

MEMORANDUM OF UNDERSTANDING (“MoU”) ON THE CO-OPERATION AND EXCHANGE OF INFORMATION WITH REGARD TO THE SUPERVISION AND OVERSIGHT OF EUROCLEAR BANK AND CLEARSTREAM BANKING SA, LUXEMBOURG UNDER THE CENTRAL SECURITIES DEPOSITORIES REGULATION (“CSDR”)

This Memorandum of Understanding (hereinafter, “MoU”) is made between:

- The Banque Nationale de Belgique/Nationale Bank van België (“NBB”)
- The Banque centrale du Luxembourg (“BCL”)
- The Commission de Surveillance du Secteur Financier (“CSSF”)

hereinafter referred to individually as “a Signatory Authority” or jointly as “the Signatory Authorities”.

Introduction

1. Euroclear Bank SA (“EB”) is an International Central Securities Depository (“ICSD”) incorporated in Belgium. EB operates the Euroclear ICSD Securities Settlement System (“SSS”)¹. EB is an issuer CSD for international securities. In addition, EB is an investor CSD for securities from various countries through links with the local CSDs.

EB was authorised by the NBB in December 2019 under the CSDR² to provide core services as set out in Section A of the Annex to the CSDR. In addition, EB was authorised to provide other non-banking-type ancillary and banking-type ancillary services, as set out in Sections B and C of the Annex to the CSDR.

2. Clearstream Banking SA, Luxembourg (“CBL”) is an ICSD incorporated in Luxembourg. CBL operates the Clearstream ICSD SSS. CBL is an issuer CSD for international securities. In addition, CBL is an investor CSD for securities from various countries through links with local CSDs.

CBL was authorised by the CSSF in April 2021 under the CSDR to provide core services as set out in Section A of the Annex to the CSDR. In addition, CBL was authorised to provide other non-banking-type ancillary and banking-type ancillary services, as set out in Sections B and C of the Annex to the CSDR.

3. This MoU is without prejudice to the existing MoU between the NBB, the BCL and the CSSF on the co-operation and communication arrangement under responsibility E of the CPMI-IOSCO Principles for Financial Market Infrastructures (PFMIs), entered into force in 2017.

¹ International Central Securities Depository Securities Settlement System.

² Regulation (EU) No 909/2014 of the European Parliament and of the Council dated 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

I. Legal basis for the involvement of the signatories

1.1. NBB

The NBB is the central bank, the prudential supervisor and the overseer of central securities depositories (CSDs) and SSSs operated by Belgian CSDs, in accordance with the law of 22 February 1998 establishing the Organic statute of the NBB (hereafter "the NBB Organic Law") and the CSDR.

According to Article 36/26/1 of the NBB Organic Law of 22 February 1998 the NBB is the competent authority responsible for the authorisation and supervision of Belgian CSDs, including EB. The NBB is responsible for the day-to-day monitoring of EB's compliance with the CSDR and the related technical standards. In addition, the NBB is also tasked to conduct a (regular) review and evaluation process which includes a consultation process and the sharing of an outcome report, ex-post, with a range of other competent and relevant authorities.

The NBB is the competent authority for the prudential supervision of credit institutions, in accordance with Article 36/2 of the NBB Organic Law.

The competence of the NBB in the field of oversight is based on Article 8 of the NBB Organic Law. In this capacity the NBB is in charge of the oversight of payment and securities settlement systems.

The NBB is the relevant authority of EB in the meaning of Article 12.1(a) of the CSDR.

1.2. BCL

The BCL, as a national central bank of the Eurosystem, promotes the safety and efficiency of payment, clearing and settlement systems under its oversight mandate pursuant to the EU Treaties, while at the national level, the competence of the BCL in the field of oversight is based on Articles 2(5), 2(6), 25 and 27-3 of the Luxembourg law of 23 December 1998 concerning the monetary status and the BCL, as amended (the "BCL Organic Law"). In this capacity, the BCL is in charge of the oversight of payment systems, SSSs and payment instruments. In addition, the BCL is responsible for supervising the general liquidity situation on the markets as well as evaluating market operators for this purpose pursuant to Articles 2(4) of the BCL Organic Law,

Articles 2(4), 2(5) and 2(6) of the BCL Organic Law provide a framework for coordination and cooperation with the CSSF and other central banks for the performance of these tasks, including with the aim to contribute to ensure financial stability.

The BCL is the relevant authority of CBL in the meaning of Article 12.1(a) of the CSDR.

1.3. CSSF

The CSSF is the competent authority for the prudential supervision of credit institutions, in accordance with Article 2(1) of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier").

According to Article 1(1) of the Law of 6 June 2018 on central securities depositories, the CSSF is the competent authority responsible for the authorization and supervision of Luxembourgish CSDs, including CBL. The CSSF is responsible for the day-to-day monitoring of CBL's compliance with the CSDR and the related technical standards. In addition, the CSSF is also tasked to conduct a (regular) review and evaluation process which includes a consultation process and the sharing of an outcome report, ex-post, with a range of other competent and relevant authorities.

II. Nature and purpose of the MoU

1. This MoU reflects the common understanding between the Signatory Authorities as to the specific arrangements to be established for organising relevant information sharing, co-operation, consultation, and communication between the Signatory Authorities with regard to EB and CBL related to CSDR.

The purpose of this MoU is:

- (i) to enable Signatory Authorities to ensure a common understanding and pursue a coherent and consistent implementation of the CSDR, allowing the Signatory Authorities to fulfil their respective oversight and supervisory mandates with respect to EB and CBL;
- (ii) to ensure supervisory co-operation, including the sharing of information, consultation and communication in relation to EB and CBL.

2. This MoU sets forth a statement of intent and is not a legally binding and/or a legally enforceable contract or agreement. Accordingly, this MoU does not:

- (i) create directly or indirectly any legal rights, obligations, claims or liabilities for any of the Signatory Authorities or third parties;
- (ii) modify or supersede, and is without prejudice to any laws, regulations or requirements in force or applicable to the Signatory Authorities, in relation to EB and CBL;
- (iii) affect any arrangements under other agreements or MoUs.

3. In addition, this MoU does not:

- (i) prejudice or constrain in any way the legal or other powers of a Signatory Authority or such Signatory Authority's discretion to exercise such powers;
- (ii) detract from a Signatory Authority's statutory mandates or functions,
- (iii) amount to delegation of any of the powers, duties, or obligations of any Signatory Authority. Each Signatory Authority remains solely and fully responsible for the proper execution of its respective competencies, tasks and duties under its applicable national law. The Signatory Authorities recognize that the interaction contemplated in this MoU must be compliant with the laws which establish the Signatory Authorities, and which govern their powers, capacities and responsibilities.

III. Cooperation and exchange of information

1. The Signatory Authorities intend to cooperate on all matters of mutual interest concerning the supervision and oversight of EB and CBL and to share relevant information for the conduct of their respective responsibilities, subject to the confidentiality arrangements described in Section VI.
2. For the purpose of this MoU, relevant information means any information provided by a Signatory Authority that is necessary for the exercise of another Signatory Authority's supervisory and oversight tasks or responsibilities according to the CSDR and pertaining to the scope as provided in Section II.1 above and paragraph 3 hereunder.
3. Exchange of relevant information includes, but is not limited to, the following topics:
 - (i) the ICSDs' management of risks arising from activities across the interoperable link between EB and CBL;
 - (ii) the CSDR-specific capital and liquidity requirements and risk mitigating techniques implemented by the ICSDs to manage intraday secured and unsecured credit risks, as well as intraday and overnight liquidity risks;
 - (iii) information in connection with CSDR procedures related to EB or CBL, which involve activities such as informing and consulting other competent and relevant authorities, including exchanges before the initiation of such procedures for discussion or preparatory purposes.
4. The cooperation will also allow for:
 - (i) conducting ad hoc discussions on application and, if the case may be, interpretation of CSDR and related Regulatory Technical Standards ("RTS") requirements;
 - (ii) striving for coherent and consistent application of supervisory approaches by the Signatory Authorities as far as possible and practicable, when and where appropriate, in view of maintaining a supervisory level playing field for CBL and EB.
5. Signatory Authorities acknowledge that this MoU does not apply to the exchange of relevant information, including statistical data, which the Signatory Authorities, as competent or relevant authority under the CSDR, shall provide to each other in accordance with the CSDR and related RTS.

IV. Modalities of cooperation

1. Exchanges of information under this MoU, by means of a communication channel agreed by the Signatory Authorities, can be complemented with ad hoc meetings, as necessary, between Representatives of the Signatory Authorities, at the appropriate level, to discuss issues of common interest. Such meetings may be conducted over conference calls or on a face-to-face basis, as judged appropriate by the Signatory Authorities. For the exchange of confidential information, Signatory Authorities are committed to use secured channels.
2. To facilitate communication and cooperation, each Signatory Authority agrees to establish and exchange a contact list of persons it designates for the purpose of this MoU, including for cooperation in crisis situations. Any amendments to the details of contact persons will be communicated in writing (e.g., via documented exchange of emails) without undue delay to the other Authorities.

V. Cooperation in crisis situations

The Signatory Authorities endeavour to establish and maintain a commonly agreed crisis communication procedure (the "Crisis Communication Framework") to enable a coordinated approach in situations of crisis or potential crisis with cross-border or potential cross-border impact involving CBL or EB.

The Crisis Communication Framework will be documented by the Signatory Authorities in a separate document and reviewed on a regular basis. It will contain a crisis contact list and a list of major crisis events upon which Signatory Authorities shall promptly inform each other.

VI. Confidentiality

VI.1. Confidential information

All non-public information shared between the Signatory Authorities pursuant to this MoU shall be treated as confidential (hereinafter "the confidential information") and shall be subject to the respective provisions of confidentiality and professional secrecy of the Signatory Authorities, as they are applicable to them.

a) NBB

In accordance with Article 35 of the NBB Organic Law, except when called upon to give evidence in court in a criminal case, the NBB and its members and former members of its organs and its staff shall be subject to professional secrecy and may not divulge to any person or authority whatsoever confidential information of which they have had knowledge on account of their duties. This shall not preclude the communication of confidential information to third parties in cases laid down by or by virtue of Belgian law.

b) BCL

In accordance with Article 33 of the BCL Organic Law, except when called upon to give evidence in judicial proceedings or where the law authorizes or requires them to disclose certain facts, the BCL staff members and members of the bodies of the BCL are subject to professional secrecy requirements. Without prejudice to the rules of professional secrecy applicable to the European System of Central Banks (ESCB), the professional secrecy requirements shall not preclude exchanges of information required in the context of the ESCB or prevent the BCL from exchanging information, to the extent necessary for the performance of its tasks, with the Commission de surveillance du secteur financier, the Commissariat aux assurances (Insurance Commission) and the Service central de la statistique et des études économiques (Central Service for Statistics and Economic Studies (STATEC)).

c) CSSF

In accordance with Article 16 of the Law of 23 December 1998 establishing a financial sector supervisory commission, save for the exceptions provided for by law or by virtue of a law, the members of the administrative structures, the approved statutory auditor, and all persons performing, or having performed, a duty for the CSSF, shall be required to maintain secrecy relative to any confidential information received while, or on account of, performing such duties, failing which they shall incur the penalties referred to in Article 458 of the Luxembourg Penal Code.

VI.2. Information sharing

- 1) This confidential information shall only be used on a need-to-know basis by the respective Signatory Authorities, under their supervisory and oversight responsibilities;
- 2) Individual data on participants active in EB and CBL will not be exchanged, unless permissible under applicable law;
- 3) The Signatory Authorities will ensure that all persons dealing with, or having access to confidential information provided by another Signatory Authority (including members of the Authority, employees, and any external providers having access to confidential information) are bound by the obligations of professional secrecy in compliance with their applicable legal frameworks, including after the termination of their duties;
- 4) Except as provided in paragraph 5), Signatory Authorities shall endeavor to maintain the confidentiality of all information and shall not disclose information received under this MoU to third parties before obtaining the prior consent from the Signatory Authority that provided the confidential information. Before disclosing the confidential information to such a third party, the receiving Signatory Authority will obtain a formal commitment from that third party that information will be kept confidential and not further disclosed to any other party;
- 5) If a receiving Signatory Authority is required by law or a legally enforceable request to disclose confidential information provided under this MoU to a third party, the receiving Signatory Authority will, to the extent permitted by law, inform the Signatory Authority that shared the information about such possible onward disclosure. If the Signatory Authority that provided the information does object to such disclosure, then, the receiving Signatory Authority will take all reasonable steps, to the extent permitted by the laws and regulations applicable to it, to assert legal exemptions or privileges from disclosure and by advising the third party requiring such information of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Signatory Authorities.
- 6) The Signatory Authorities will ensure the confidentiality of exchange of information and any matter arising under this MoU, as well as the protection of personal data contained in such exchange of information. The Signatory Authorities process any personal data contained in the information in accordance with the data protection legislation applying to the Signatory Authorities and act as independent controllers when processing the personal data. As such, each Signatory Authority is solely responsible for implementing appropriate technical and organizational measures to ensure an adequate level of security of the exchanged personal data; as far as necessary, providing the data subjects with all legally required information about the processing of their personal data – including the transfer of their personal data to the other Signatory Authorities – and their rights; and handling requests from data subjects exercising their rights.
- 7) No privileges or confidentiality associated with information provided by a Signatory Authority are intended to be waived as a result of sharing such information pursuant to this MoU.

VII. General provisions

VII.1. Amendments

- 1) This MoU may be amended by the mutual consent of the Signatory Authorities expressed in writing.
- 2) The Signatory Authorities shall review this MoU and the Crisis Communication Framework as referred to in Section V on a regular basis. The Signatory Authorities will consult, when necessary, with a view to improving its operations and resolving any issues arising.

VII.2. Entry into Force/Termination

- 1) This MoU will come into force as of the date of the last signature by one of the Signatory Authorities.
- 2) This MoU shall remain into force until terminated in writing, either:
 - with respect to an individual signatory, by that Signatory Authority, giving a 30-day advance written notice to each of the other Signatory Authorities;
 - with respect to all signatories, by an agreement between all signatories.
- 3) Upon termination of this MoU, all Signatory Authorities shall remain subject to the confidentiality provisions set out in Section VI with respect to any information provided under this MoU.

VII.3. Disclosure

This MoU may be disclosed by the NBB, the BCL and the CSSF to EB and CBL. The Signatory Authorities may also disclose this MoU to other public authorities or the public in general, to the extent permitted by the law applicable to them. Each Signatory Authority will inform the other Signatory Authorities about such disclosure. Whenever the content of this MoU is not disclosed in its entirety, the text to be disclosed will be submitted for the written approval of the other Signatory Authorities before disclosure.

SIGNATORY AUTHORITIES

For the Banque nationale de Belgique/Nationale Bank van België

Name / function: Pierre Wunsch, Governor

Signature:

A handwritten signature in blue ink, consisting of a stylized 'P' followed by a horizontal line that curves upwards and then downwards.

Date and place: 3 September 2024, Brussels

For the Banque centrale du Luxembourg

Name / function: **Nicolas Weber** Executive Director **Roland Weyland** Executive Director

Signature:  

Date and place: 2 October 2014

For the Commission de Surveillance du Secteur Financier

Name / function: C l a u d e W a m p a c h / D i r e c t e u r

Signature: Claude Jean Wampach Digitally signed by
Claude Jean Wampach
Date: 2024.09.27
17:42:00 +02'00'

Date and place: _____