Council of the European Union
General Secretariat

PUBLIC

Interinstitutional files:
2025/0381 (COD)
2025/0382 (COD)
2025/0383 (COD)

Brussels, 27 August 2026

WK 13115/2026 INIT

LIMITE

EF
ECOFIN
CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and Banking Union (MISP) Financial Services Attachés
N° Cion doc.:	ST 16345 2025 INIT
Subject:	Market Integration and Supervision Package - ESMA Regulation Presidency Discussion Paper

ÉIRE2026.EU
IRELAND2026.EU

PUBLIC

ESMA Regulation Presidency Discussion Paper

Council Working Party

2 September 2026

Table of Contents

1. Background 2
2. Objective of today's Working Party 2
3. Issues 2
3.1 ESMA Governance 2
3.2 Articles 17aa and 17aaa 4
3.3 Co-operation Arrangements 6
3.4 Other amendments to ESMA Regulation 8
4. Annex 10
ESMA Regulation PCY Compromise Text 10

1. Background

The Council Working Party on 2 September will resume negotiations on the ESMA Regulation within the Market Integration and Supervision Package. The meeting builds on the discussion at the ECOFIN meeting of 10 July, the Council Working Party meeting of 17 July, and the Presidency's subsequent written consultation and bilateral engagement with Member States.

During those discussions, delegations raised a number of issues concerning ESMA's governance arrangements, the proposed intervention powers under Articles 17aa and 17aaa, and the framework for cooperation between ESMA and national authorities in the exercise of direct-supervisory tasks. Delegations also emphasised the need for clear and proportionate arrangements that preserve effective decision-making, ensure appropriate involvement of national competent authorities and provide legal certainty for all parties.

2. Objective of today's Working Party

Taking account of the views expressed, the Presidency has developed proposed landing zones on these principal outstanding issues. A consolidated Presidency compromise text is set out in the Annex to this discussion paper for consideration. The text seeks to reconcile the different positions expressed by delegations while safeguarding the overall objectives of the MISP proposal.

The Presidency has prepared the attached compromise text with a view to getting an agreement on MISP at the October Ecofin. For each issue, the Presidency will provide a brief overview and explain the rationale underpinning the proposed amendments. Delegations are invited to examine this paper and the Presidency compromise text set out in the Annex and to present their views on the proposed changes.

3. Issues

3.1 ESMA Governance

Relevant articles: Articles 17, 19, 19a, 22, 30, 39o, 40, 43, 44, 44a, 44b, 46a, 48 and 51.

Background

The MISP proposal would extend ESMA's direct-supervisory responsibilities and replace the Management Board with a full-time Executive Board composed of the ESMA Chairperson and five independent members.

The expansion of ESMA's direct-supervisory role requires a clear allocation of responsibilities between the Executive Board and the Board of Supervisors. The framework should enable ESMA to take effective and timely entity-specific supervisory decisions, while preserving the Board of Supervisors' central role in regulation, strategy, budgetary oversight and supervisory convergence. It should also ensure appropriate involvement of

national competent authorities, clear institutional accountability and effective oversight of the Executive Board.

Presidency proposals

The compromise text seeks to establish a clear division of responsibilities based on the nature of the task concerned.

The Executive Board would be responsible for ESMA's operational and administrative management and for taking entity-specific decisions relating to financial market participants directly supervised by ESMA. The Board of Supervisors would retain responsibility for regulatory matters, strategy, the work programme, the budget and supervisory convergence.

For supervisory convergence tools affecting national competent authorities or financial market participants that remain under national supervision, the Executive Board would initiate the relevant procedure, carry out the necessary assessment and prepare a reasoned proposal or recommendation. The Board of Supervisors would adopt the final decision. This allocation would apply to the specified decisions under Articles 17, 19, 19a, 22 and 30, as well as Articles 17aa and 17aaa, subject to the final agreement on those provisions (see section 3.2 below). This proposal follows the underlying principle set out in recital 20 of the original MISP proposal, namely that: *"To ensure a clear division of responsibilities and effective checks and balances, the Board of Supervisors should remain ESMA's main body for regulatory decisions and supervisory convergence."*

The compromise text retains an independent, full-time Executive Board composed of the ESMA Chairperson and five members appointed on the basis of merit, independence, integrity and relevant supervisory and market expertise. The Board of Supervisors would prepare the shortlist of candidates with the assistance of the Commission. The appointment criteria would also ensure that the Executive Board collectively possesses an appropriate understanding of the sectors directly supervised by ESMA, supervisory convergence and the different structures and levels of development of Union capital markets. The compromise text also provides for a single, non-renewable five-year term for the Chairperson, the Executive Director and the independent members of the Executive Board. This would avoid a potentially lengthy reappointment procedure for a limited two-year extension of the mandate.

The relevant national competent authority would participate, without voting rights, in Executive Board deliberations concerning a directly supervised entity established in its Member State. The relevant representative would receive the agenda and necessary documentation sufficiently in advance to participate meaningfully. This arrangement is intended to ensure that relevant national supervisory and market knowledge informs the Executive Board's deliberations, while preserving clear responsibility for the final direct-supervisory decision.

The independent members of the Executive Board would also participate in meetings of the Board of Supervisors without voting rights. The Board of Supervisors could deliberate

without those members when considering an objection to an Executive Board decision, assessing the performance or accountability of the Executive Board, or addressing a conflict of interest.

The compromise text introduces two additional safeguards for direct-supervisory decisions producing binding external legal effects:

- nine voting members of the Board of Supervisors could require an ex-ante discussion of a proposed Executive Board decision before its adoption; and
- the final Executive Board decision would be subject to a Board of Supervisors non-objection procedure.

The ordinary non-objection period would not exceed ten working days and could be extended once by up to 15 working days where supported by a simple majority of the voting members of the Board of Supervisors. The Board of Supervisors could object to the final decision by a qualified majority of its voting members. The independent members of the Executive Board participating in the Board of Supervisors would not vote on an extension or objection. In emergency situations, the objection period would not exceed 48 hours. These safeguards supports effective Board of Supervisors oversight without transferring responsibility for the direct-supervisory decision from the Executive Board to the Board of Supervisors.

The compromise text also strengthens oversight of ESMA's supervisory fees through the establishment of a Fees Committee composed of representatives of national competent authorities. The Committee would assess the application of the cost-recovery principle, the allocation of fee-funded resources and the evolution and impact of supervisory fees. It would provide opinions to the Board of Supervisors on ESMA's annual and multiannual estimates of supervisory fee revenue and related expenditure.

Delegations are invited to examine the suggested amendments and provide their views.

3.2 Articles 17aa and 17aaa

Relevant articles: 17aa and 17aaa

Background

The Commission proposal introduces two new supervisory convergence tools enabling ESMA to respond to serious supervisory failures concerning approvals and to serious infringements involving the cross-border provision of services or activities.

Following the previous Working Party discussion, the Presidency engaged with the Council Legal Service on how these provisions could be structured consistently with the applicable institutional and legal requirements, taking account of the Council Legal Service's opinion from earlier this year. The Presidency has subsequently revised both provisions with the aim of ensuring that the powers are clearly defined, subject to objective conditions and procedural safeguards, and limited to what is necessary and proportionate.

PUBLIC

The revised provisions make two principal changes to the Commission proposal. First, the threshold for intervention is raised so that Articles 17aa and 17aaa operate as exceptional tools of last resort. Their use would require specific and substantiated evidence of a serious and persistent supervisory failure or a serious and continuing infringement, together with specified risks to customers or consumers, financial markets or financial stability. Intervention would follow engagement with the relevant competent authority, an opportunity for remediation and an assessment that the proposed action cannot be replaced by a less intrusive measure capable of achieving the same outcome.

Second, the measures would be temporary, targeted and time bound. Continued application would require a fresh assessment demonstrating that the relevant conditions remain fulfilled and that the measure remains necessary and proportionate. As both provisions are supervisory convergence tools affecting NCAs or entities remaining under national supervision, the Executive Board would undertake the assessment and preparatory work, while the Board of Supervisors would make the ultimate decision whether to adopt the final measure.

Presidency proposals

Article 17aa

Article 17aa would apply where an Article 30 peer review or Article 22(4) inquiry provides specific and substantiated evidence of a serious and persistent failure by an NCA to supervise approvals effectively in a specified sector or part of a sector. The failure would also need to risk significant financial damage to customers or consumers, market integrity or financial stability.

ESMA would first notify the NCA of its concerns and specify a reasonable period for the NCA to submit and begin implementing a remedial action plan, taking account of the nature, seriousness and complexity of the supervisory failure. That period could be extended once where substantive measures had been taken and were likely to remedy the failure without creating unacceptable additional risk.

If the failure persisted, the Executive Board could submit a reasoned proposal to the Board of Supervisors recommending corrective measures and, where necessary, temporarily requiring the NCA to seek ESMA's opinion before granting specified approvals. The proposal would have to demonstrate that the measures were necessary, proportionate and could not be replaced by a less intrusive alternative. The Board of Supervisors could adopt either or both measures by simple majority. The NCA concerned could present its position but would not vote.

The prior-opinion requirement would initially apply for no more than three months. Any renewal would require a fresh Executive Board assessment and Board of Supervisors decision confirming that the measure remained necessary and proportionate. ESMA's opinion would be non-binding, but an NCA departing from it would have to provide a reasoned explanation for such departure.

Article 17aaa

Article 17aaa would apply where ESMA has specific and substantiated evidence of a serious and continuing cross-border infringement with the potential to cause significant financial damage to customers or consumers, threaten market integrity or orderly market functioning, or threaten financial stability. It would not apply where ESMA already supervises the entity concerned.

ESMA would first refer its findings to the authorising NCA and provide an opportunity for remediation. Where concerns persisted, the NCA would be required to submit and begin implementing a remedial action plan within a reasonable period, which could be extended once where substantive corrective measures had been taken without creating an unacceptable increase in risk.

Only where the infringement persisted after that process could the Executive Board recommend that the Board of Supervisors suspend some or all of the entity's cross-border services or activities. The recommendation would have to demonstrate that suspension was necessary and proportionate, could not be replaced by a less intrusive measure and would not produce disproportionate adverse effects. The NCA concerned would have an opportunity to submit final observations.

The Board of Supervisors could adopt the suspension by simple majority, with the NCA concerned entitled to present its position but not vote. The suspension would be temporary and targeted, initially lasting no more than three months and renewable once for up to a further three months following a fresh assessment and consultation with the relevant authorities.

The decision would be addressed to the NCA, which would notify the entity and give effect to the suspension. The suspension would expire automatically unless renewed and would have to be lifted or narrowed where the underlying conditions were no longer met. The entity or NCA could request such a review, and final decisions would remain subject to appeal and judicial review.

Delegations are invited to examine the suggested amendments and provide their views.

3.3 Co-operation Arrangements

Relevant articles: Articles 8a and 8b

Background

The MISP proposal transfers new direct supervisory responsibilities to ESMA while providing for cooperation between ESMA and relevant national competent authorities in carrying out those responsibilities.

The expansion of ESMA's direct supervisory role requires arrangements that ensure supervisory continuity, preserve access to national expertise and support an orderly

transfer of knowledge, information and responsibilities. At the same time, the framework should ensure that ESMA develops the staff, expertise, systems and operational capacity necessary to perform its supervisory tasks effectively and independently.

The cooperation framework should provide sufficient flexibility to reflect differences between sectors, entities and supervisory tasks. It should also establish clear responsibilities, information flows, resource expectations and reimbursement arrangements, while avoiding unnecessary duplication and ensuring that responsibility and accountability for direct supervision remain with ESMA.

Presidency proposals

The compromise text distinguishes between cooperation during the transition to direct ESMA supervision (the 'preparation phase'), a 'transition phase' and cooperation once ESMA can perform its tasks independently (the 'steady state phase'). This approach will allow more intensive competent authority support to ESMA during the transitional phase and will trigger a meaningful assessment of cooperation arrangements before the steady state arrangements are agreed.

During the preparation phase, ESMA and the relevant national authorities would cooperate to prepare for the transfer of responsibilities, while NCAs would remain responsible for supervision. From the date of transfer, ESMA would become the responsible direct supervisor and remain accountable for all final supervisory decisions. During the transition period, NCAs would support ESMA through sector-specific arrangements, including Joint Transition Teams led by ESMA staff. ESMA would independently assess and validate any work prepared by an NCA before relying on it in a supervisory decision.

The transitional arrangements would cover the transfer of supervisory files, data and pending procedures, as well as staffing requirements, supervisory planning and sector-specific milestones. The transition would end when the Board of Supervisors determines, on the basis of a reasoned assessment from the Executive Board and after consulting the relevant NCAs, that ESMA has the capacity to perform its tasks independently. The initial transition period would end no later than three years after the transfer of supervisory responsibilities. The Board of Supervisors could extend it for all or certain sectors for up to 12 months, with any further extension requiring a fresh Executive Board assessment and Board of Supervisors decision identifying the remaining deficiencies, required support and revised milestones.

Steady-state cooperation arrangements would be tailored to the relevant sector and, where appropriate, to the nature, scale, complexity and cross-border significance of the supervised entity. They could provide for joint teams, liaison officers, secondments, secure information-sharing and administrative assistance in supervisory, investigatory and enforcement matters. Relevant national authorities would receive timely and proportionate information on material supervisory developments concerning entities established in their jurisdictions.

The Executive Board would prepare the transitional and steady-state arrangements in consultation with the relevant authorities. The Board of Supervisors would approve those

arrangements and could require amendments before approval. ESMA would remain responsible and accountable for its supervisory assessments, decisions and outcomes, and NCA participation would not transfer responsibility for the final decision.

ESMA would reimburse the reasonable direct and indirect costs incurred by national authorities. The arrangements would provide clear rules on resource estimates, eligible costs, invoicing, reimbursement, advance financing where justified and dispute resolution. During the transition, ESMA would provide semi-annual estimates of the resources expected from NCAs and report on progress against the agreed milestones.

Delegations are invited to examine the suggested amendments and provide their views.

3.4 Other amendments to ESMA Regulation

Relevant articles: Articles 1, 9a, 17(4), 28a, 28b and 33, together with the technical and editorial amendments identified in the table below.

Background

In addition to the proposed changes concerning governance, intervention powers and cooperation arrangements, the Presidency compromise makes a limited number of targeted amendments to other provisions of the ESMA Regulation. These amendments respond to issues raised by delegations concerning legal certainty, proportionality, cross-border enforcement and international cooperation.

Presidency proposals

Urgent regulatory measures: Article 9a

This Commission proposal would permit ESMA to take specified temporary measures only in urgent and unforeseen circumstances. The Presidency compromise would delete the requirement that the circumstances also be "unforeseen".

Urgency would therefore remain a necessary condition, but ESMA would not be prevented from acting merely because the circumstances giving rise to the urgent issue could have been anticipated. The amendment reflects concerns that the concept of an unforeseen circumstance is subjective and could unnecessarily restrict the practical use of the provision.

Timing of the Commission formal opinion: Article 17(4)

This proposed amendment to the ESMA Regulation is intended as a technical amendment to align the Commission's deadline for issuing a formal opinion with the compliance period specified in ESMA's recommendation under Article 17(3).

The Commission's three-month period would begin after the period given to the competent authority to comply with ESMA's recommendation has expired. The Commission could extend that period by one month.

This would address a timing mismatch in the Commission proposal under which the Commission's deadline could expire before the competent authority's period for compliance had ended. The amendment would ensure that the Commission retains a full period in which to assess whether the competent authority has complied and whether a formal opinion is required.

Cross-border recovery of administrative fines: Articles 28a and 28b

The Presidency proposal would establish a framework under which a competent authority could request assistance from another Member State's competent authority to recover a final and enforceable administrative fine.

The Presidency compromise proposes limited changes. One would clarify that the applicant authority must have information or reasonable indications that the person concerned has, or may have, 'assets' (as opposed to 'sufficient assets' in the Member State of the requested authority against which enforcement may be sought. The applicant authority would not be required to establish in advance that those assets are sufficient to recover the full amount of the fine.

The compromise would also:

- allow the requested authority, where recovery is unsuccessful, to request that the applicant authority bear the costs incurred;
- permit refusal where the estimated costs of the recovery proceedings would exceed the fine or periodic penalty payment to be recovered; and
- clarify that disagreements concerning the application of Articles 28a and 28b may be addressed through the binding-mediation procedure under Article 19.

These changes seek to ensure that the mutual-assistance framework remains workable and proportionate, while avoiding an obligation for the requested authority to conduct a preliminary investigation into the existence or value of assets before accepting a request.

International supervisory and enforcement cooperation: Articles 1 and 33

The Presidency compromise would strengthen ESMA's ability to enter into administrative arrangements and exchange information with third-country regulatory and supervisory authorities for enforcement purposes.

It would require such administrative arrangements to be approved by the Board of Supervisors. This reflects the Board of Supervisors' continuing role in regulatory and supervisory convergence matters and provides collective oversight of ESMA's international cooperation framework.

The amendments are intended to support ESMA's participation in international securities-enforcement cooperation arrangements, including the exchange of information with third-country authorities. The exercise of those powers would remain subject to the limits of ESMA's Union-law mandate and the applicable requirements concerning professional secrecy, confidentiality and data protection.

PUBLIC

The compromise text also contains the following technical, editorial and consequential corrections, which do not alter the substance of the Commission proposal:

Amending provision	Nature of Presidency amendment
Article 10(5)	Corrects the singular reference to a revised draft regulatory technical standard.
Article 15(5)	Corrects the singular reference to a revised draft implementing technical standard.
Article 39a (2)	Corrects the wording from "those specific sector or area" to "that specific sector or area".
Article 39d (4) and (7)	Corrects references to an inspection and removes duplicated wording.
Article 39f	Corrects missing references and grammatical inconsistencies concerning the relevant Union acts and investigations.
Article 39h	Corrects grammatical errors and references to financial market participants.
Article 39j (2)	Replaces "the first paragraph" with "paragraph 1"
Article 39l (1)	Inserts missing wording necessary to complete the settlement provision.
Article 53(1)	Corrects the cross-reference from Article 46a (7) to Article 46a (8).

4. Annex

ESMA Regulation PCY Compromise Text

PUBLIC