DRAFT Comments on the Savings and Investments Union:

Regulation fostering EU market integration and efficient supervision

Content

I. DLT Pilot Regime (DLT PR)

A. General Remarks

The European Union stands at a critical juncture in the global race for digital assets such as tokenized securities. While the proposed review of the DLT PR is ambitious and widely supported, parts of the MIP remain more controversial. A lengthy legislative process can therefore be expected. Hence, the intended future-proof DLT regulation may not enter into application before the 2030s - by that time the United States, backed by proactive regulatory initiatives, will have set global standards for tokenized securities. Hence, the welcomed changes to the DLT PR as regards thresholds and limits as listed below as well as the removal of the licence limit should apply as soon as possible, i.e. immediately upon entry into force

B. Specific Comments

1. Thresholds and scope of instruments

We welcome the significant increase in the thresholds and scope of instruments:

- **Cap increase:** The cap on the total value of DLT-based financial instruments in one DLT market infrastructure is set to rise from €6 billion to €100 billion previously constrained volume restrictions. This expansion enables DLT projects to scale sufficiently to appeal to institutional investors and major issuers, thereby fostering liquidity.
- **Market capitalization:** The limitation to tokenized shares from issuers with a market capitalization below €500 million is also being removed, which enables larger market participants to engage.
- **Scope:** Permitting all MiFID II financial instruments and their derivatives eliminates a major barrier to diversification. Broadening the scope creates the necessary product diversity necessary to attract a broader investor base and support a variety of investment strategies—both of which are crucial for generating liquidity.

These adjustments address our previous concerns and help establish the critical mass of trading volume and product diversity needed to attract liquidity providers, issuers, and, ultimately, investors.

Regarding Article 4, we welcome expanding the scope of entities which can operate a DLT TV and a DLT trading and settlement system (DLT TSS) to include, in addition to investment firms and CSDs, also CASPs that are authorised to operate a crypto-asset trading platform. CASPs permitted to operate a DLT market infrastructure, would become subject to requirements set out in MiFID, MiFIR and CSDR while benefiting from targeted and justifiable exemptions like other operators of DLT market infrastructures.

2. DLT notary and DLT account keeper

We welcome the introduction of the new roles of the "DLT notary" and the "DLT account keeper" to provide the core CSD services of "notary service" and "central maintenance service" for DLT financial instruments (Art. 10a of the draft DLTPR). Allowing regulated markets, CSDs, investment firms, credit institutions, or CASPs to fulfill these functions offers necessary flexibility.

While we acknowledge the alignment with CSDR Title III requirements (Art. 10a, 10b of the draft DLT PR in conjunction with Title III of the CSDR), the regime should avoid duplicative or overlapping requirements where risks are already addressed at the level of the DLT market infrastructure operator.

Crucially, for issuers whose DLT financial instruments are traded on trading venues, the requirement under Art. 3(1) CSDR is considered fulfilled if the initial recording is done by a DLT notary (Art. 10b draft DLTPR). Deviating from Art. 3(2) CSDR, transactions in DLT-based securities can be recorded by a DLT notary, DLT SS, a DLT-TSS, or a traditional CSD (Art. 10b of the draft DLT PR). This allows DLT-based financial instruments to be traded on a trading venue if recorded in a market infrastructure. This framework preserves the functional separation between recording and

maintenance (notary/account keeper) and settlement in an EU-authorised settlement infrastructure.

However, the lack of a defined **transition from the Pilot Regime to the "regular" regime** poses a significant risk. To avoid "cliff-edge" risks for issuers and investors once derogations expire, a durable legal framework within the CSDR is required (see detailed comments under following Section IV.1). The proposed approach may facilitate an EU-wide operational model for the trading and lifecycle management of DLT financial instruments within the Pilot Regime, which could also be relevant for national frameworks such as crypto securities under the German Electronic Securities Act (eWpG).

II. CSDR

1. Art. 3 CSDR

We support updating the definitions of "book entry" and "securities account" (Art. 2 (4a) and (28) of the draft CSDR) to explicitly include both centralized and decentralized (DLT-based) electronic records alike. This supports technology-neutrality and contributes to legal certainty for tokenised securities.

However, these definitional changes alone do not remove the structural barriers for trading-venue transactions, as Art. 3(2) CSDR continues to link compliance to the settlement process in securities settlement systems operated under the full CSDR framework. Therefore, we specifically call for a **durable "post-pilot" pathway that permanently integrates "DLT Notaries" into the CSDR framework**. To provide legal certainty and avoid "cliff-edge" risks after the Pilot Regime expires, the following adjustments are necessary:

- **Establishment of a permanent authorisation category**: A permanent authorisation category for DLT-based notary and central maintenance services should be anchored within the CSDR (Title III). Since DLT Notaries perform core CSD functions (notary/maintenance) but do not necessarily operate the settlement system itself, they are not 100% comparable to traditional CSDs. Consequently, they should be subject to a proportionate supervisory regime that focuses on relevant core safeguards (asset protection, governance, IT resilience) without imposing full CSD requirements where these are not applicable.
- **Clarification of Art. 3(2) CSDR compliance:** It must be clarified that the requirement of Art. 3(2) CSDR, ensuring transferability via book-entry, is fulfilled by recording the securities with such an authorised DLT Notary. This acknowledges the functional separation between the recording layer (Notary) and the settlement layer, allowing for valid constitution of securities even if the subsequent settlement occurs in a separate, albeit authorised, infrastructure.
- **Recognition of national regimes:** We strongly advocate for a streamlined recognition or fast-track procedure for existing national registrar regimes, such as the German Electronic Securities Act (eWpG). Registrars demonstrating compliance with CSDR-equivalent safeguards should be exempt from duplicate authorisation procedures to prevent high market entry barriers.

For example, DLT notaries could be included in the CSDR and Article 3(2) CSDR could also be fulfilled in the "normal" world by booking with them. In addition, there must be an integration of the DLT PR with national legal systems, some of which have had well-functioning systems for issuing DLT financial instruments for years (in Germany, for example, the eWpG). Consideration could, for example, be given to treating crypto securities registrars or comparable other national registrars as automatically equivalent to DLT account keepers or notaries and recognition. Or at least there should be a simplified ("fast-track") recognition or authorisation path to DLT notary and account keeper, avoiding duplicative authorization requirements.

2. Art. 7 (2) CSDR: Penalties as a revenue source for CSD-participants

With regard to the prohibition of cash penalties serving as a revenue source for CSD-participants, 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 accrued to the participant may remain with the participant.

3. Art. 9 CSDR: Reports of settlement internalisers

We disagree with the extension of reporting requirements for settlement internalisers with regard to having to report on a quarterly basis not only the aggregated volume and value but broken down by type of financial instrument and type of transaction, of all securities transactions that they settle outside securities settlement systems, and the corresponding settlement fail rates.

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. Fail rates should generally be low for settlement internalisers since internalizing a settlement usually has as a prerequisite that the settlement internaliser already has the relevant financial instruments at its disposal. Considered that there may be a legitimate interest on the part of the supervisory authorities in knowing the relevant data with regard to large settlement internalisers, which may be larger than the national CSDs of some EU Member States, a de minimis threshold should be introduced for having to provide settlement internalisation reports.

4. Art. 34 (9) CSDR: disclosure of prices and fees to clients

We believe that the addition of paragraph 9 is not necessary. Fees and prices charged to retail clients are already disclosed as a matter of standard practice.

With regard to professional clients, we believe that mandatory disclosure of prices and fees is unnecessary. The market for settlement internalisers is characterized by healthy competition, and the quality of execution is determined by a range of factors beyond just prices and fees. Professional clients are typically well-informed and able to assess the overall value of the services provided.

Furthermore, routinely providing such detailed information incurs administrative costs. Given that this data is often of limited value and relevance to professional clients in their decision-making process, we suggest that this information should only be made available upon explicit request from the client.

III. MiCAR

A. General Remarks

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 Article 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.

B. Specific Comments

1. Article 60 MiCAR – Notification regime and annual turnover reporting

The amendments in the newly inserted Art. 60 (6a) MiCAR introduce an obligation for in scope entities referred to in Article 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.

2. Article 69 MiCAR – Notification of changes in the management body

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 Article 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. Article 73 MiCAR – Outsourcing arrangements

The amendments to Article 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

4. Article 92 MiCAR – Market abuse reporting

Redirecting market abuse notifications under Article 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, the transfer of reporting mandates without corresponding supervisory responsibilities could create legal uncertainty regarding which authority holds ultimate responsibility for follow-up, enforcement, and supervisory action.

5. Multi-issuer stablecoins

In addition to the proposed amendments to MiCAR, we call for regulations for multi-issuer stablecoins. These instruments should be clearly regulated in order to ensure the stability of the European financial market and avoid legal uncertainties. One possible option, for example, would be to require equivalent regulation in third countries for their admissibility, if a complete ban is not being considered. This way abusive market practices that exploit regulatory differences can be prevented.

IV. ESMA Regulation

We generally support the European Commission's plan to strengthen the efficiency and competitiveness of European capital markets with the Market Infrastructure Package (MIP).

The package not only provides for substantive adjustments to existing regulations, but also for far-reaching changes to the European supervisory architecture, particularly with regard to the role,

powers and governance of ESMA. In principle, we support the further development of European supervision, provided that it is geared to the requirements of the MIP and creates clear responsibilities. The key is to strike a balance between European and national supervision and to clearly assign responsibilities.

Any expansion of ESMA's powers must be clearly defined, predictable, and legally secure, focusing only on cross-border issues. Competencies should be formally set out in the ESMA Regulation and relevant Level 1 legal acts. Regional market practices and national specificities must be systematically respected when only national markets are affected, leveraging the expertise of national authorities. Cooperative models, such as Joint Supervisory Teams, can help - provided national competent authorities remain substantially involved in decision-making.

Finally, when fulfilling its duties, ESMA should explicitly be required to consider the competitiveness of European capital markets alongside investor protection and financial stability. International examples demonstrate that stable and efficient markets are legitimate supervisory objectives, and oversight practices should take into account economic consequences.

The new 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.

We are skeptical about the proposed Executive Board, composed of a chair and five full-time independent members, which will centralize operational control and decision-making, including on key interventions like suspending cross-border distribution. This structure risks marginalizing the Board of Supervisors - and thus national authorities - since the latter would only retain a right of objection. Concentrating power in the hands of a few independent members could undermine the pluralistic legitimacy and balanced governance of ESMA.