Comments

on Market Integration and Supervision Package (COM/2025/943 final)

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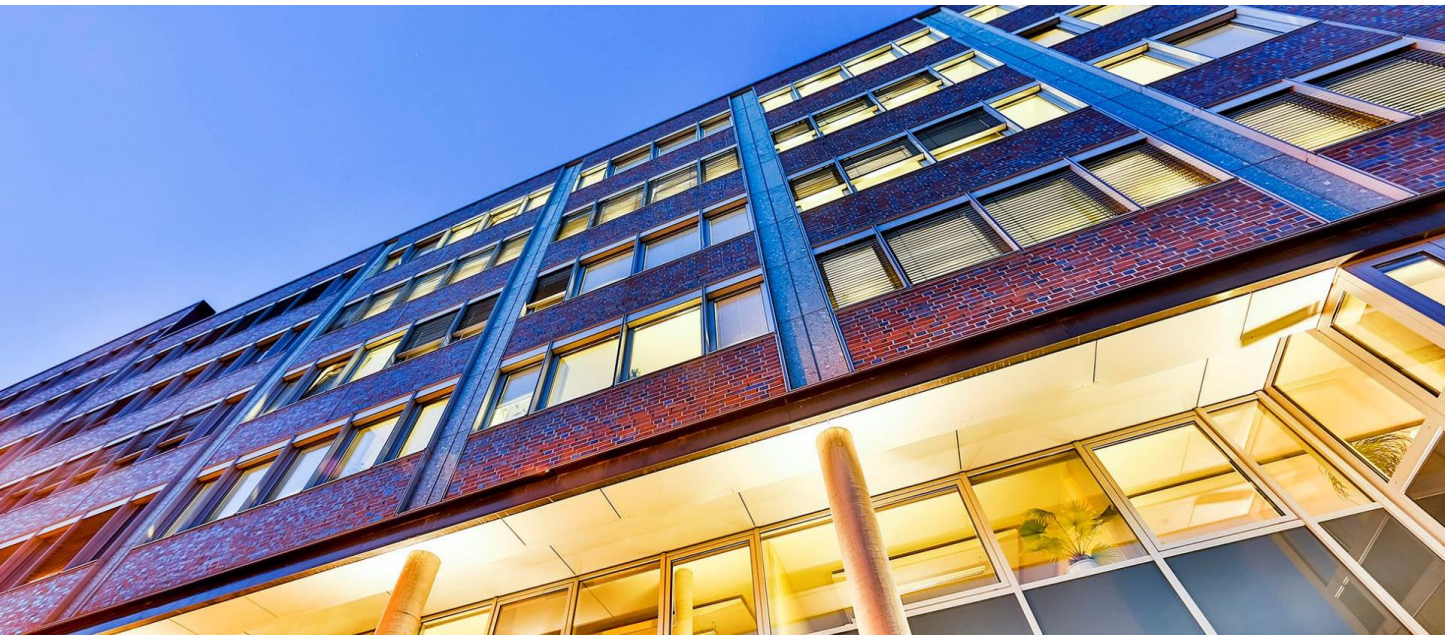
[1] The statement was prepared without the involvement of our member Clearstream Europe AG.



Summary

The Association of German Banks welcomes the European Commission's plan to ensure that Europe can continue to compete on the global stage with a powerful, deep capital market. The Market Integration and Supervision Package (MISP) presented in December 2025 can move the EU substantially in the right direction.

The MISP should create conditions that promote competition, attract investment, and not impose product specifications or consolidation requirements.

The private banks in Germany see the highest potential in the proposals regarding **post-trade infrastructure** and its offerings. Comparison with the US market shows that infrastructure providers in Europe are too complex and costly. The European Commission recognises this and suggests a variety of options for promoting competition in the Regulation on Central Securities Depositories (CSD).

A pan-European post-trade architecture with uniform rules is crucial; supervisory structures should be built on this, not the other way around.

Our member banks believe, however, a significant provision is missing. CSD's should be required to disclose their prices and services in a standardised, transparent manner. Only a clear and unified cost structure will allow their clients – the banks – to compare offers and choose the most cost-effective option.

This provision is necessary, among other things, because only one CSD is active in each member state. In contrast, banks offering post-trade services are always in competition with other banks. Therefore, the proposal on price transparency for settlement internalisers should apply only vis-à-vis their clients, not to the market. **Banks are not a market infrastructure.**

Banks differ from market infrastructures; therefore, transparency and reporting requirements in particular must be applied in a differentiated manner.

Promotion of modern technologies, such as **DLT**, can create decentralised market structures and affect the banks' role as intermediaries. These proposals are welcome, as they create a European framework that opens up many different possibilities leaving enough choice between the options.

We welcome the proposed amendments to **MiCAR**. However, they need adjustments to ensure that supervisory competencies, prudential and incident reporting are clearly and consistently assigned to the supervisory bodies with the adequate expertise. We also welcome the proposals for trading venues, which create the regulatory framework required to allow for market-driven consolidation.

The **depositary passport** can help deepen the market, but only if it is legally secure, consistent in terms of supervision, operationally robust and protects investors across borders.

The MISP proposals on market integration are accompanied by potential plans to bundle specific **market supervision** activities under the ESMA. Centralisation of supervisory authorities is not an end in and of itself, but rather the result of market driven consolidation and deepening of the markets. Prudential issues should therefore addressed in a second step, and should not, at this point in time, drown out the debate on the market integration proposals. The suggested approach, introducing supervision of infrastructures such as CCPs and CSDs, is definitely a way forward, provided that the following is taken into account:

When harmonizing EU rules, targeted capital market relevance is more important than complete standardization.

- Centralisation of supervisory activities must not lead to increased complexity.
- If European supervision increases, national supervision must decrease.

Having this said, the ESMA should be strengthened and modernised by the following measures:

Competitiveness should be defined as a supervisory mandate, with a focus on market efficiency rather than increased complexity and costs.

1. The global competitiveness of the European markets should be introduced/enshrined as a mandate or key guiding principle of the ESMA's supervisory tasks.
2. The ESMA should be able to take action, e.g. through "real" no-action letters.

It should be noted here that the proposal to turn the **Finality Directive** into a regulation in order to improve post-trade competition is another important and necessary feature of the MISP. A targeted, selective harmonisation of provisions pertaining to bankruptcy in the capital markets would increase legal certainty and help create a level playing field.[2]

[2] The proposal to turn the Finality Directive into a regulation is subject of a separate Have-Your-Say-Consultation, on which we will comment.

1 CSDR

The Association of German Banks (BdB) welcomes the revision of the CSDR towards an increasingly harmonised European capital market. We believe that many of the amendments can contribute to the further integration of markets and a simplification of trading. In particular, we welcome the opening of the CSDR to modern technologies such as DLT, as this offers potential along the entire value chain – from the issuer to the custodian. However, it also introduces new competitors into the intermediaries In particular we support practical steps toward CSD consolidation, including harmonised, simplified and transparent CSD fee scheldules, consistent CSDR supervision and effective implementation of the CSD hub model.

For the BdB, it is essential that all market participants are subject to the same regulatory requirements in order to ensure fair competitive conditions – same business, same rules!

In the following we would like to comment on certain key-topics.

1.1 Settlement-internalisers

As pointed out before: Where there is the same business, the same rules should apply. But on the other hand: Where there is a business that can´t be compared – different rules should apply. This is the case with settlement internalisers.

The BdB takes a critical view of the newly proposed obligations for settlement internalisers to disclose their costs. These would create additional bureaucratic burdens for banks without delivering any discernible added value for the customers or the market.

The proposed public fee disclosure requirements similar to that of financial market infrastructures (FMIs) do not reflect the distinct role of custodian banks acting as settlement internalisers. **Banks are not a market infrastructure operator and do not offer core CSD services** as CSDs, of which there is only one in each Member State. Banks are competitors against other banks in the open market. Therefore customers can choose between many different banks competing with each other in the market. Furthermore customers can already compare competitors costs of settlement internalisation, as banks naturally disclose their costs to customers. In practice, this is done as follows:

Institutional customers submit a so called requests for proposal (rfp). This is a customised request for specific services they require and the associated costs.

For **retail-clients** costs are already disclosed in a standardised matter in public, for example on the web-site of the bank.

A general disclosure requirement would therefore not provide any additional benefit and is not justified from a systemic perspective. On the contrary: disclosure of costs would impair competition.

The new transparency requirements under Art. 34 para. 9 draft CSDR are viewed therefore critically and should be deleted. From the BdB's perspective, standardisation is not appropriate, as client requests in the context of so called rfps (requests for proposal) are usually highly individual. Banks offer differing scopes of services and product ranges. Institutional clients in particular have individual needs. In any case, disclosure to the customer is sufficient; public disclosure of the data is not necessary.

However, the situation is different for public institutional service providers such as CSDs. The BdB advocates introducing comparable transparency requirements for CSDs, as structural necessity exists only there, due to the lack of competition.

1.2 CSD costs and fee structures

A central demand of the BdB is the establishment of cost transparency for CSDs at the European level. However, the current proposed amendments to the CSDR do not address this issue.

The BdB considers it essential that CSDs should be required to publish uniform and comprehensible fee schedules. In addition, cost comparability between CSDs must be ensured so that overall costs can be reduced and the competitiveness of the European market can be strengthened.

A report published by AFME in 2025 clearly shows that there are significant differences in the services and fees of European CSDs, and that European CSDs, in particular, generate substantially higher costs compared with, for example, U.S. CSDs.

Link: https://www.afme.eu/publications/reports/analysis-of-csd-fees-in-major-european-markets/

The BdB therefore advocates reducing these discrepancies and making fee structures transparent and comparable to create more competetivness between CSDs.

1.3 Reports of settlement internalisers (Art. 9 draft CSDR)

The new reporting requirements under Art. 9 of the draft CSDR should be removed. From the BdB's perspective, this requirement is based on incorrect assumptions regarding the activities and volumes of settlement internalisers. The numbers of volume came from a report published by ESMA last year (TRV Risk Monitor; ESMA50 1949966494 3846). AFME and EBF have reviewed this report and conclude, in the attached letter, that ESMA has conducted an incorrect risk assessment. Therefore, the risk presented in the report does not exist. We therefore advocate taking a closer look at the figures once again and critically reassessing the issue in this light. The collection, processing and publication of data means incurring administrative costs which have to be carefully weighed against possible knowledge gains on the part of the supervisory authorities. This is particularly true in light of the European debate on reducing bureaucracy.

The envisaged ESMA single report on CSD settlement and internalised settlement by end of 2026 should be carefully prepared and interpreted to ensure correctness of data and to avoid any misinterpretations. This would then inform changes to the proposed settlement internaliser rules in Art. 34 CSDR.

1.4 Penalties

Art. 7(2) shall be amended as follows:

The cash penalties shall not be configured as a revenue source for the CSD or its participants. Cash penalties shall be paid in cash or in e-money tokens.

With regard to the prohibition of cash penalties serving as a revenue source, a key issue is the lack of clarity about the legal - especially tax - nature of these penalties. Furthermore, the question of whether penalties are passed on depends on the custody structure. In some cases, penalties accrue to the participant; in others, they have to be forwarded. This practice has been implemented without issue for years.

In our view, the proposed change will create unnecessary bureaucracy, as it will require case-by-case justification for why penalties accruing to the participant may remain there without constituting a source of revenue. At a minimum, it should be clarified that penalties legally accruing to the participant may remain with the participant.

1.5 Centralised supervision as a first step

Proposed centralised supervision of significant CSDs (and CCPs) is a welcome first step to drive consolidation from the top down, but this must be accompanied by further bottom-up changes in the post-trade framework, which are currently not sufficiently captured in the MISP. See under 1.6.

1.6 AMI-SeCo barrier-report – reducing barriers of post-trade environment

Finally, we would like to draw attention to the report published in September 2025 by the AMI SeCo SEG, entitled 'Remaining barriers to integration in securities post trade services – issues and recommendations'.

Link:
https://www.ecb.europa.eu/press/intro/publications/pdf/ecb.amiseco202509_barriersmarketintegration.en.pdf

This report identifies barriers that hinder the creation of a harmonised European capital market. For each of these barriers, it also sets out the corresponding European legislative acts that would need to be amended in order to remove them. For several of these barriers, this also applies to the CSDR.

One example ist barrier 4, the free choice of location of issuance. This barrier ist defined as highly important and also highly difficult. It sais that the lack of harmonisation of national securities and corporate lawas hindert he free choice of a issuer CSD. This problem could be adressed by amanding Art. 49 of the CSDR.

As just shown, the revision of the CSDR would have been a good opportunity to eliminate some of the barriers highlighted in the report. The BdB urges that this be taken up and addressed in the ongoing process.

1.7 Open Access (Art. 49 draft CSDR, Art. 34c draft MiFIR)

We welcome the introduction of the rules on open access and the possibility for market operators and investment firms operating a trading venue to offer all their members or participants the right to designate any CSD established in the Union for the settlement of transactions in financial instruments undertaken on that trading venue (Art. 34 c MiFIR) and to "have the right to arrange for such securities to be initially recorded and the right to arrange for such securities to be recorded subsequently to an initial recording, in book-entry form in any CSD established in any Member State." (Art. 49 CSDR). This is actually the core idea behind T2S – which was to enable settlements across Europe using just one securities account and one cash account. So far, this has only worked- if at all - with cash accounts, but not with securities accounts. In the past, there have been occasional moves by CSDs or clearing houses to offer settlements in other markets, positioning themselves as alternative CSDs.

2 DLT Pilot Regime

The BdB welcomes the revision of the DLT Pilot Regime Regulation. The DLT Pilot Regime is to be amended in such a way that, in particular, the scope is significantly expanded by now including all MiFID financial instruments. In addition, the upper limit for participation in the sandbox will be raised from 6 billion euros to 100 billion euros. The BdB welcomes these changes and considers them absolutely necessary to make the thus far little used pilot regime more practical. However, certain thresholds, participation constraints, and limited optionality for settlement assets would still present restrictions that could the commercial viability of some projects.

The EU could risk diminishing its competitive advantage over international peers in the development of digitalised financial markets if DLT infrastructures cannot effectively scale and transition into permanent, fully-functional business models. Further clarity and flexibility is needed to ensure that investment firms/credit institutions are not unnecessarily disincentivised from exploring innovations in trading market structure. These additional improvements and clarification are essential to ensure that the DLT PR evolves into a framework that supports innovation by both Financial Market Infrastructures and market participants.

We therefore recommend:

- Seek clarification, if the restrictions imposed on a DLT-SS to not being operated by a credit institution providing clean credits unrelated to CSD services under CSDR do also apply to DLT-TSS operated by a credit institution, and clarify if these credit restrictions also apply to credit institutions providing individual CSD services under new Art. 10a DLTPR (DLT notary services and DLT central maintenance services).
- Broaden participation beyond only DLT account keepers and allow participation in more than two settlement schemes, and raise the threshold beyond the proposed EUR10bn.
- Streamline authorisation processes for providing CSD services such as DLT notary and settlement maintenance for existing regulated institutions under the new Art. 10a.
- Allow for settlement in DLT-based cash solutions beyond central bank money such as tokenised deposits and authorised e-money tokens (EMTs).
- Improving the usability of the overall DLT PR regime: by removing transaction thresholds altogether.

It is of great importance to the BdB that companies which outgrow the Pilot Regime transition into a fully regulated environment. Existing rules already apply, namely those under the CSDR. Here too, the principle must hold: those engaged in the same business must adhere to the same rules.

Overall, the MISP should be negotiated as a singular package to ensure the proposals have maximum impact. Separating discussions on the DLT Pilot Regime would only risk losing focus on the broader MISP and SIU objectives, and delaying progress on other proposals which are complementary to the success of the DLT Pilot Regime (e.g. CSDR and MiFIR changes).

3 MiCAR

We welcome the general objective of the proposed amendments to MiCAR, as it aims to strengthen supervisory convergence and market integrity at Union level. We explicitly support the proposal not to transfer supervisory powers to ESMA where the CASP is a credit institution. Given the already centralised and harmonised banking supervision framework, establishing a parallel layer of centralised supervision for the crypto-asset activities of credit institutions would be unjustified. Moreover, NCAs have already developed substantial expertise in supervising crypto-asset activities since MiCAR entered into force.

While the overall approach is welcome, the proposed amendments raise questions regarding consistency and proportionality, particularly where reporting and notification obligations are shifted to ESMA while supervisory competence remains with NCAs. Several amendments impact provisions of Title V, Chapter 2 of MiCAR beyond the exemption for credit institutions under Art. 60(10). We therefore consider that a clearer and more consistent alignment between supervisory responsibilities

and reporting obligations is necessary, ensuring that reporting channels reflect actual supervisory competence. Without such alignment, the reform risks creating additional administrative burdens, fragmented reporting structures, legal uncertainty, thereby increasing regulatory complexity and hindering competitiveness of the European banking industry.

3.1 Notification regime and annual turnover reporting (Art. 60 draft MiCAR)

The amendments in the newly inserted Art. 60 (6a) MiCAR introduce an obligation for entities referred to in Art. 60(2) to (6) MiCAR, therefore also covering investment firms and central securities depositories, to submit the data to both their competent authority and ESMA.

This creates redundant data flows, potentially with overlapping data formats and timelines, creating unnecessary administrative burden and compliance costs.

Additionally, the redirection seems structurally inconsistent where supervision continues to lie with NCAs and risks fragmentation of oversight. Without clear guidance on how the two authorities will coordinate, there is a risk of duplication, inefficiency, and legal uncertainty, as it is unclear which authority has responsibility for acting on the reported information.

3.2 Notification of changes in the management body (Art. 69 draft MiCAR)

The shift to notify ESMA (rather than NCAs) of management changes conflicts with existing supervisory allocation, especially for credit institutions who remain under national supervision. This appears inconsistent with the existing allocation of supervisory responsibilities

We would therefore welcome it if Art. 69 MiCAR would be amended to read: '*Crypto-asset service providers shall notify ESMA or their competent authority, if different from ESMA, […]*' for reasons of legal clarity and to ensure that notifications continue to be made to the authority responsible for supervising the entity in question, in line with the principle of proportionality and existing supervisory allocation.

3.3 Outsourcing arrangements (Art. 73 draft MiCAR)

The amendments to Art. 73(1)(d) and (4) MiCAR, which now refer exclusively to ESMA for the oversight of outsourcing arrangements, suggests a general ESMA supervisory competence. This contradicts the established supervisory framework for entities subject to national supervision, in particular credit institutions. The provision should therefore clarify that ESMA's role applies only where it is the competent authority, while the relevant NCA retains supervisory responsibility in all other cases. A clear delineation of competences is essential to ensure coherent supervision, proportionate reporting obligations, and legal certainty

3.4 Market abuse reporting (Art. 92 draft MiCAR)

Redirecting market abuse notifications under Art. 92 MiCAR to ESMA, rather than the competent NCAs, raises significant practical and structural concerns. This change affects all entities subject to the market abuse regime, including credit institutions, regardless of whether ESMA exercises direct supervisory competence.

The amendment risks creating parallel reporting channels, delays in notification processing, and duplication of efforts, as ESMA would receive information that NCAs continue to supervise and act upon. This is likely to increase administrative burdens for both supervised entities and authorities and may undermine the efficiency of existing supervisory arrangements. Furthermore, transferring notifications without a corresponding realignment of supervisory responsibilities could create legal uncertainty regarding which authority holds ultimate responsibility for follow-up, enforcement, and supervisory action.

3.5 Multi-issuer stablecoins

In addition to the proposed amendments to MiCAR, we call for a clear regulation of multi-issuer stablecoins. These instruments should be expressly regulated to safeguard the stability of the European financial market and to ensure legal certainty.

One option would be to condition their admissibility on the existence of equivalent regulatory standards in relevant third countries, unless a prohibition is deemed appropriate. This would prevent regulatory arbitrage and abusive market practices.

4 EU depositary passport

4.1 Deepen the market by depositary passport

With the Savings and Investment Union (SIU), the European Commission wants to remove barriers to cross-border capital market activities and deepen integration on the single market. The proposed approach from the Market Integration Package, which would allow depositary activities even outside the home member state of a fund (EU depositary passport), represents a significant milestone on the path to achieving these goals.

The Association of German Banks will be happy to assist the European Commission as they continue to develop a proposal for introducing a depositary passport as a means of improving capital market integration. To achieve this goal, however, simply introducing a depositary passport will not be enough. If it is to succeed, amendments must be made to existing law in advance of its introduction.

In doing so, it will be important to remember that the depositary is not just a service provider but also provides structural protection for investors. In addition to custody, depositaries take on tasks such as safekeeping assets, cash monitoring, oversight, as well as liability and implementation mechanisms which are closely intertwined with national civil and insolvency frameworks, as well as securities accounts law. As such, a depositary passport must be designed in a way that is legally certain, operatively robust and applies coherent supervisory standards.

Regulatory frameworks must allow for balanced market structures in order to create resilient European fund architecture, or the supposed advantages will instead bring with them new risks and imbalances.

4.2 Access to a broader range of depositaries for investment companies

The passport will open up access to a broader spectrum of depositaries for investment companies. Different specialisations, technical skills or market expertise can thus be utilised by more funds, regardless of the member state they are based in. This could help to establish more tailored services and efficient structures in a variety of use-cases.

Smaller markets with only a limited number of depositaries could profit, as funds based in these markets would no longer be reliant on a national depositary. Improving options could provide economic advantages for investment companies, provided they carefully compare and select services.

4.3 Responsibilities must be clearly regulated

With the introduction of the passport, funds and depositaries will no longer necessarily be located within the same jurisdiction. The responsibilities assigned to each authority must therefore be defined clearly and with legal certainty, in order to avoid delays or conflicting interventions. The proposal contains mechanisms for coordinating between supervisory authorities but does not describe in detail how supervisors would cooperate. We call for clear definitions of responsibilities in order to avoid delays or conflicting interventions.

4.4 Depositaries operating cross-border must be able to meet local requirements

The duties and responsibilities assigned to depositaries are based on local statutory and operative requirements. Market practices vary by regions, with differing paths to resolution, registration procedures and taxation requirements. A Union-wide passport does not change anything about these clear differences. In order to ensure that cross-border depositary models function reliably, there is a need for clear responsibilities, transparent processes and structures that ensure that country-specific requirements can be complied with in all cases.

4.5 No clear conflict-of-law rules

In light of this, questions of substantive law are significant. Transfer of ownership, securities lending or security agreements are, in Europe, governed by differing national laws. The question is, which laws apply to the individual transactions if a fund is domiciled in one member state, but the depositary is based in a different country. This can lead, in practice and in the event of a dispute or insolvency, to complex situations that are handled differently within different legal systems.

In order to guarantee the necessary legal certainty, the directive should provide for an explicit conflict-of-law rule that clarifies which national law transactions are subject to. This will create the required reliability to ensure that the depositary passport can be applied with legal certainty in practice.

Member states have differing supervisory cultures and administrative processes. This can, in a cross-border model, result in varying prudential requirements. Depositaries and investment companies will thus be acting within an environment in which diverging national prudential practices exist in parallel. Market participants can therefore place more focus on selecting locations whose legal or administrative framework conditions better suit their business models. This, in turn, significantly increases the importance of close cooperation between supervisory authorities and the need for clear rules regarding which authority is responsible for which process.

After all, the question of cross-border legal enforcement affecting multiple jurisdictions is much more complex than a purely national model. Liability regulations remain unchanged, but practical implementation is affected by the place of jurisdiction, national requirements and cooperation between authorities. The proposal does not provide any clarifying details on this matter.

In order to avoid legal uncertainty, it would be helpful if the directive included, at the very least, a clear point of contact or basic information on determining jurisdiction and cooperation between authorities. Such a guiding principle would not need to regulate individual details, but simply help provide orientation and create a framework within which questions pertaining to cross-border liability and implementation can be answered consistently.

5 Supervision

5.1 General remarks

Any action to deepen EU capital markets and foster their attractiveness is highly appreciated. The EU Commission’s proposals under the Market Integration Package contain such urgently needed reforms of regulation currently in place. Although strong and effective supervision is the foundation of thriving and competitive capital markets, it is, at this point, questionable whether centralization of EU supervision or shifting powers from NCA’s to ESMA should be prioritized.

It should be therefore noted that the political debate about centralization of supervision or expanding ESMA's powers must not block urgently needed reforms of existing regulatory frameworks. From our perspective, any action in this regard could be a second step if this would hinder necessary reforms in the short run.

5.2 Governance implications and institutional balance

The proposed further development of ESMA goes beyond targeted adjustments and introduces governance-related changes that extend well beyond the regulation of cross-border market infrastructures. It affects both the scope and configuration of supervisory powers as well as the authority's institutional governance.

The envisaged investigative and intervention powers create a disconnect between ESMA's decision-making authority and the accountability of national supervisors. While ESMA decides on the initiation, scope, and intensity of measures, national authorities bear the burden of implementation, market proximity, and political accountability. This mismatch weakens the legitimacy of supervision and heightens the risk of conflicting objectives. Several of the proposed instruments (notably Arts. 17aa and 17aaa draft ESMA Regulation) allow ESMA to exert significant influence over national supervisory decisions. This creates a risk of de facto direct supervision and a gradual shift of decision-making powers. Supervisory convergence must not result in opaque or informal competence shifts.

Such a shift of competence should be avoided as it would unduly expand ESMA's supervision of market participants (who do not fall under ESMA's direct control) and cause legal uncertainty. Moreover, at least from a German perspective it is unclear what "granting approval to financial products" means, as there is no granting to financial products besides prospectuses and Investment terms on the German market.

The role of the proposed Executive Board needs to be clearly defined in comparison to the role and function of the Board of Supervisors, as it will centralize operational control and decision-making (including suspending cross-border distribution).

5.3 Competitiveness as a secondary Objective of ESMA's work

International competitiveness of EU firms and EU capital markets should be a guiding principle and manifested as ESMA's secondary objective (as it is for FCA[3]). ESMA should always consider how its work affects the EU Commission's objective to foster EU's economy (including the financial sector) and its growth and attractiveness for businesses, consumers and investors (EU-wide and globally) in the medium to long-term. This guiding principle should shape ESMA's primary objectives and could help

[3] Financial Conduct Authority, https://www.fca.org.uk/about/what-we-do/secondary-objective

to avoid building new barriers or unduly bureaucratic burdens when exercising its supervision or establishing new rules and guidelines.

Besides a cost/benefit analysis an EU competitiveness test should be systematic and mandatory for each new rule (irrespective of whether it is on Level 2 or 3). The test should cover at least the following aspects:

- competitiveness of EU firms and EU capital markets in the EU and globally,
- simplification of new rules to avoid excessive and unnecessary burdens on market participants and their clients and favor regulatory certainty,
- consider international standards which are developed and adopted by recognized standard-setting bodies (i.e. IOSCO or BIS),
- consider regulatory approaches adopted in other competitor jurisdictions such as the UK and US.

5.4 Costs and bureaucratic burdens

However, it must be ensured that the proposed approach by the MISP does not lead to an overall increase in regulatory costs (either directly for the supervised entities or indirectly for their clients) and creates disproportionate burden on market participants and investors. Supervision under ESMA should be based on existing supervisory frameworks (i.e. reporting and data requirements). If there is no added value for financial stability, market integrity or investor protection any additional IT, compliance or operational adjustments must be avoided.

5.5 Regulatory stability

The Lamfalussy process has led to increased volumes of detailed regulatory rule-making in Level 2, which is becoming more and more prescriptive[4] and binding firms' resources and costs in a constant state of review and implementation. A stable and predictable regulatory environment will support integration efforts and improve the EU's attractiveness for international investors and capital flows. Therefore, the co-legislators should ensure that the ESMA regulation and the respective Level 1 texts set clear boundaries for ESMA's mandate. ESMA must avoid gold plating and develop its Level 2 or 3 proposals by following the principle of competitiveness and proportionality.

[4] European Banking Institute, Report on simplification of EU financial law, January 2026, p. 44 ff., available: https://ebi-europa.eu/wp-content/uploads/2026/01/the-EBI-SIMPLIFICATION-REPORT-16-January-2026-FINAL.pdf.

To avoid legal inconsistency and foster legal certainty, it should be noted that every Level 1 text which contains mandates for ESMA should explicitly require obligations which need to be finetuned in Level 2 to only start to apply once all Level 2 requirements are finalized.

NCAs are important for the local financial ecosystem due to their proximity and expertise of the local market dynamics, regulatory environment and specific challenges faced by these entities. It is therefore necessary to provide a clear definition of ESMA's mandate in relation to NCA's.

Any changes in terms of ESMA's powers should consider:

- sufficiently-resourced supervision and increase of expertise in the individual regulatory areas,
- implementing a "real" no-action letter power to prevent detrimental impacts from regulatory requirements,
- communication with ESMA must be as easy as communication with NCAs has been to date,
- decision-making by ESMA has to be clear and transparent in the relationship between ESMA and market participants, ESMA and NCA's and ESMA and EU Commission as well,
- early engagement with the industry on regulatory standards, making industry secondments the norm and allowing for knowledge exchanges with the industry,
- the idiosyncrasies of individual institutions in its supervision (i.e. business models, governance structures and geographic footprints),
- avoid imbalanced supervisory processes (uncoordinated horizontal supervision vs. JSTs),
- have simple documentation and reporting requirements.

5.6 Classification as significant and less significant

The distinction between significant and less significant market participants within the SSM has shown a very high level of complexity. Although the SSM provides for a clear provision to classify significant (SI) and less-significant (LSI) institutions, that classification has led to a supervisory "cliff-effect". Institutions slightly above the threshold will be treated as well as "big" SI while institutions slightly below the threshold will be treated as LSI. To simplify that degree of complexity, general supervision of market participants in scope might be preferable. ESMA and the respective NCA could then determine whether a particular market participant should fall under its or the supervision of that national competent body.

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