German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Statement to the German Federal Ministry of Finance

on the Regulation fostering EU market integration and efficient supervision (Market Integration and Supervision Package, MISP)

Lobby Register No R001459

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

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Comments
on the Regulation fostering EU market integration and efficient supervision (Market Integration and Supervision Package, MISP)

1. Objective and General Assessment

The German Banking Industry Committee (GBIC) 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 is the first step in the right direction, making space within various frameworks to foster competitive advantages.

GBIC is particularly interested in the proposals that affect 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 has introduced a variety of options for promoting competition in the Regulation on Central Securities Depositories. Here, the banks believe a significant provision is missing. Central securities depositories should be required to disclose their prices and services in a standardised, transparent manner. Only a clear and unified cost structure will allow 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 that offer post-trade services are always in competition with other banks. Therefore, the proposal on price transparency for banks that offer settlement internalisation should apply only vis-à-vis their clients, not to the market. Banks are not market infrastructure.

Promotion of modern technologies, such as DLT, can create decentralised market structures and affect the banks' role as intermediaries. These proposals are also very welcome, as they create a European framework that opens up many different possibilities. The market can decide if and when it wants to make use of more modern options.

We are also in favour of the amendments to MiCAR. However, these amendments do need adjusting to ensure that supervisory competencies, prudential and incident reporting are clearly and consistently assigned to the supervisory bodies with the correct expertise. We also welcome the proposals for trading venues, which create the regulatory framework required to allow for market-driven consolidation.

GBIC generally supports the EU depositary passport, but only if it is legally secure, consistent in terms of supervision, operationally robust, and protects investors across borders.

The specific European Commission proposals on market integration are accompanied by potential plans to, in some cases, bundle market supervision activities under the ESMA. In principle, we support the further development of European supervision, provided that it is limited to pan-European issues with cross-border relevance and geared to the necessities laid down in the MISP with respect to market infrastructures. The key here is to strike a balance between European and national supervision and to clearly assign responsibilities.

Centralisation of supervisory activities is, from the point of view of GBIC, not an end in and of itself, but rather the result of market driven consolidation and deepening of the markets. Prudential questions could therefore have been answered in a second step, and should not, at this point in time, drown out the debate on the specific proposals. The suggested approach, in which a European supervisory authority would be given jurisdiction over infrastructure such as CCPs and CSDs, is definitely an option, provided that the following is taken into account:

- Centralisation of supervisory activities cannot lead to increased complexity.
- If European supervision increases in these areas, national supervision must decrease.

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Completely independent of details on and assessment of the proposed European supervisory authority, the ESMA should be strengthened and modernised with respect to pan-European market infrastructure issues via the following measures:

1. The ability of the European markets to compete on the global stage should be codified as a key guiding principle of the ESMA's supervisory tasks.
2. The ESMA must be able to take action, e.g. via the introduction of a "real" no-action letter (for exceptional circumstances).

2. CSDR

The GBIC 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 GBIC, 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.

2.1 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 GBIC 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 clients 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 Article 34 Paragraph 9 of the draft CSDR are viewed therefore critically and should be deleted. From the GBIC'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.

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

2.2 CSD costs and fee structures

A central demand of the GBIC 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 GBIC 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 GBIC therefore advocates reducing these discrepancies and making fee structures transparent and comparable to create more competitiveness between CSDs.

2.3 Reports of settlement internalisers Art. 9 of the draft CSDR

The new reporting requirements under Article 9 of the draft CSDR should be removed. From the GBIS'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 Article 34 CSDR.

2.4 Definitions - 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 framewor**k. 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.

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- **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.

2.5 Penalties

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

2.6 Centralised supervision is 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.

2.7 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 is barrier 4, the free choice of location of issuance. This barrier is defined as highly important and also highly difficult. It says that the lack of harmonisation of national securities and corporate laws hinders the free choice of a issuer CSD. This problem could be addressed by amending Article 49 of the CSDR.

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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 GBIC urges that this be taken up and addressed in the ongoing process.

3. DLT Pilot Regime

3.1 General Remarks

The European Union stands at a critical juncture in the global race for digital assets such as tokenized securities. However, a lengthy legislative process can be expected for the MISP – since while the proposed review of the DLT PR is ambitious and widely supported, parts of the MIP remain more controversial. As a result, 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 Pilot Regime 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.

Nevertheless, 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).

The GBIC 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 GBIC 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:

- Clarification on CSDR credit restrictions for credit institutions: We seek clarification that the strict prohibition on providing 'clean credits' (unrelated to CSD services under the CSDR) does not apply to credit institutions operating a DLT-TSS or providing individual CSD services under the new Article 10a DLTPR (DLT notary and central maintenance services). An explicit carve-out is necessary to ensure that universal banks are not inadvertently excluded from adopting these new DLT roles.
- Allow for settlement in DLT-based cash solutions beyond central bank money such as tokenised deposits and authorised e-money tokens (EMTs).

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It is of great importance to the GBIC 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.

3.2 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).

4. MiCAR

4.1 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.

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4.2 Specific Comments

- **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.

- **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.

- **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

- **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.

- **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.

5. EU asset management

National competent authorities (NCAs) are most familiar with the fund products and legal provisions in their respective markets. Against this background, we welcome that the Commission has not proposed a transfer of asset management supervision to the EU level.

However, we are concerned about the expanded ESMA competencies (Art. 110b-c UCITS-Directive, Art. 47a-b AIFMD, Art. 14c-e CBFDR) and particularly the plan for ESMA to conduct annual reviews of certain asset managers. As a result of these reviews, ESMA could require NCAs to change their supervisory practices in areas such as governance, risk management, and delegation by a deadline ("corrective measures"). Beyond this review framework, ESMA could, on an ongoing basis, identify deficiencies in product supervision and subsequently initiate an escalation process, ranging from delays due to mandatory ESMA consultations to a full ban on passporting (Art. 14c para. 4 UCITS-Directive).
A dual structure scrutinizing NCAs' actions down to individual supervised entities, probing for "divergent" or "deficient" practices, would be inefficient. ESMA's regulatory expansion would create additional costs that would be borne by asset managers in the form of increased supervisory fees, and, ultimately, also by the investors. The additional reviews are also unnecessary, as ESMA can achieve a sufficient level of supervisory convergence with its existing powers.

The dilution of the NCA's role as the primary regulator would lead to more complexity as any statement or guidance provided by the NCA could be subject to ex-post approval by ESMA. NCAs could either pre-consult with ESMA on certain decisions or revoke decisions provided to an asset manager due to differing assessments from ESMA. In the former case, market participants would wait longer for feedback from the NCA; in the latter, they would still lack the required regulatory certainty to implement consequential changes despite having received guidance by the NCA. Thus, there is no basis for the claim that charging fees for ESMA reviews is justified by the benefits asset managers would reap from them (Recital 15).
Notably, the proposals to facilitate internal outsourcing (see Section 3) and to conduct annual ESMA reviews both refer to the same EU group definition (Art. 2(1)(v) UCITS-Directive, Art. 4(1)(av) AIFMD). Apparently, the Commission views the expanded ESMA powers as a counterbalance to a supposedly less stringent regulation of intra-group arrangements. Therefore, we stress that the drawbacks of an additional supervisory layer clearly outweigh any benefits of an alleviation for intra-group arrangements — even if the latter provisions were to be improved. If these two proposals can only be approved as a package, we recommend rejecting both.

6. Depositary Passport

The EU Depositary Passport is a central proposal by the European Commission as part of the Savings and Investments Union (SIU), aimed at facilitating cross-border capital market activities and further deepening the integration of the single market.

The German Banking Industry welcomes this initiative in principle and is available as a point of contact for further discussions and the development of detailed concepts. In this context, it emphasizes that the introduction of a depositary passport alone is not sufficient: comprehensive legal adjustments are required beforehand, as the depositary acts as a structural protection mechanism for investors and is closely linked to national civil, insolvency and custody law frameworks.

The passport can provide fund providers with access to a broader range of depositaries, which is particularly beneficial for smaller markets. With an expanded selection, fund providers could compare services more purposefully and achieve economic advantages. However, this expanded access must under no circumstances lower the existing high protection levels. Furthermore, clear supervisory responsibilities of the authorities involved are necessary, especially if funds and depositaries will no longer necessarily operate within the same legal and supervisory environment.

Local legal and operational requirements must continue to be met even when operating under the depositary passport, as Union-wide regulations cannot eliminate the existing differences in regulatory protection levels. There is still a lack of clear conflict-of-law rules, particularly regarding transfers of ownership and securities lending, which can lead to legal uncertainties in cases of dispute or insolvency which might constitute a barrier to accepting the passport.

7. ESMA Regulation

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 limited to pan-European issues with cross-border relevance and geared to the necessities laid down in the MISP with respect to market infrastructures. The key here is to strike a balance between European and national supervision and to clearly assign responsibilities.

In general, any expansion of ESMA's powers must be clearly defined, predictable, and provide legal certainty. 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. These national issues should not be part of any expansion of European supervision as the national supervisory authorities (NCAs) already have the respective experience and proximity to the market practice and daily functioning of their national capital markets. Thus, interaction with the NCAs is of utmost importance. In addition, cooperative models, such as Joint Supervisory Teams, can support to ensure that 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.

7.1 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

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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.

We are skeptical about the proposed Executive Board, composed of a chair and five independent full-time members, which will centralize operational control and decision-making, including 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.

The extension of ESMA's mandate to a "common supervisory and enforcement culture" (Art. 29 draft ESMA Regulation) significantly broadens its role beyond supervision. Such a shift requires clear political justification and strict limits.

7.2 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[1]). 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 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.

7.3 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.

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

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7.4 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[2] 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.

To avoid legal inconsistency and foster legal certainty, it needs to be ensured that every Level 1 text which contains mandates for ESMA to issue Level 2 requirements only starts 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 the mandate of the 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 (in exceptional circumstances and in close cooperation with the EU Commission) 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),
- to avoid imbalanced supervisory processes (uncoordinated horizontal supervision vs. JSTs),
- to have simple documentation and reporting requirements.

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[2] 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.