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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and Banking Union (MISP) Financial Services Attachés
Subject:	Market Integration and Supervision Package - Presidency Discussion Paper on ESMA Duty of Cooperation – Article 8a Amendments - Working Party meeting on 30.03.2026

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Presidency Discussion Paper
Market Integration and Supervision Package
ESMA Duty of Cooperation – Article 8a Amendments

30 March 2026 10:00

1. Article 8a Amendments

The proposed Article 8a aims to introduce a horizontal framework governing cooperation between European Securities and Markets Authority ('**ESMA**') and relevant competent authorities and other national authorities, Union institutions or Union bodies, including where ESMA exercises direct supervisory tasks pursuant to Article 8(1), point (l), as provided for in the relevant sectoral legislation. Art 8a(5b) envisages that cooperation arrangements support the transfer of competences from National Competent Authorities ('**NCAs**') to ESMA (i.e. the transitional stage) and, if needed, cases where NCAs retain an operational role in the context of ESMA's exercise of direct supervision (the steady stage).

According to the Commission proposal, the proposed cooperation framework between ESMA and other relevant authorities, will allow for a degree of flexibility in how such cooperation is organised across sectors and supervisory tasks. These arrangements would be guided by general principles under par. 5, such as efficiency and mutual trust, and could encompass different forms of cooperation, including joint supervisory activities, inspections or operational coordination. They are also intended to be adaptable over time, taking into account the evolution of ESMA's role and supervisory capacity, facilitating where needed the coordinated use of expertise and resources across authorities within the Union.

The absence of specific new provisions on joint supervisory teams or similar arrangements, enables ESMA to combine elements of centralised decision-making at ESMA level with the assistance of NCAs in the execution of certain tasks, as ESMA deems appropriate. It is the Presidency's ('**PCY**') understanding that the objective of this approach is to provide flexibility to ESMA to use and structure the cooperation arrangements as ESMA deems appropriate, including the details for day-to-day cooperation. Once established the cooperation arrangements would govern the cooperation of ESMA and the NCAs.

According to the proposal, such arrangements are intended to cover three main situations:

(i) Areas of direct supervision: the cooperation arrangements would cover the transition where supervisory responsibilities are transferred from NCAs to ESMA and continuity of supervision needs to be ensured; after the transition phase cooperation arrangements could be maintained also for the 'steady state';

(ii) Situations where other Union or national authorities retain specific roles, expertise or consultation rights under Union law, such as the involvement of the ECB or other Central Banks in relation to CCPs; and

(iii) Areas where certain supervisory tasks remain with national authorities, for example market surveillance for trading venues.

The proposed involvement of national authorities deemed as relevant in the execution of supervisory tasks under ESMA's responsibility and instructions also seek to ensure that ESMA may draw from the expertise and knowledge of the relevant authorities, while relevant authorities would be responsible for supporting ESMA and performing tasks with regard to financial market participants under ESMA's supervision, in accordance with art.8(1)(l). Assistance under this framework would include the preparation and implementation of the necessary acts, assistance in verification activities or performance of specific operational tasks.

To this extent, the Commission proposes that, following the transitional phase of building up ESMA's supervisory capacity and after ESMA would rely on cooperation with NCAs, ESMA may envisage for example the establishment of local presences of ESMA in Member States ('**MS**'). It is further noted that, according to the PCY's understanding, and given that the term 'relevant competent authorities' is not further defined, such arrangements could include NCAs other than that of the MS where the supervised entity is located if deemed relevant.

ESMA would also be expected to review these arrangements regularly by the Executive Board, taking into account the progressive development of its supervisory capacity.

It is the PCY's understanding that the cooperation arrangements could also extend in areas where ESMA exercises supervisory convergence powers or other tasks under Union law, rather than direct supervisory task, as the reference to the tasks under Art.8(1)(l) seem to be illustrative and non-exhaustive. In view of the aforesaid, cooperation arrangements may encompass, inter alia, the following cases:

- Cooperation arrangements in the context of ESMA's direct supervision.
- Cooperation arrangements in the context of supervisory convergence in relation to any of the legislative acts referred to in Article 1(2) of ESMAR, for which ESMA does not assume direct supervisory responsibilities. For example, even though enhanced supervisory convergence powers in asset management (AIFMD, UCITSD, CBDR) do not constitute direct supervisory tasks within the meaning of Article 8(1), point (l), their establishment on a complementary basis is not excluded in the legal text and may therefore be used and structured as deemed appropriate. The same applies for any of the legal acts referred to in Article 1(2).
- A mixed situation arises under the DLT Pilot Regime Regulation ('**DLTPR**') where supervisory cooperation is primarily structured by the sectoral legislation that the DLTPR refers to (CSDR, MIFID, SFR). Article 8a would apply in the case of DLTPR settlement schemes, which are a new type of consortia-operated market infrastructure over which ESMA has direct supervisory powers. In other cases, the cooperation would follow the rules under the sectoral legislation (MIFID, CSDR). However, if deemed appropriate co-operation arrangements under Article 8a may be utilised.

The practical arrangements for cooperation shall be established by ESMA following consultation with "the authorities" and will be approved by the Executive Board under par.6. The Executive Board shall also ensure their implementation and the authorities shall, in cases where ESMA is exercising direct supervisory tasks, follow the instructions given by the Executive Board when performing the tasks set out in the arrangements. It is the PCY's understanding that no "formal" cooperation arrangements without the Executive Board can be operationalised, as the Executive Board is responsible for the implementation of the arrangements after their approval. The sequencing set out in par. (6), appears closely linked to the timeline for the establishment of ESMA's new governance structure, as at the same time, the scope of the proposed framework, covering multiple market segments, market specificities and involving a wide range of authorities, suggests that the preparation and agreement of such arrangements may require a certain lead time. The proposed timeline foresees that the Executive Board would be established approximately one year after entry into force, with direct supervisory tasks becoming operational after two years and full supervisory capacity reached progressively thereafter. In this context, cooperation arrangements appear to be closely linked to the preparatory phase preceding the start of direct supervision. Given their intended role in supporting the transition and ensuring continuity of supervision, it may be useful to consider how their timing and sequencing align with these objectives.

Finally, Article 8a provides that, after consultation of the authorities concerned, practical cooperation arrangements are approved by the Executive Board, which also ensures their implementation. The Regulation does not expressly provide for a formal approval role of the Board of Supervisors ('**BoS**').

Paragraph 4 establishes a default rule that ESMA bears costs incurred by authorities, in connection with the cooperation in the context of direct supervisory tasks, unless otherwise agreed. Paragraph 5(i) allows arrangements to determine modalities for calculation and reimbursement. In instances of more 'traditional' cooperation (outside the direct supervisory powers), where the focus is solely on exchange and coordination without administrative assistance or support between authorities, budgetary arrangements are not required. In these cases, the national authorities (e.g. national market surveillance authorities, central banks of issue) bear their own cost, as is currently the case. However, it should be noted that it is the PCY's understanding, in this context, that the interaction between Article 8 and Article 8a may support more operational forms of supervisory convergence, going beyond information exchange and contributing to the alignment of supervisory practices across MS, such as the organisation of joint or parallel supervisory activities, the handling of cross-border cases in a coordinated manner, or the consistent application of supervisory and enforcement approaches. For such activities, according to the Financial Statement, it is the PCY's understanding that these would continue to rely on the EU budget and contributions from NCAs.

Clarifications provided by the Commission in the January technical exchange

MS raised a number of questions regarding the functioning, scope and implications of the proposed cooperation arrangements between ESMA and NCAs in particular under Article 8a of the ESMAR. For example, questions were raised regarding the division of tasks between ESMA and NCAs, especially for entities holding multiple licences or operating under different regulatory regimes. Some MS also asked how cooperation would function in practice for day-to-day supervisory activities, including on-site inspections and other operational tasks.

Furthermore, several MS further requested clarification regarding the content, scope and timing of cooperation arrangements, including whether such arrangements would apply only in cases where ESMA exercises direct supervisory powers, and whether they would be limited to specific supervisory tasks.

In response, the Commission explained that cooperation arrangements are intended to provide flexible mechanisms for allocating tasks between ESMA and NCAs, particularly in areas where ESMA exercises direct supervisory powers but may rely on the operational support and expertise of national authorities. According to the Commission, such arrangements would apply only in cases where ESMA has direct supervisory responsibilities. In those situations, NCAs may assist ESMA in performing specific tasks, such as inspections or other supervisory activities, but the supervisory responsibility would remain with ESMA.

The Commission also clarified that NCAs would not retain parallel supervisory responsibilities for entities under ESMA's direct supervision. Instead, the arrangements would allow ESMA to make use of national expertise where necessary, while maintaining a single supervisory authority. The Commission further indicated that part of the supervisory fees collected by ESMA could be redistributed to NCAs for tasks carried out in support of ESMA, with the aim of avoiding additional financial burdens for national authorities.

Overall, the Commission emphasised that cooperation arrangements are designed to ensure effective supervision while avoiding duplication of responsibilities, allowing ESMA to draw on national expertise where needed while maintaining a coherent supervisory framework.

Preliminary Views of the MS:

One MS expressed support for the introduction of a structured duty of cooperation. Two MS indicated that enhanced cooperation could be supported in principle, subject to safeguards regarding governance and the role of national authorities. Several MS requested further clarification on the legal framework, scope and operational modalities of the proposed arrangements, while a number of MS raised more substantive concerns regarding the balance of responsibilities between ESMA and national competent authorities, the legal nature of the arrangements and their resource implications. In this respect, some MS also noted that, unlike the SSM framework, the proposed Article 8a leaves significant discretion as regards the organisation and functioning of the cooperation arrangements, which may require further clarification to ensure legal certainty and a clear allocation of responsibilities.

Several MS questioned the legal nature and adoption process of the cooperation arrangements. In particular, concerns were raised regarding the degree of involvement of NCAs in defining their content. Some MS considered that cooperation arrangements should be closely discussed with NCAs and subject to their approval, while others suggested that the BoS should play a stronger role in their adoption.

Some MS also suggested that the legal framework for cooperation arrangements could be further clarified at L1, while others proposed that more detailed rules could be established through regulatory technical standards, with cooperation arrangements adopted through ESMA decisions.

A number of MS stressed that the duty of cooperation should not create a hierarchical relationship between ESMA and national authorities. In particular, concerns were expressed regarding provisions requiring NCAs to follow ESMA's instructions when assisting in supervisory tasks, which some MS considered could blur the distinction between cooperation and subordination and several MS emphasised the need to ensure that cooperation arrangements preserve a clear allocation of responsibilities and accountability, and that NCAs retain decision-making autonomy where supervision remains at national level.

Some MS requested clarification on the scope of Article 8a, noting that the proposal appears to combine different forms of cooperation, including cooperation linked to ESMA's direct supervisory powers and cooperation relating to other supervisory activities.

Clarification was also requested regarding the interaction with existing sectoral cooperation mechanisms, such as supervisory colleges under EMIR or CSDR. Some MS questioned whether the proposed cooperation arrangements could effectively replace or complement these existing frameworks.

Several MS highlighted that cooperation arrangements may have significant operational and resource implications for NCAs, particularly where ESMA relies on national authorities for supervisory support or operational tasks.

In this regard, MS stressed the need for cooperation arrangements to clearly define tasks, procedures, timelines and resource commitments, and to ensure that NCAs are adequately involved in their preparation. Some MS also emphasised that national authorities should be able to assess their availability and resource capacity in advance.

A number of MS further underlined the importance of ensuring that ESMA has sufficient internal capacity, so that cooperation arrangements do not result in a de facto transfer of ESMA's supervisory responsibilities to national authorities.

Additionally, a number of MS highlighted the resource and financing implications of such arrangements. While MS broadly supported the principle that costs incurred by NCAs in the context of cooperation should be borne by ESMA. At the same time, some MS requested further clarification on the scope of reimbursable costs and the modalities for cost reimbursement, noting that similar frameworks have given rise to different interpretations. MS further noted that NCAs may need to remain available to support ESMA's supervisory work, which could entail additional costs and the need to maintain adequate expertise at national level. Questions were raised regarding how such cooperation would be financed, including the allocation of supervisory fees and the interaction with the proposed funding model.

Some MS also proposed clarifying the provision in order to ensure that all costs and expenses incurred by NCAs are fully covered, unless otherwise explicitly agreed.

Several MS tabled drafting suggestions to clarify the provision. These included, inter alia:

- clarifying the legal nature and adoption process of cooperation arrangements, including the possible role of the BoS;
- specifying more clearly the modalities of cooperation and procedures governing cooperation arrangements;
- clarifying the extent to which NCAs should follow ESMA's instructions when providing support;
- specifying the conditions under which NCAs provide operational assistance, including timelines and resource planning;
- clarifying the scope of cost reimbursement for cooperation activities.

Questions to MS

1. ***Do MS consider that the proposed Article8a strikes the right balance between legal certainty, consistency, and accountability, on the one hand, and flexibility to conceive and adapt targeted cooperation arrangements on the other? Should additional elements be specified in L1 as guiding principles of cooperation arrangements (for example, minimum requirements regarding information-sharing arrangements, clarity on task allocation and governance requirements, or cost principles). Please elaborate.***

2. ***Do MS agree with the overall objective of Article 8a to establish a framework for cooperation between ESMA and relevant authorities primarily in the context of ESMA's direct supervisory tasks? If not, what elements should be clarified or adjusted, in particular regarding the scope of such cooperation and the interplay between the cooperation under Article 8a and, where applicable, under sectoral rules?***

3. ***Do MS agree that cooperation arrangements should also be capable to be used also in the context of supervisory convergence? Do MS consider that further framing and are needed?***

4. ***Do MS agree with the proposed approval of cooperation arrangements by the Executive Board? If not, what adjustments would MS consider appropriate, including whether national authorities (e.g. through the BoS) should be more involved in the adoption or review of cooperation arrangements? Please elaborate.***

5. ***Do MS consider that the proposal sufficiently clarifies the role of NCAs when assisting ESMA, including the provision that authorities follow ESMA instructions when performing tasks under cooperation arrangements? If not, what clarifications or safeguards would MS consider necessary?***

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6. ***How do MS assess the composition of cooperation arrangements, including the selection and number of participating "relevant" NCAs? What factors should be taken into account in their design to ensure ESMA's operational independence, as well as a balanced participation of "relevant" NCAs?***

7. ***Do MS consider that the proposed framework sufficiently addresses cost allocation and resource implications for national authorities? If not, what adjustments or clarifications would MS suggest, including regarding reimbursement of costs, including as regards:***
    - ***the methodology for calculating reimbursable costs (e.g. reimbursement upon use vs retainer fee),***
    - ***arrangements supporting advance resource planning by national authorities to maintain the relevant expertise even if it is not actively used by the Authority to be able to support the Authority upon request; and***
    - ***other cost allocation modalities in relation to cooperation arrangements not relating to direct supervision?***

8. ***Do MS consider that the proposal sufficiently clarifies how cooperation arrangements would function in practice, including during the transition phase and where responsibilities remain shared between ESMA and national authorities? If not, what elements should be further specified?***