

SPAIN

According with Article 44 quinquies of the SMA the CNMV' assessment of the technical adequacy of the arrangements between the regulated markets and a CCP or CSD of another Member State with a view to providing for the clearing and/or settlement of some or all trades concluded by market participants under their systems shall be without prejudice to the competencies of other supervisory authorities of such systems. The said article states that the CNMV shall take into account the oversight/supervision already exercised by those institutions in order to avoid undue duplication of control. Similar provisions are included in Article 125 of the SMA for clearing and settlement services provided for transactions executed in MTFs.

When the National Securities Market Commission exercises its authority over foreign incoming clearing and settlement providers that are subject to regulation in their 'home' jurisdiction, it can act with the same scope as envisaged in this Law for Spanish firms.

United Kingdom

Having the status of an overseas recognised body facilitates the participation of overseas investment exchanges and overseas clearing houses in UK markets. In comparison with authorisation, it reduces the involvement which UK authorities need to have in the day-to-day affairs of an overseas recognised body because they are able to rely substantially on the supervisory and regulatory arrangements in the country where the applicant's head office is situated.

The FSA has a Memorandum of Understanding with a number of overseas regulatory authorities describing arrangements for co-operation and exchange of information. This has become our standard practice under FSMA 293 (3)(d), which requires "adequate arrangements exist for cooperation between the [FSA] and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated".