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A1. ESMA Governance Framework

A1.1 Introduction

- Two Council Working Parties (CWP), held on 30-31 March 2026 and 28 May 2026, have enabled the sharing of views on the Commission's proposal for revisions of the ESMA governance framework and the allocation of intervention and supervisory convergence tools. The Cyprus Presidency (CY PCY) has also hosted policy debates at ECOFIN on 5 May and 12 June 2026, including discussion of the balance of responsibilities between the Board of Supervisors and the proposed new Executive Board.

- The CY PCY's draft Progress Report (June 2026) concludes that broad support has emerged in principle for the establishment of an Executive Board within ESMA, with Ministers underlining the need for appropriate checks and balances in the governance model, including a balanced division of powers and tasks between the Executive Board and the Board of Supervisors. Accordingly, the Presidency proposes certain revisions to the Commission's proposal as outlined in A1.3 and A1.4 below.

A1.2 Member State Concerns

- **Composition and Appointment of the Executive Board**

  Relevant Articles: Article 44a

  Member States are seeking greater involvement in the appointment of independent Executive Board members and would prefer alignment with the appointment procedure for the Chairperson (i.e., with the Board of Supervisors preparing the shortlist and the Commission playing a supporting role). Member States contend that aligning the appointment procedure with the Chairperson model would preserve the central role of the Board of Supervisors in the governance framework with the Board of Supervisors having specific expertise to select technically qualified candidates, with relevant supervisory and market expertise to exercise direct supervisory powers within their markets.

- **Distribution of Tasks Between the Executive Board and Board of Supervisors**

  Relevant Articles: Articles 43, 44, 46a and 44b

  Many Member States propose reallocating supervisory convergence tasks from the Executive Board to the Board of Supervisors, particularly peer reviews and decisions on supervisory convergence addressed to individual entities or authorities. A clear division of tasks is deemed essential for accountability.

- **Decision-Making Arrangements and Non-Objection Procedure**

  Relevant Articles: Article 44b

  Member States have expressed significant concerns regarding the practical functioning of the non-objection procedure, particularly the combination of a high objection threshold (two-thirds majority), short timelines (10 working days) and limited information flows, which may constrain meaningful Member States oversight. A critical concern is that the Board of Supervisors must receive sufficiently complete, timely and structured information to properly exercise its role. Member States note that updates limited to twice-yearly reporting may not be sufficient, and more frequent and structured information-sharing would likely

be necessary. Member States supporting a lower threshold argue that extending the objection procedure with a lower threshold to all Executive Board decisions would strike a more balanced approach between effective decision-making and meaningful Member States scrutiny.

- **Participation of Executive Board Members in the Board of Supervisors**
  Relevant Articles: Articles 40(1) and 44(1)
  Member States have raised concerns about granting voting rights at Board of Supervisors to Executive Board members, pointing to risks of conflict of interest and an unbalanced governance model. A clear majority of Member States consider that Executive Board members should not have voting rights in the Board of Supervisors but could participate as observers. Alternative options to the Commission proposal, such as allowing Executive Board members to participate as observers without voting rights or allowing tightly-circumscribed voting rights would ensure effective information-sharing whilst preserving the nature of the Board of Supervisors.

A1.3 Revised Governance Framework – General Principles

Proposed revisions should preserve the efficiency and independence envisaged by MISP whilst adding clearer safeguards to address Member States concerns. The central principles are:

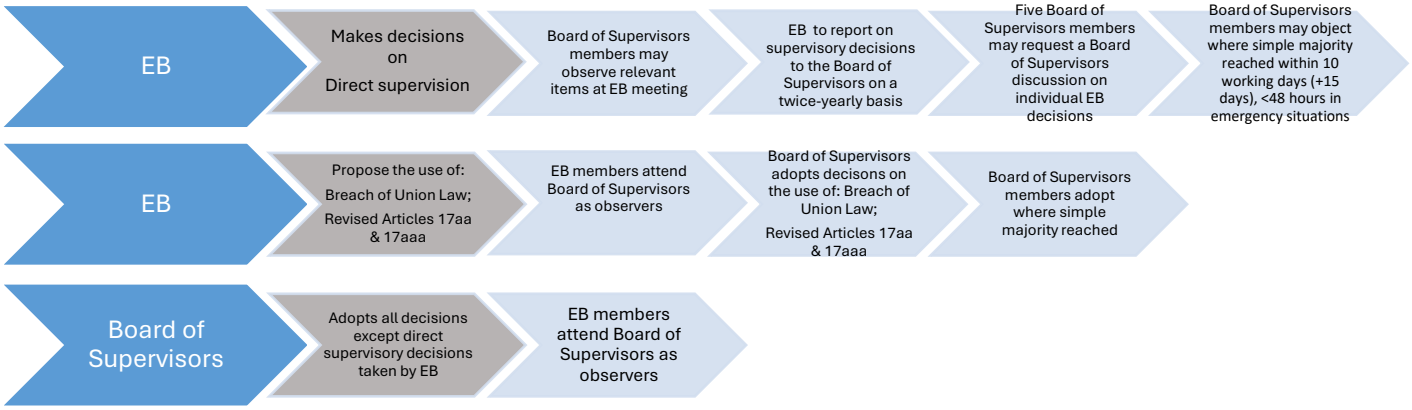
- ESMA should have a governance structure that combines efficiency and independence with meaningful NCA involvement and oversight.
- This split of responsibilities between Executive Board and Board of Supervisors must ensure a balanced governance model with distinct, complementary mandates and information sharing. The Executive Board should be responsible for direct supervisory decisions on designated entities, whilst the Board of Supervisors should retain primary responsibility for supervisory convergence, regulatory matters and strategic decisions. Any additional Executive Board

powers should be limited to proposing the use of exceptional powers, which could benefit from an EU perspective and a full time independent Board.

- NCAs should have meaningful opportunities to exercise oversight of Executive Board decisions through a proportionate non-objection procedure with an appropriately calibrated threshold, timeline and sufficient information-sharing.
- Executive Board members should participate in Board of Supervisors discussions, to ensure a balanced governance model whilst allowing the Executive Board to contribute expertise and information.

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A1.4 Revised Governance Model – Key Features



1. Composition and Appointment of the Executive Board

- <u>Numbers of Executive Board members and Board of Supervisors participation:</u> The Executive Board would be composed of the Chairperson and five independent members, in line with the Commission's proposal. Relevant NCAs may act as non-voting participants at Executive Board meetings where decisions concern entities established in their jurisdiction, thereby preserving the independence of the Executive Board whilst allowing NCA input. Whilst many Member States expressed support for granting voting rights to Board of Supervisors members at Executive Board meetings, the Presidency proposes this alternative approach based on an

assessment of the overall allocation of responsibilities (See "Distribution of Tasks Between the Executive Board and Board of Supervisors" section below.)

- Appointment procedure for Executive Board members: The appointment procedure for Executive Board members would be aligned with that of the Chairperson, with the Board of Supervisors preparing the shortlist and the Commission playing a supporting or advisory role. This responds to the preference expressed by a large majority of Member States for a stronger role of the Board of Supervisors in appointments (See Section A.2).

- Appointment criteria: The appointment criteria for independent Executive Board members would be aligned with Joint ESA standards and include an assessment based on candidates' strong supervisory expertise, technical qualifications and market knowledge. While the introduction of staggered mandates for the initial appointment of Executive Board members was considered, it is not proposed to progress this due to the practical implications for the Executive Board in its early years and its heavy workload. It can be expected over time that natural attrition would address the risks of simultaneous turnover of all members.

- Central Bank observers: Central Banks of Issue of non-euro area EU/ currencies of the instruments cleared or settled by the CCP/CSD would be permitted to observe Executive Board discussions relevant to the CCP/CSD.

Q1: Do Member States support the Presidency's proposed revisions relating to composition and appointment of the Executive Board?

Q2: Are there any remaining concerns on composition and appointment of the Executive Board that require resolution?

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2. Distribution of Tasks Between the Executive Board and Board of Supervisors

The Presidency's proposed revisions clearly delineate responsibilities between the Executive Board and the Board of Supervisors:

- Executive Board responsibilities: The Executive Board would be responsible for supervisory decisions relating to directly supervised entities. It would also be responsible for proposing the use of ESMA's powers under Articles 17 (Breach of Union Law), 17aa and 17aaa, as well as overseeing their implementation, subject to adoption by the Board of Supervisors. As described in more detail in the paper on Co-operation Arrangements, co-operation arrangements under Article 8a would be established only on a sectoral basis, through common sectoral frameworks applicable to the relevant sector, and would not take the form of bilateral arrangements between ESMA and individual NCAs. The Board of Supervisors would approve the overall sectoral framework, including standard templates, minimum content requirements and safeguards, while the Executive Board would apply that framework in the context of ESMA's direct supervisory responsibilities. (Subject to outcome of separate CWG discussions on Co-operation Arrangements).

- Board of Supervisors responsibilities: The Board of Supervisors would retain decision-making for everything other than direct supervision, namely supervisory convergence, adoption of the use of Breach of Union Law and

Articles 17aa and 17aaa, regulatory matters, strategic planning and budgetary decisions. Notably, decisions relating to peer reviews and the approval of sectoral co-operation arrangement frameworks, templates and minimum content under Article 8a would also fall to the Board of Supervisors.

Q.3: Can Member States support the distribution of tasks between the Executive Board and Board of Supervisors on the basis proposed by the Presidency?

Q.4: Should the Executive Board also be empowered to suggest topics, based on the risk heat map, for the Board of Supervisors to conduct an inquiry under Article 22(4) (into a type of financial activity or product) or a peer review (Article 30(4)) based on information identified as part of their direct supervisory tasks?

3. Decision-Making Arrangements Within the Executive Board and Non-Objection Procedure

The Presidency's proposed revisions seek to address Member States concerns regarding decision-making in the Executive Board and the related Board of Supervisors non-objection procedure:

- Board of Supervisors members would be entitled to contribute to relevant items at Executive Board meetings (for example, where NCAs might usefully share national perspective or national market specificities). The Presidency notes that many sought voting rights for individual Board of Supervisors members on relevant Executive Board items at the Executive

Board, but as the proposal is for the Board of Supervisors to retain the supervisory convergence powers, observer rights might be sufficient.

- It should be noted that neither the Commission proposal nor the Presidency proposal specify the detailed operational procedures for how supervisory decisions are formally transmitted to the Board of Supervisors to trigger the objection period. This should be covered in the Executive Board's working arrangements or rules of procedure, which the Executive Board is required to adopt and make public under Article 44b(3). The Presidency proposes that the Level 1 specifies that where supported by at least five Board of Supervisors members, an Executive Board decision could be tabled for timely discussion at Board of Supervisors.

- Threshold for non-objection procedure: A clear majority of Member States favour a lower threshold than the Commission's proposed two-thirds majority for objection. The Presidency therefore proposes that the objection threshold be reduced to a simple majority for all Executive Board decisions.

- Duration of objection period: The objection period could be extended once at the request of NCAs by 15 days (other than in emergency cases). 15 days would provide NCAs with more time to review complex decisions. The possibility of extension should not be limited to duly justified or particularly complex cases.

- Level of Board of Supervisors support for extension: The Presidency propose the same level of support (simple majority) as is required for an objection.

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- Emergency situations: For emergency situations, the Executive Board should be allowed to adopt decisions with immediate effect utilising its emergency powers, subject to subsequent discussion and scrutiny by the Board of Supervisors.

Q5: Do Member States support the Presidency proposal on decision making arrangements at the Executive Board and the non-objection procedure?

Q6: Are there any remaining concerns about the decision-making arrangements at the Executive Board and the non-objection procedure that require resolution?

4. **Participation of Executive Board Members in the Board of Supervisors and Related Voting Rights**

- The Presidency seeks to address Member State concerns regarding conflicts of interest and governance balance. Two options are proposed:

  Option A: Participation means that all Executive Board members can act as observers at Board of Supervisors meetings, without any voting rights.

  Option B: All Executive Board members can act as observers at Board of Supervisors meetings but the Executive Board has one vote as an EU competent authority at Board of Supervisors.

- The proposals seek to ensure the balanced governance model, with clear division of powers between the Executive Board and Board of Supervisors, whilst allowing the Executive Board to contribute expertise and information.

Q7: Do Member States support Option A or Option B on Participation of Executive Board Members in the Board of Supervisors and Related Voting Rights?

Q8: Are there any remaining concerns about Participation of Executive Board Members in the Board of Supervisors and Related Voting Rights that require resolution?

A2. ARTICLES 17aa and 17aaa

A2.1 Introduction – Articles 17aa and 17aaa

This section examines the issues previously raised by Member States in relation to Articles 17aa and 17aaa. It should be read alongside the governance proposal set out in **"Distribution of Tasks Between the Executive Board and Board of Supervisors"** under which the Executive Board would be responsible for proposing the use of ESMA's powers under Articles 17 (Breach of Union Law), 17aa and 17aaa, as well as overseeing their implementation, subject to adoption by the Board of Supervisors. It is noted that a majority of Member States have expressed a preference for the Board of Supervisors to remain the primary decision-maker in respect of these powers.

Since Member States last discussed these provisions at the Council Working Party on 30 March 2026, the Council Legal Service (CLS) has issued an opinion on the compatibility of certain elements of the MISP proposal with the Meroni doctrine.

The CLS considers that Articles 17aa and 17aaa could be compatible with the doctrine, provided ESMA's discretion is subject to additional safeguards and constraints. In the case of Article 17aa, this would involve linking ESMA's intervention powers to a formal Commission opinion and/or introducing appropriate time limitations. Similar safeguards, including enhanced Commission

involvement and temporal restrictions, would be required in relation to Article 17aaa.

The Commission has emphasised that these powers are intended to operate only as exceptional measures of last resort, designed to safeguard the integrity of the Single Market and protect host Member States where shortcomings in home-state supervision have cross-border effects.

In light of the CLS opinion and Member States' views, the Presidency intends to engage further with the CLS and explore potential solutions and drafting options.

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A2.2 Article 17aa and 17aaa: Member States Positions

Article 17aa allows ESMA intervention where a peer review or Article 22(4) inquiry finds an NCA "*may be failing to effectively supervise*" and this "*could jeopardise*" market integrity, financial stability or investor protection. ESMA may require the NCA to seek ESMA's opinion before granting approvals. Article 17aaa goes further, allowing ESMA to suspend cross-border services where it has "reasonable grounds" to conclude an entity has committed a serious infringement with similar risks.

Whilst some Member States welcome stronger convergence tools to treat cross-border supervisory failures, reactions are mixed. Some others want outright deletion of the text. Many more support the principle but raise substantial concerns common to both Articles: the intervention thresholds seem vague and too low; roles between ESMA and NCAs lack clarity, particularly regarding national law interpretation; there are insufficient procedural safeguards for NCAs; liability remains unclear; timelines seem unrealistic for complex cases; and questions persist about compatibility with Meroni, institutional balance and the principle of conferral.

Article 17aaa raises additional complications. ESMA would be suspending services of entities it doesn't supervise, creating accountability gaps. The "reasonable

grounds" threshold seems insufficient for such a significant intervention. There is no corrective action phase before suspension, and concerns about market participants bearing consequences of supervisory failures beyond their control are heightened.

A2.3 Articles 17aa and 17aaa: Proposed path forward

The Presidency proposes to engage with CLS to craft an approach which balances effective supervisory convergence with Member States concerns about proportionality, subsidiarity and legal certainty. The approach should rest on common principles for both Articles; ESMA's powers should be genuinely last-resort, used only where existing tools have been exhausted; intervention criteria should be objective and evidence-based; there should be structured engagement with adequate timelines; proper appeal mechanisms must exist before implementation; and ESMA's role in interpreting Union law needs clarification. Any decision by the Executive Board to propose the use of these powers would remain subject to adoption by the Board of Supervisors.

For Article 17aa specifically, this means NCAs need meaningful opportunities for justification and, where warranted, corrective action before binding measures and then clear procedures to demonstrate compliance and exit the process. For Article 17aaa, it requires a mandatory phase for NCA justification and, where warranted, correction, before suspension, realistic timelines with flexibility for good faith cooperation, and robust review mechanisms with proper procedural guarantees.

These principles should address both the CLS concerns and the fundamental issues raised by Member States, preserving the tools' effectiveness for serious cases whilst ensuring proportionality and legal certainty.

Q9: Do Member States support the Presidency's proposed way forward incorporating enhanced thresholds, structured engagement phases,

extended timelines, temporal limitations and a Commission opinion for Articles 17aa and 17aaa?

Q10: Are there any critical concerns regarding Articles 17aa and 17aaa not addressed above that require Presidency attention?

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