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ILNAS/PSDC/Pr001


Supervision of digitisation or e-archiving service providers (*PSDCs*)

Modifications:

- adapt the requirements on audit durations
- refer to the national standard ILNAS 106

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1. Introduction

The Luxembourg institute for standardisation, accreditation, safety, and quality of goods and services (ILNAS, Fr.: “Institut Luxembourgeois de la Normalisation, de l’Accréditation, de la Sécurité et qualité des produits et services”) is placed under the administrative supervision of the Minister of the Economy of the Grand Duchy of Luxembourg. The legal missions of ILNAS – Digital Trust Department are defined in [1].

ILNAS, via the “Digital Trust Department”, is notably charged with the supervision of PSDCs (Fr.: “Prestataires de services de dématérialisation ou de conservation”) that are established in the Grand Duchy of Luxembourg and offer services related to digitisation or e-archiving of documents.

This document describes the scheme, requirements and process applied by the ILNAS – Digital Trust Department for the supervision of PSDCs. The supervision scheme is based upon the law on electronic archiving of 25 July 2015 [2].

2. Purpose of the procedure


The purpose of this procedure consists in describing the process of supervising PSDCs. The procedure primarily addresses the clients and the staff of ILNAS – Digital Trust Department.

3. Definitions

For the requirements of this document, the definitions given in the *Règlement grand-ducal modifié du 25 juillet 2015 portant exécution de l’article 4, paragraphe 1^{er} de la loi du 25 juillet 2015 relative à l’archivage électronique* [3] apply.

4. References

- [1] Loi modifiée du 4 juillet 2014 portant réorganisation de l’Institut luxembourgeois de la normalisation, de l’accréditation, de la sécurité et qualité des produits et services et portant organisation du cadre général pour la surveillance du marché dans le contexte de la commercialisation des produits ;
- [2] Loi du 25 juillet 2015 relative à l’archivage électronique et portant modification :1. de l’article 1334 du Code civil ; 2. de l’article 16 du Code de commerce ; 3. de la loi modifiée du 5 avril 1993 relative au secteur financier ;
- [3] Règlement grand-ducal modifié du 25 juillet 2015 portant exécution de l’article 4, paragraphe 1^{er} de la loi du 25 juillet 2015 relative à l’archivage électronique;
- [4] Lignes directrices d’audit de la règle technique d’exigences et de mesures pour la certification des Prestataires de services de dématérialisation ou de conservation (PSDC) ;
- [5] National standard ILNAS 106 - Archivage électronique - Référentiel d’exigences pour la certification des prestataires de services de dématérialisation ou de conservation (PSDC)
- [6] ISO/IEC 17021-1:2015 Conformity assessment -- Requirements for bodies providing audit and certification of management systems -- Part 1: Requirements
- [7] ISO/IEC 27006:2015 Information technology -- Security techniques -- Requirements for bodies providing audit and certification of information security management systems
- [8] Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC;
- [9] IAF ID 3: 2011 – IAF Informative Document For Management of Extraordinary Events or Circumstances Affecting ABs, CABs and Certified Organizations

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5. Supervision scheme for PSDCs

Figure 1 *Supervision scheme for PSDCs* illustrates the model for PSDC supervision. This scheme relies on the following elements:

- The national accreditation body of a Member state (e.g., OLAS in Luxembourg) which has signed the European cooperation for Accreditation (EA) multilateral agreement (EA MLA), accredits the competence of conformity assessment bodies to carry out conformity assessment of a PSDC and the services it provides;
- **Conformity assessment bodies (CABs)**, independent bodies of assessors, accredited against [6] and [7] by the national accreditation body, carry out conformity assessments of PSDCs against [3].
- **ILNAS – Digital Trust Department**, the national supervisory body, which is responsible for undertaking supervision of PSDCs; under the law of electronic archiving [2];
- **List of PSDCs**, a document which contains the supervision status of PSDCs.

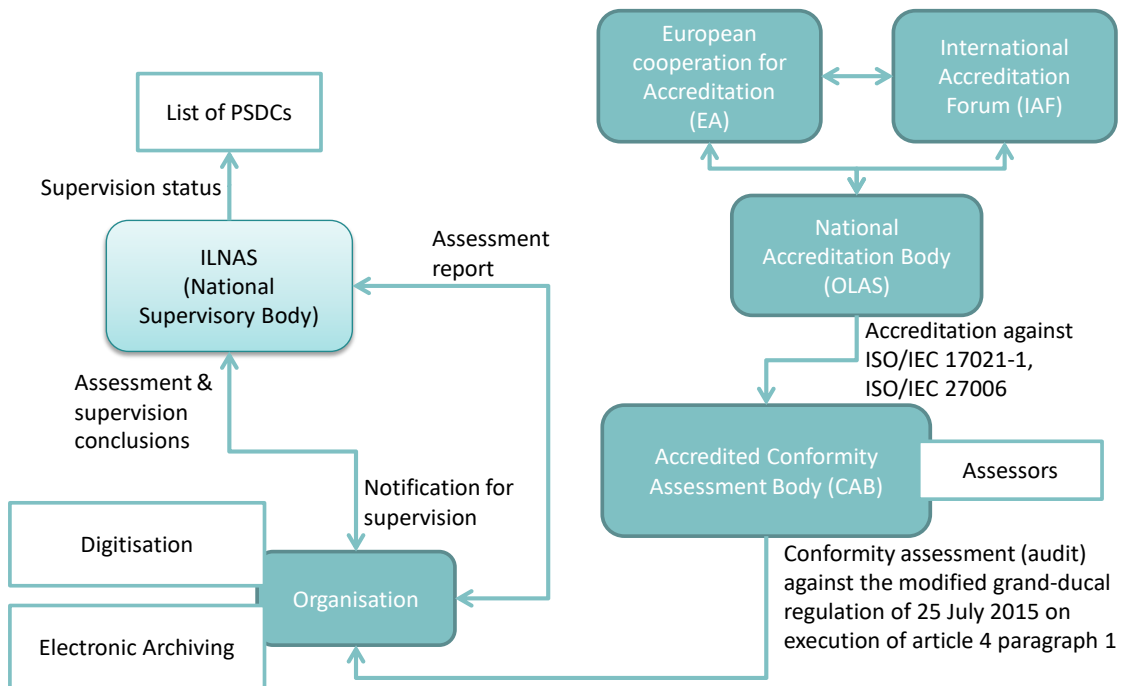


Figure 1 Supervision scheme for PSDCs

6. Supervision process

Figure 2 *Supervision process* illustrates the different steps to obtain “PSDC” status:

1. Notification for supervision;
2. Registration of the PSDC;
3. Assessment & supervision conclusions.

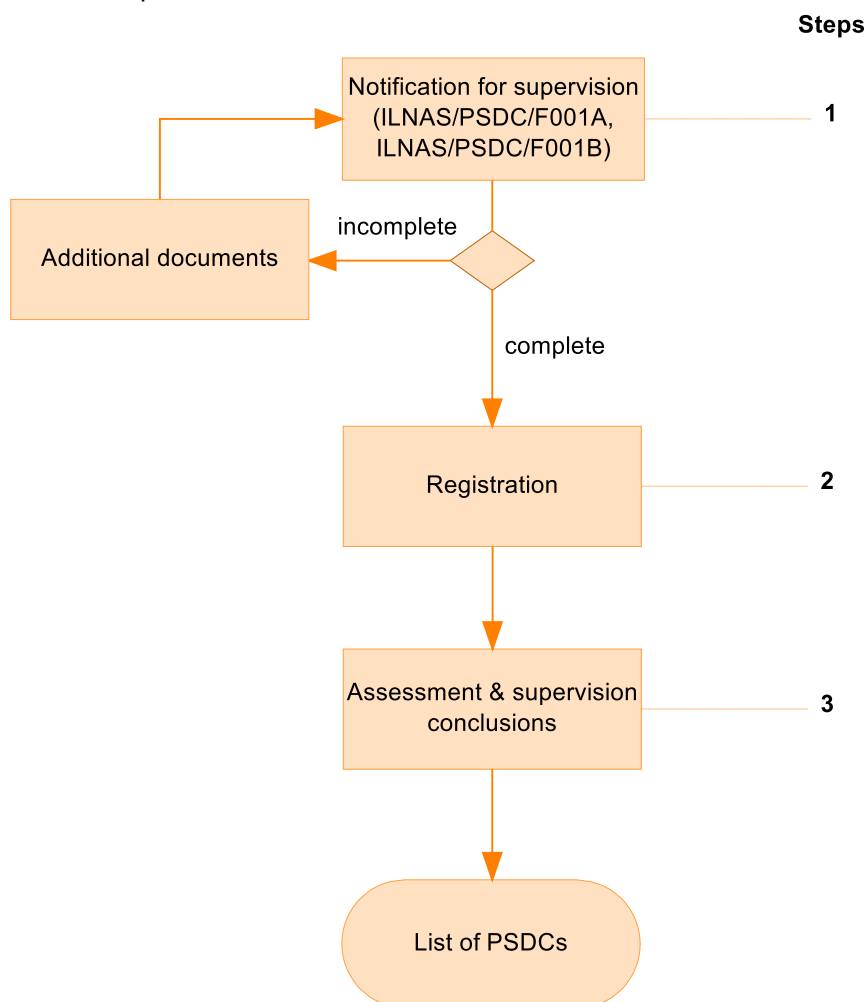


Figure 2 Supervision process


Step 1: Notification for supervision

A notification for supervision of a PSDC is made via the application form ILNAS/PSDC/F001A - *Notification for supervision of Digitisation or e-archiving service providers (PSDCs)*.

The form includes, in addition to general information of the PSDC and information about the supervision, the scope of the supervision, which has to be signed by a representative authorized to commit the PSDC.

The PSDC must also provide all the supporting documents listed in the notification form.

This notification form enables the PSDC to officially notify their application for supervision and constitutes "the triggering factor" for the supervision process. The form is also used in order to provide the ILNAS – Digital Trust Department with any updated information about supervised PSDCs, which have undergone major changes to their structure, their organization or in their resources required to carry out the activities covered by the notification for supervision.

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The duly completed, dated and signed notification form, together with supporting documents, must be mailed or brought in an envelope marked "confidential" to:

ILNAS
Digital Trust Department
1, avenue du Swing
L-4367 Belvaux

Alternatively, the notification can be sent electronically, in a secure way, to ILNAS – Digital Trust Department. The Digital Trust Department (confiance-numerique@ilnas.etat.lu) has to be contacted prior to sending the form and the supporting documents to discuss the transmission modalities.

On receipt of a notification for supervision or for extending the scope of supervision, the **case manager (Fr.: “gérant d'affaires”)** reviews the application and resources on the basis of ILNAS/PSDC/F004A – *Check-list: Review of a notification for supervision*. The scope of the supervision is validated by the **supervision manager (Fr.: “responsable de surveillance”)**.

Extension to new areas of supervision: The extension of the supervision by the ILNAS – Digital Trust Department to new areas is notified by using the Form ILNAS/PSDC/F001A - *Notification for supervision of Digitisation or e-archiving service providers (PSDCs)*.

Multi-Site organisations: For the supervision of a multi-site PSDC organisation, the administration of the notification for supervision is described in Appendix ILNAS/PSDC/A013 – *Supervision of multi-site PSDCs*.

In case of need, the Digital Trust Department can ask to obtain additional documents not foreseen in the notification form from the PSDC.

Application to reduce, to voluntarily suspend or cancel the supervision

The PSDC may apply at any time for a reduction, a suspension or cancelling of its PSDC status by a letter sent to the ILNAS – Digital Trust Department and signed by a representative authorized to commit the PSDC. The list of PSDCs or the scope of supervision is then updated and the changes notified to the PSDC.

The suspension leads to the interdiction of the PSDC to refer to its status of supervised PSDC. Each voluntary suspension on which the PSDC hasn't done any follow-up within 18 months following the date of reception of the mail results in a withdrawal of the PSDC status.


Step 2: Registration

ILNAS – Digital Trust Department allocates an identification number to each notification for supervision. This number is valid for the whole supervision and is used in all correspondence. The Digital Trust Department will transmit the number to the PSDC making the notification for supervision. The notification for supervision is validated by the **head of Digital Trust Department (Fr.: “chef du Département de la confiance numérique”)**.

~~The case manager opens the Form ILNAS/PSDC/F018 – *History of a supervised PSDC* internally, which enables him to ensure good traceability of key factors during supervision. This record is reviewed by the supervision manager.~~

Step 3: Assessment & supervision conclusions

The supervision shall ensure that the PSDC meets the applicable requirements laid down in the *Règlement grand-ducal modifié du 25 juillet 2015 portant exécution de l'article 4, paragraphe 1^{er} de la loi du 25 juillet 2015 relative à l'archivage électronique* [3].

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The following elements are notably reviewed during supervision:

- Accreditation and scope of the conformity assessment body;
- Certification and scope of the conformity assessment of the PSDC;
- Knowledge of [2], [3] and [5] by the assessors, who carried out the accreditation assessment;
- Knowledge of [2], [3] and [5] by the assessors, who carried out the conformity assessment against [3];
- Coverage of the essential points of [3] in the conformity assessment report;
- If applicable, the removal of major nonconformities detected during the conformity assessment.

Decision on granting the PSDC status

The final decision on granting the PSDC status is taken by ILNAS.

After validation by the Director of ILNAS, the Digital Trust Department notifies the service provider of its decision and inserts the notifying service provider into the national List of PSDCs.

Maintenance of the PSDC status

PSDCs must to undergo yearly conformity assessments, which may either be surveillance conformity assessments or full conformity re-assessments. A full conformity re-assessment must be carried out at least every three years.

After a conformity assessment, the PSDC must submit the conformity assessment report to ILNAS – Digital Trust Department. The conformity assessment report must be signed by an authorized representative of the CAB

- with a hand-written signature if the report is to be submitted to ILNAS – Digital Trust Department in paper form, or
- with a qualified signature according to the eIDAS regulation [8] if the report is to be submitted to ILNAS – Digital Trust Department in electronic form.

A PSDC must submit the notification forms ILNAS/PSDC/F001A and ILNAS/PSDC/F001B, together with the required documents, before a full conformity re-assessment takes place to renew its supervision by ILNAS – Digital Trust Department.

If a conformity assessment determines that all the applicable requirements are met by a PSDC, the PSDC status is maintained in the national List of PSDCs. In case the applicable requirements are not met by the PSDC, the current status “Under Supervision” in the national List of PSDCs is changed to “Supervision revoked” until proof of conformity is brought by the PSDC via a new notification for supervision.


ILNAS – Digital Trust Department may request conformity assessments of a PSDC at any time.

When a major nonconformity is detected during the conformity assessment of a PSDC, the Digital Trust Department will analyse whether the PSDC status will be withdrawn from the service provider **on a case-by-case basis**.

The PSDC status will be withdrawn from a service provider whenever it loses the PSDC certification obtained from a CAB.

Periodic surveillance reviews

There shall be no larger period than six months for a periodic review of the surveillance of a PSDC by ILNAS – Digital Trust Department.

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A periodic surveillance review typically takes place in the form of a *supervision meeting* between representatives of the PSDC and of ILNAS – Digital Trust Department. During supervision meetings, the PSDC will be given an opportunity to discuss recent events, incidents, or planned changes that affect its PSDC status with representatives of ILNAS – Digital Trust Department.

Supervision meetings are documented using the form ILNAS/PSDC/F016 - *Compte rendu des réunions dans le cadre de la surveillance des PSDC*. Meeting minutes must be signed by a representative of the PSDC that participated in the meeting or by an otherwise authorized representative of the PSDC

- with a hand-written signature if the meeting minutes are to be submitted to ILNAS – Digital Trust Department in paper form, or
- with a qualified signature according to the eIDAS regulation [8] if the meeting minutes are to be submitted to ILNAS – Digital Trust Department in electronic form.

A supervision meeting may be replaced by members of the Digital Trust Department being present during a conformity assessment of the PSDC.

Notification of changes, events, and incidents

Article 5 (2) of the Law of 25 July 2015 on electronic archiving requires digitization or e-archiving service providers to inform ILNAS – Digital Trust Department without undue delay of any event, circumstance, or incident that has caused, or may cause, a violation of the requirements given in the Law of 25 July 2015 on electronic archiving, ~~or~~ the Technical Regulation for digitization and e-archiving service providers, or the national standard ILNAS 106.

Examples of changes, events, and incidents that must be notified to ILNAS – Digital Trust Department can be found on the form ILNAS/PSDC/F001B.

In particular, major changes to the ISMS for digitization or e-archiving of PSDC must be notified by the PSDC to ILNAS – Digital Trust Department in writing, **at least three months before an intended change is planned to be implemented**. Major changes in reaction to an unforeseeable event must be notified to ILNAS – Digital Trust Department in writing as soon as the PSDC has begun with the planning of the changes.

A notification of a planned major change must be accompanied by a detailed description of the intended change and a timetable for its implementation.

The CAB must be informed of major changes as well.

If in doubt whether an intended change is considered to be a major change, the PSDC is advised to contact ILNAS – Digital Trust Department.


Major changes include

- switching to a new service provider for hosting IT infrastructure of the PSDC; or
- moving business premises.

Extraordinary events affecting conformity assessments

Extraordinary events beyond the control of the PSDC, such as wars, strikes, riots, political instability, geopolitical tensions, terrorism, crime, pandemics, flooding, earthquakes, or other natural or man-made disasters (cf. [9]), may affect its ability to take part in conformity assessments. Note that in contrast to [9], malicious computer hacking is not considered to be a relevant event for this section.

The CAB must follow the requirements and recommendations given by its accreditation body for assessing the risks related to extending existing PSDC certifications.

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Additionally, the CAB has to prepare an impact analysis to identify the PSDCs affected by the extraordinary event and establish a plan detailing the actions it proposes to undertake. Both documents must be shared with ILNAS – Digital Trust Department.

If on-site conformity assessments are not possible due to the extraordinary event, the CAB may conduct remote conformity assessments of all the assessment topics that do not require a physical presence.

Initial conformity assessments should be postponed until regular conformity assessments can be carried out again. For surveillance conformity assessments or conformity re-assessments, the CAB should determine whether the nature of the extraordinary event allows for gathering enough evidence to support the extension of an existing PSDC certification. The parts of the conformity assessment that cannot be evaluated during the extraordinary event must be assessed as soon as the normal business activities of the PSDC can be resumed.

Extraordinary audits mandated by ILNAS

In application of Article 4 (2) of the Law of 25 July 2015 on electronic archiving, ILNAS – Digital Trust Department may require a PSDC to undergo an audit at any time to verify its compliance with some or all of the applicable requirements.

Such an audit may be carried out by members of ILNAS – Digital Trust Department or by external auditors. Auditors that are not employed by ILNAS have to sign the code of ethics for external collaborators (form ILNAS/MAC/F019) before they can participate in the audit.

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7. Duration of conformity assessments

The duration of conformity assessments must be sufficient to allow auditors to perform all the required verifications.

~~Members of the bodies need to respect a dedicated amount of auditor time to be spent on initial certification, surveillance and recertification for each PSDC.~~ ILNAS – Digital Trust Department may be present during conformity assessments.

The total audit duration includes the time spent by the audit team in stage 1 audit (documentation review), stage 2 audit (on-site of the audited organization), planning, as well as report writing.

It is expected that the auditor time involved in such planning and report writing combined should not typically reduce the total on-site auditor time to less than 70 % of the total audit duration. Where additional time is required for planning or report writing, this cannot be a justification for reducing the on-site auditor time. ~~The Auditor~~ travel time of auditors is not ~~included~~ considered to be in-part of the audit time.

The conformity assessment body shall, in particular, take into account the following factors when determining the duration of conformity assessments:

- The complexity of PSDC services and of the IT infrastructure.
- The number of sites to audit.
- Third party arrangements used within the scope of the concerned PSDC services.
- The standards and regulatory requirements with respect to which the PSDC services are to be certified.
- Existing certifications and previous audits.

The PSDC has to inform the ILNAS – Digital Trust Department of the planned audit duration prior to the audit. The audit duration has to be agreed upon with the ILNAS – Digital Trust Department for initial audits, surveillance audits, and reassessment audits, prior to the audit.

The conformity assessment body shall indicate the durations of the stage 1 and stage 2 audit phases in the conformity assessment report durations of the audit phases

~~Initial PSDC conformity assessment audit time~~

~~ILNAS – Digital Trust Department will verify, in the scope of its supervision, if the auditor time chart below (cf. Table 1 – Auditor time chart) has been respected for audit planning.~~

hg Number of employees	ISO/IEC 27001 certified PSDC-D (Auditor days)	ISO/IEC 27001 certified PSDC-C (Auditor days)	ISO/IEC 27001 certified PSDC-DC (Auditor days)	Non ISO/IEC 27001 certified PSDC-D (Auditor days)	Non ISO/IEC 27001 certified PSDC-C (Auditor days)	Non ISO/IEC 27001 certified PSDC-DC (Auditor days)
01-10	1,5	1,5	2,5	6,5	6,5	7,5
11-25	2	2	3,5	9	9	10,5
26-45	2	2	4,5	10,5	10,5	13
46-65	2,5	2,5	5	12,5	12,5	15

66-85	3	3	5,5	14	14	16,5
86-125	3	3	6	15	15	18
126-175	3,5	3,5	6,5	16,5	16,5	19,5
176-275	3,5	3,5	7	17,5	17,5	21
276-425	4	4	7,5	19	19	22,5
426-625	4	4	8,5	20,5	20,5	25
626-875	4,5	4,5	9	22	22	26,5
876-1.175	4,5	4,5	9,5	23	23	28
1.176-1.550	5	5	10	24,5	24,5	29,5
1.551-2.025	5,5	5,5	10,5	26,5	26,5	31,5
2.026-2.675	5,5	5,5	11	27,5	27,5	33
2.676-3.450	6	6	11,5	29	29	34,5
3.451-4.350	6	6	12	30	30	36
4.351-5.450	6,5	6,5	12,5	31,5	31,5	37,5
5.451-6.800	6,5	6,5	13	32,5	32,5	39
6.801-8.500	7	7	13,5	34	34	40,5
8.501-10.700	7	7	14	35	35	42
>10.700	Follow progression above	Follow progression above	Follow progression above	Follow progression above	Follow progression above	Follow progression above

Table 1 – Auditor time chart

Surveillance PSDC conformity assessment audit time

Each year, a surveillance conformity assessment has to be performed. ILNAS – Digital Trust Department will verify, in the scope of its supervision, if the auditor time chart below (cf. Table 2 – Auditor time chart for surveillance) has been respected for audit planning.

Number of employees	ISO/IEC 27001 certified PSDC-D (Auditor days)	ISO/IEC 27001 certified PSDC-G (Auditor days)	ISO/IEC 27001 certified PSDC-DG (Auditor days)	Non ISO/IEC 27001 certified PSDC-D	Non ISO/IEC 27001 certified PSDC-G	Non ISO/IEC 27001 certified PSDC-DG
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				(Auditor days)	(Auditor days)	(Auditor days)
01-10	0,5	0,5	1	2	2	2,5
11-25	0,5	0,5	1,5	3	3	4
26-45	1	1	1,5	4	4	4,5
46-65	1	1	2	4,5	4,5	5,5
66-85	1	1	2	4,5	4,5	5,5
86-125	1	1	2	5	5	6
126-175	1	1	2,5	5,5	5,5	7
176-275	1	1	2,5	5,5	5,5	7
276-425	1,5	1,5	2,5	6,5	6,5	7,5
426-625	1,5	1,5	3	7	7	8,5
626-875	1,5	1,5	3	7,5	7,5	9
876-1.175	1,5	1,5	3	7,5	7,5	9
1.176-1.550	1,5	1,5	3,5	8	8	10
1.551-2.025	2	2	3,5	9	9	10,5
2.026-2.675	2	2	4	9,5	9,5	11,5
2.676-3.450	2	2	4	9,5	9,5	11,5
3.451-4.350	2	2	4	10	10	12
4.351-5.450	2	2	4,5	10,5	10,5	13
5.451-6.800	2	2	4,5	10,5	10,5	13
6.801-8.500	2,5	2,5	4,5	11,5	11,5	13,5
8.501-10.700	2,5	2,5	5	12	12	14,5
>10.700	Follow progression above	Follow progression above	Follow progression above	Follow progression above	Follow progression above	Follow progression above

~~Table 2 - Auditor time chart for surveillance audits~~

PSDC conformity re-assessment audit time

~~After 3 years, a reassessment has to be performed. ILNAS—Digital Trust Department will verify, in the scope of its supervision, if the auditor time chart below (cf. Table 3 - Auditor time chart for reassessment) has been respected for audit planning.~~

Number of employees	ISO/IEC 27001 certified PSDC-D (Auditor days)	ISO/IEC 27001 certified PSDC-C (Auditor days)	ISO/IEC 27001 certified PSDC-DC (Auditor days)	Non ISO/IEC 27001 certified PSDC-D (Auditor days)	Non ISO/IEC 27001 certified PSDC-C (Auditor days)	Non ISO/IEC 27001 certified PSDC-DC (Auditor days)
01-10	1	1	2	4,5	4,5	5,5
11-25	1	1	2,5	5,5	5,5	7
26-45	1,5	1,5	3	7	7	8,5
46-65	1,5	1,5	3,5	8	8	10
66-85	2	2	4	9,5	9,5	11,5
86-125	2	2	4	10	10	12
126-175	2	2	4,5	10,5	10,5	13
176-275	2,5	2,5	5	12	12	14,5
276-425	2,5	2,5	5	12,5	12,5	15
426-625	3	3	5,5	14	14	16,5
626-875	3	3	6	14,5	14,5	17,5
876-1.175	3	3	6,5	15,5	15,5	19
1.176-1.550	3,5	3,5	6,5	16,5	16,5	19,5
1.551-2.025	3,5	3,5	7	17,5	17,5	21
2.026-2.675	3,5	3,5	7,5	18	18	22
2.676-3.450	4	4	8	19,5	19,5	23,5
3.451-4.350	4	4	8	20	20	24
4.351-5.450	4	4	8,5	20,5	20,5	25

5.451-6.800	4,5	4,5	9	22	22	26,5
6.801-8.500	4,5	4,5	9	22,5	22,5	27
8.501-10.700	4,5	4,5	9,5	23	23	28
>10.700	Follow progression above	Follow progression above	Follow progression above	Follow progression above	Follow progression above	Follow progression above

Table 3 - Auditor time chart for reassessment audits