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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 - Presidency discussion paper on EMIR - Working Party on 05.03.2026

Dear Attachés and experts,

This REV merely changes the room number included in the first page of the Presidency note, reflecting the fact that the meeting will now be taking place in JL 50.7.

Kind regards,

The ECOFIN 1.B MISP team

5 March 2026

Presidency Discussion Paper
Market Integration and Supervision Package
Post-Trading - European Market Infrastructure Regulation (EMIR)

5 March 2026 10:00 JL 50.7

Introduction

On 4 December 2025, the European Commission published the proposal on the Market Integration and Supervision Package ('**MISP**'). The MISP was presented by the Commission at the Council Working Party ('**CWP**') kick-off meeting on 15 December 2025, together with references to the accompanying evaluation and Impact Assessment (IA). Given the extended scope of the MISP, a more detailed technical presentation addressing certain elements of the asset management proposals took place on 15 January 2026. During the aforesaid presentation, Member States ('**MS**') had the opportunity to express their preliminary views and comments on the proposals.

The above exchange indicated a conditional openness to centralised European Securities and Markets Authority ('**ESMA**') supervision for genuinely significant central counterparties ('**CCPs**'), provided that the significance criteria remain proportionate and less significant CCPs stay under national supervision. The main issues raised concerned fiscal responsibility, with several MS questioning the asymmetry between EU-level supervision and national financial backstops in crisis situations. Concerns were also raised about the abolition of colleges and the proportional treatment of groups, indicating that governance and crisis-management issues remain politically sensitive.

Following these exchanges, MS also had the opportunity to submit their written comments on the proposal to the Presidency.

The purpose of this paper is to provide a structured basis for the technical discussions of the CWP meeting on 5 March 2026 which is dedicated to the first reading of the provisions of the MISP that are relevant to post-trading, notably the ones related to CCPs that are embedded in Article 2 (amendments to European Market Infrastructure Regulation ('**EMIR**')) of the Master Regulation.

The proposal seeks to strengthen the supervisory framework for CCPs under EMIR by introducing direct EU-level supervision by ESMA over significant CCPs, while preserving MS flexibility for less significant CCPs. It clarifies designation criteria for determining CCP significance, supervisory powers and cooperation arrangements, simplifies governance structures and simplifies procedures related to open access and the establishment of interoperability arrangements. Overall, the proposal aims to reinforce supervisory convergence and ensure a more coherent and effective oversight framework for CCPs across the Union.

Today's CWP provides an opportunity to engage in constructive technical examination of the proposal and continue the exchange on the key issues raised. The Presidency invites MS to provide comments during today's CWP and, to elaborate their positions in the subsequent written procedure on the following topics:

1. **Significance Criteria for EU CCPs**
2. **Approval Process for Interoperability Arrangements**
3. **Open Access Between EU Trading Venues and EU CCPs**

1. Significance Criteria for EU CCPs

Relevant Articles: Article 22a (new), Article 14 relevant to the scope of clearing obligation instruments, Article 22a(2)–(5) EMIR relevant to the reference of the 'significance' assessment and Article 22(1a) relevant to the MS opt-in mechanisms

Under the Commission's proposal, as soon as the Regulation would enter into force, EU CCPs would be categorised by ESMA as either *significant* or *less significant*:

- significant CCPs would fall under ESMA supervision, with ESMA assuming supervisory responsibilities one year after the Regulation enters into force
- less significant CCPs would remain under the supervision of their national competent authorities ('**NCAs**'). In such cases, colleges would be chaired by ESMA rather than co-led by ESMA and the relevant NCA.

The Commission's proposal introduces a new Article 22a setting out the criteria ESMA would use to determine whether an EU CCP is significant or less significant. The criteria proposed by the Commission are non-cumulative, meaning that a CCP would be considered significant if it meets any one of the criteria.

The first *three* of the *five* proposed criteria are quantitative thresholds, based on a 12-month assessment period:

a. the average open interest of securities transactions, including securities financing transactions, exchange traded derivatives or non-financial instruments cleared by the CCP is more than EUR 100 billion; or

b. the average gross notional outstanding of OTC derivatives transactions cleared by the CCP is more than EUR 500 billion; or

c. the average aggregated initial margin requirement and default fund contributions for accounts held by the CCP's clearing members, calculated on a net basis at clearing member account level, is more than EUR 25 billion.

During the January CWP, the Commission explained that these criteria are similar to those introduced by EMIR 2.2[1], which ESMA is required to use to determine whether a recognised third-country CCP ('**TC CCP'**) should be classified as systemically important or likely to become systemically important for the financial stability of the EU or one of its Members States (Tier 2) or not (Tier 1). The indicators and the 12-month assessment period are similar to the ones for TC CCPs, while threshold levels differ.

As per the Commission, the choice of the indicators is meant to ensure consistency between the EU and third-country criteria for determining the significance/systemic importance of CCPs.

The *fourth* of the *five* criteria contained in the Commission's proposal are the 'group' criteria:

i. the CCP belongs to the same group as another EU CCP or a Tier 2 TC CCP;

[1] Commission Delegated Regulation (EU) 2020/1303 of 14 July 2020, OJ L 205 21.9.2020, pp 7-12

ii. the CCP belongs to the same group as a CSD or a trading venue for which ESMA is the competent authority.

According to the Commission, these 'group' criteria aim to improve supervisory efficiency, making sure that all the relevant EU infrastructures of the same group are supervised at the same level by the same supervisor, especially when there is a cross-border dimension.

Finally, the *fifth* criterion in the Commission's proposal includes a mechanism allowing MS to request ESMA supervision for the CCPs established in their jurisdiction that do not pass any of the previously mentioned thresholds or meet any of the group criteria.

Under paragraph 7 of Article 22a, where ESMA determines that a CCP previously classified as significant has not fulfilled any of the conditions set out in paragraph 2 for a continuous period of 36 months, ESMA shall determine that the CCP no longer qualifies as significant. That determination would take effect after an adaptation period to be set by ESMA and not exceeding 24 months. Before the end of that period, the relevant NCA would be required to establish a college pursuant to Article 18.

In addition, ESMA would be required to establish and maintain a publicly available list of significant CCPs.

As with other entities under direct ESMA supervision, Article 22a(9) provides that ESMA shall charge supervisory fees to significant CCPs for the performance of its supervisory tasks.

The January CWP meeting allowed for a substantive exchange of views on the proposed framework for distinguishing between significant and less significant EU CCPs under new Article 22a EMIR. While some Member States supported ESMA's direct supervision of significant CCPs, several MS questioned the abolition of supervisory colleges, the criteria for significance, and the implications for fiscal responsibility, stressing that supervisory centralisation without a corresponding EU-level crisis financing framework raises important concerns.

As regards the requests for clarification raised in that CWP meeting on the non-cumulative nature of the thresholds, the Commission indicated that this approach was chosen to ensure that CCPs presenting a material systemic footprint are captured without unnecessary complexity. On the removal of colleges for significant CCPs, the Commission referred to supervisory feedback suggesting that the existing structure may create duplication in a context of direct EU-level supervision. It underlined that cooperation with relevant authorities would continue under the proposed framework and that appropriate mechanisms for information exchange would remain in place. The Commission also emphasised that the classification as "less significant" is not intended to signal a lower prudential standard but rather reflects a supervisory allocation of responsibilities.

Preliminary views of MS:

Three MS expressed support for EU-level supervision of significant CCPs as foreseen in the Commission proposal. Several MS indicated conditional openness, subject to further clarification, calibration or adjustments to the proposed criteria and governance arrangements. A number of MS opposed extending ESMA's direct supervision to CCPs at this stage, arguing that the recently revised EMIR framework has not yet been sufficiently tested and that supervisory convergence tools should be further utilised before pursuing institutional changes.

In particular, several MS requested additional clarification regarding the methodology and calibration of the proposed quantitative thresholds. Two MS suggested that some or all of the criteria should apply cumulatively. One MS proposed increasing certain threshold levels, and several MS questioned the relevance of the group criterion, suggesting that a cross-border activity element should be introduced or strengthened instead. Some MS expressed differing views on the relevance of the group criterion as an indicator of systemic importance. Some questioned whether group affiliation in itself reflects the risk profile or market significance of the CCP concerned. Clarification was requested regarding which CCPs would fall within scope under this criterion.

Some MS also requested further information on the expected number of CCPs that would fall within scope under the proposed thresholds.

A number of MS supporting centralisation emphasised that EU-level supervision should contribute to supervisory consistency and a more level playing field. Other MS underlined that centralisation alone would not address structural drivers of market fragmentation, including legal, fiscal and market-structure divergences.

Furthermore, MS raised a number of technical questions regarding the proposed quantitative thresholds. Clarification was requested on the calculation and interpretation of "average open interest" and "average gross notional outstanding", including underlying data sources and comparability across asset classes. Concerns were expressed regarding the calibration of thresholds, in particular the relationship between securities thresholds and the OTC derivatives threshold. It was suggested that systemic importance should reflect both substantial clearing activity and a material cross-border dimension. Proposals were made to introduce a cumulative cross-border activity requirement or to increase certain thresholds. One MS also raised regarding the appropriateness of a fixed 12-month observation period, including whether a longer assessment window or a more dynamic threshold mechanism could enhance stability and reduce the risk of classification being driven by temporary market conditions.

In addition, several MS emphasised that the distinction between significant and less significant CCPs should remain clear, objective and proportionate. Particular attention was drawn to the need to ensure that CCPs with primarily domestic activity and limited cross-border relevance continue to benefit from supervision grounded in local market knowledge.

MS underlined that Article 22a must be assessed in conjunction with the proposed amendments to the ESMA Regulation, including provisions on cooperation arrangements. Clarification was requested regarding the practical functioning of cooperation between ESMA and NCAs; how supervision would operate in both going-concern and resolution scenarios; how accountability would be structured where supervisory authority is exercised at EU level but fiscal or resolution responsibilities remain at national level.

Several MS highlighted that effective supervision requires close interaction with national authorities, including in light of national corporate, insolvency, administrative and tax law, as well as specific market practices.

Furthermore, MS raised concerns regarding regulatory certainty and operational stability in the context of reclassification. With regard to annual reassessment, some MS considered that frequent potential reclassification between significant and non-significant status could create uncertainty for CCPs and

supervisory authorities, with implications for governance arrangements, compliance planning and investment decisions.

Regarding paragraph 7, differing views were expressed on whether loss of significance should automatically follow from non-fulfilment of the thresholds for 36 months. Some MS suggested that ESMA should retain discretion in determining whether declassification is appropriate. Questions were raised as to whether the adaptation period (up to 24 months) should be determined solely by ESMA, and whether transition periods should be symmetrical for transfers to ESMA supervision and back to national supervision.

Concerns were also raised regarding the identification of the competent authority during adaptation periods and the operational implications for NCAs required to re-establish colleges.

In addition, MS expressed concerns regarding the notification framework, in particular the reference to "most relevant Union currencies". It was argued that all central banks of issue should receive notifications, irrespective of whether their currencies are classified as among the most relevant, in order to avoid asymmetries in access to supervisory information, especially in situations of market stress.

Questions were raised regarding the procedure whereby a legal person must request ESMA to determine its status prior to authorisation. One MS suggested that such determination should involve closer cooperation with the home NCA, rather than being undertaken solely by ESMA.

In relation to supervisory costs and fees, some concerns were expressed regarding the potential for increased overall supervisory costs, particularly if ESMA fees are levied in addition to costs borne by NCAs required to maintain expertise for cooperation purposes. MS underlined the importance of ensuring predictability and avoiding duplication.

Questions were also raised as to whether the legal basis for supervisory fees should be located in sectoral legislation or exclusively in the ESMA Regulation.

Questions to MS:

Q1: Should the quantitative criteria and related methodology for assessing EU CCPs be consistent with those used to assess TC CCPs? If not, which alternative proposals do MS suggest in terms of CCPs captured and additional information to be collected?

Q2: Do MS believe the current 12-month assessment period is appropriate to ensure stable and objective classification?

Q3: Do MS agree with the additional 'group' criterion'? If not, what additional criteria should be considered (such as cross-border activity) ?

Q4: Is the proposed MS opt-in mechanism to provide MS the option to designate ESMA as the supervisor of CCPs established in their territory appropriate? If no, why not?

Q5: Do MS agree that proposed transition and reclassification arrangements are proportionate and operationally workable for both ESMA and NCAs?

Q6: Should additional criteria be introduced? If so, which criteria and why?

2. Approval Process for Interoperability Arrangements

Relevant Article: Article 54 EMIR

The Commission's proposal amends Article 54 of EMIR with the aim of simplifying the process of approval of all interoperability arrangements between EU or between EU and third-country recognised CCPs. Under the current framework, approval requires decisions by both the competent authorities of the CCPs involved in the interoperability arrangement, together with opinions by ESMA and the colleges of those CCPs.

The Commission's proposal would:

(i) replace the approval of competent authorities with an approval by ESMA, *and*
(ii) remove the requirement to obtain an opinion from ESMA and the relevant colleges.

According to the Commission, these changes would in principle facilitate and shorten the procedure for the approval of interoperability arrangements between CCPs and would hence offer more opportunities for counterparties to choose a CCP for clearing their transactions.

As explained by the Commission, the proposal has not changed the criteria or the process for two CCPs which wish to obtain the approval of their interoperability arrangements to do so. The Commission's stated aim is to simplify and shorten the processes for these arrangements to be approved. As regards the point on ESMA both drafting the RTS and enforcing the rules contained therein, the Commission explains that the changes suggested to ESMA's governance, mean that different bodies within ESMA would be in charge of the preparation of the draft RTS (the Board of Supervisors) and the decision to approve the interoperable arrangements (the Executive Board).

During the January CWP meeting, while some MS recognised the objective of reducing procedural complexity, others questioned whether replacing the approval by the competent authorities of the CCPs concerned with a single approval by ESMA might unduly limit national involvement. It was pointed out that interoperability arrangements can have tangible implications for domestic markets and financial stability and therefore warrant careful supervisory consideration at national level.

Questions were also raised regarding the distribution of functions within ESMA, particularly in light of its role in preparing regulatory technical standards and, under the proposal, approving interoperability arrangements. One MS explored whether, beyond procedural simplification, the framework could go further in facilitating interoperability, including by examining whether refusals to enter into such arrangements in relation to low-risk asset classes should be subject to additional scrutiny.

Preliminary views of MS:

In their written comments, MS recognised the importance of interoperability arrangements for the smooth functioning of financial markets. Divergent views emerged regarding the approval authority.

One MS supported ESMA having the power to approve interoperability arrangements for significant CCPs, particularly in the cash equity segment, in order to prevent unjustified barriers to market access. The same Delegation also questioned whether it would be possible to move further towards a provision similar to the proposals on open access to interoperability arrangements, by empowering ESMA to assess and potentially override a CCP's refusal to enter into such arrangements for low-risk asset classes such as cash equities.

Two MS expressed a preference for maintaining the status quo, whereby approval decisions are taken by the competent authorities of the CCPs involved, arguing that interoperability arrangements may have significant effects on the markets served by those CCPs. Other MS similarly underlined that, particularly for less significant CCPs, NCAs should retain decision-making responsibility given their in-depth knowledge of local market conditions.

Concerns were also raised regarding ESMA combining regulatory and supervisory functions, with calls for a clear distinction between rule-setting and enforcement. In this context, several MS highlighted the need for mandatory consultation with national competent authorities when ESMA assesses interoperability arrangements. Clarification was also requested on applicable timelines and technical criteria to ensure smooth market functioning while maintaining effective supervision.

Questions to MS:

Q7: Do MS support the proposed process of the approval of interoperability arrangements with the involvement of ESMA?

Q8: Do MS consider that additional safeguards are necessary to ensure appropriate input from NCAs? If not, how else could those processes be simplified while, at the same time, ensuring a consistent supervisory approach across the EU?

3. Open Access Between EU Trading Venues and EU CCPs

Relevant Articles: Article 7 and Article 8 EMIR

EMIR currently contains provisions related to the access of EU trading venues to EU CCPs (Article 7 of EMIR) and vice versa (Article 8). As similar provisions are also inserted in the Markets in Financial Instruments Regulation (MiFIR) and Directive (MiFID), the EMIR provisions have a limited scope: they only cover the trading and the clearing of OTC derivatives contracts. The Commission's proposal would introduce three sets of changes to the provisions on access requests in EMIR; the first two concern both Articles 7 and 8, whereas the last set only applies to Article 8.

The first set of changes is meant to clarify the processes to be used for access requests between trading venues and CCPs with clear deadlines and consequences for each step. According to the Commission, this would ensure that all access requests between CCPs and trading venues would follow the same

process. The introduction of clear deadlines would avoid that requested parties fail to provide their replies to the requests or do so after excessively long periods of time (as has happened in the past).

The second set of changes designates ESMA as the sole arbitrator in case of refusal to grant access by a trading venue or a CCP, as the case may be. According to the Commission, by granting this role to ESMA, the arbitration process would be fully harmonised across the EU, ensuring consistent outcomes.

According to the Commission, the proposed amendments would not change the existing scope of the rules (those would still apply to all access requests between EU CCPs and EU trading venues in relation to OTC derivatives).

As regards the third set of changes, the Commission's proposal would update Article 8 of EMIR to prevent trading venues from restricting access to their trading feeds on the grounds that the counterparties to a specific transaction had not chosen the same CCP, when the CCPs of their choice have already entered into an interoperability arrangement under Article 51 of EMIR. According to the Commission, this exception would seem justified given that the existence of an interoperability arrangement prevents issues that may otherwise arise when two counterparties do not choose the same CCP to clear their transactions. It would ensure that CCPs would not be discouraged from setting up interoperability arrangements and would allow market participants to fully leverage the efficiency gains offered by interoperability, where such interoperability has been put in place by CCPs.

The proposal also formalises information flows and enforcement steps throughout the process. Access requests would require notification to ESMA and to the competent authorities of both the CCP and the trading venue. A specific mechanism is introduced for cases where the requested entity does not respond within the three-month deadline, allowing ESMA to request additional information and, where the refusal conditions do not appear to be met, to require access. Where access is denied, the refusing entity would have to provide a detailed justification based on a comprehensive risk assessment, while refusal on the sole ground of loss of revenue would be excluded. In case of refusal, the entity having been denied access would have the right to lodge a complaint with ESMA who would be required to provide a reasoned reply within one month and may adopt binding decisions. Finally, the proposal specifies that, once granted, access should become fully operational within three months, and it links key elements of the risk assessment and non-discrimination conditions to the delegated acts adopted under MiFIR.

During the January CWP meeting, MS broadly acknowledged the need to address practical difficulties encountered in access requests, including delays and procedural uncertainty. At the same time, a number of points were raised regarding the operational aspects of the proposal. Clarification was sought on certain concepts used in the text, including references to 'systemic risk' and 'technical connectivity'. Some MS suggested that further specification at Level 2 might enhance legal certainty, particularly in relation to the grounds for refusal of access.

Views were divided on the proposal to designate ESMA as the sole arbitrator in the event of disputes concerning access requests. MS that supported the proposal underlined the benefits of ensuring consistent outcomes across the Union. Others expressed concern that centralised arbitration might not sufficiently reflect the specific characteristics of local markets and infrastructures. Questions were also raised as to whether the proposal could lead, in practice, to CCPs being compelled to grant access in situations where prudential considerations remain relevant.

The Commission explained that the introduction of clear procedural steps and deadlines is intended to enhance predictability and prevent excessive delays, without modifying the substantive grounds for refusal, which remain anchored in existing legislation and Level 2 measures. It further noted that the alignment between EMIR and MiFIR provisions has been pursued to the extent possible, taking into account the differing scope of the two instruments.

With respect to the proposed amendment preventing trading venues from restricting CCP choice where interoperability arrangements are already in place, the Commission indicated that such restrictions would no longer be justified once prudential risks have been addressed through an approved interoperability framework. The aim is to ensure that market participants can effectively benefit from the efficiencies that interoperability arrangements are intended to deliver.

Preliminary views of MS:

In their written comments, MS broadly supported the objective of improving transparency, predictability and interoperability in access arrangements between CCPs and trading venues. At the same time, a number of operational concerns were raised.

First, clarification was requested regarding the scope and interaction between EMIR and MiFIR, particularly in light of the evolving distinction between OTC derivatives and ETDs. Several MS suggested that greater consistency between the two frameworks would enhance legal certainty and efficiency.

Regarding the obligation to grant access on a non-discriminatory basis, some MS cautioned that the formulation "regardless of the trading venue" should not be interpreted as obliging CCPs to accept access without due regard to the risk profile of the trading venue. Clarification was also requested on the meaning of "initial connectivity".

On the grounds for refusal, while many MS supported limiting the circumstances under which access can be denied, concerns were expressed that key concepts such as "systemic risk" and "smooth and orderly functioning of markets" remain broad and may lack sufficient operational clarity. It was suggested that clearer and more analytical criteria are needed, including at Level 1, to guide risk assessments and support consistent Level 2 measures. Some MS questioned whether prohibiting denial based solely on loss of revenue is appropriately calibrated, particularly for less significant infrastructures, whereas others noted that refusals may in practice be based on technical or model-related considerations that are difficult to challenge. It was suggested that, in case of refusal, proportionate mitigating measures could be proposed as an alternative to outright denial.

MS expressed diverging views on ESMA's role in access procedures and complaint handling. Some supported ESMA as the decision-making authority to ensure consistent outcomes. Others considered that access decisions, given their potential impact on local markets, should remain primarily within the remit of competent national authorities, with ESMA acting in a mediating or coordinating capacity. Several MS stressed that, at a minimum, consultation of the competent authorities should be mandatory where ESMA assesses refusals or prepares decisions, in order to avoid accountability gaps, particularly where less significant entities are involved. Clarification was also requested regarding the definition of what constitutes a request and a refusal of access, including whether conditional access amounts to a refusal.

Finally, MS broadly supported the objective of strengthening interoperability, including the provision preventing trading venues from restricting CCP choice where interoperability arrangements are already in place, while underlining the need for clear and robust risk-assessment criteria.

Questions to MS:

Q9: Do MS support clarifying the processes for granting access with clear steps and deadlines to be followed? If yes, should any changes be made or additional clarifications be provided in relation to the Commission's proposal? If so, which ones and why? If not, what other means could be used to address the existing issues with significant delays in replies to access requests, or even no replies at all?

Q10: Do MS support the proposal to have ESMA as the sole arbitrator in case of disputes about refusals to give access? If not, why and what alternative approaches could be used to ensure consistent outcomes in relation to access requests?

Q11: Do MS believe additional alignment between EMIR and MiFIR is warranted at Level 1 to enhance legal certainty and avoid duplicative or overlapping procedural regimes? If yes, which additional alignments would be necessary and why?

Q12: Should any changes be made or additional clarifications be provided to the Commission's proposal in relation to the reasons for refusal of access? If so, which and why?

Q13: Do MS believe the proposed deadlines (three months for response; one month for ESMA decision; three months for operationalisation) are appropriate and operationally feasible? If not, why not and which alternative deadlines should then be considered?

Q14: Do MS agree with prohibiting the trading venues' practice restricting the choice of CCPs for counterparties in the context of open access requests? If not, why not?