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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 Governance - Working Party meeting on 30.03.2026

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Presidency Discussion Paper
Market Integration and Supervision Package
ESMA Governance

31 March 2026 10:00

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1. Introduction: Overview and Rationale

The Commission proposal aims to introduce changes to the governance structure of ESMA in light of its expanding responsibilities. It provides for the establishment of an Executive Board composed of five independent, full-time members and the Chairperson, replacing the current Management Board. Members are to be appointed through a procedure involving the Commission, the Board of Supervisors ('**BoS**'), the European Parliament, and the Council. The Commission proposal also aims to set out provisions on conflicts of interest and provides for a proposed term of office of five years, with the possibility of a single extension of two years.

The Executive Board will be assigned responsibilities for decisions relating to direct supervision, as well as for certain supervisory convergence decisions addressed to individual entities or national competent authorities ('**NCAs**'), including in areas such as dispute resolution and breach of Union law procedures. The BoS will remain responsible for providing overall guidance and for decision-making in regulatory matters and supervisory convergence of a general nature.

The Commission proposal also sets out arrangements governing the interaction between the two bodies. In particular, the BoS may object to certain decisions of the Executive Board, while members of the Executive Board participate in the BoS. Overall, the Commission proposal aims at structuring a balanced allocation of tasks between the BoS and the Executive Board in relation to regulatory and supervisory matters, while establishing mechanisms governing their interaction.

2. Amendments in Detail

2.1. Accountability of ESMA to the Council

Relevant Article 3

The proposed amendment to Article 3 of the ESMA Regulation introduces the possibility for the Council to invite the Chairperson to appear before it, in a manner analogous to the European Parliament's right to request the Chairperson to participate in hearings. It also introduces the possibility for the Chairperson to be accompanied by a member of the Executive Board. The Commission proposal aims to increase transparency and accountability of the Executive Board.

Question to MS:

1. ***Do MS agree with the amendments? Are there any elements that should be further clarified?***

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2.2. Composition and Appointment of the Executive Board

Relevant Article 44a

The newly proposed Article 44a of the Commission proposal is modelled on the corresponding provisions in the AMLA Regulation and sets out the composition and appointment procedures of the newly established Executive Board. The Executive Board will consist of the Chairperson of the Authority and five independent, full-time members. The Executive Director will be able to attend the meetings of the Executive Board without the right to vote. A representative of the Commission may also participate in discussions concerning planning, budget and human resources, with a right to vote on budgetary matters (see explanations under section 2.4). Additionally, specific representatives, such as those from the ECB or from NCAs, may participate in discussions concerning particular tasks or entities, without voting rights.

Following the Commission proposal, the Executive Board members are expected to represent different types of supervisory experiences, including experience in prudential supervision, and collectively to possess, to the extent possible, an appropriate understanding of the sectors in which the Authority exercises direct supervisory tasks. They are to be selected on the basis of merit and relevant experience (both public and private sector experience), taking into account gender and geographical balance, following an open selection process published in the Official Journal of the European Union.

The selection process follows an open procedure published in the Official Journal of the European Union. Under this procedure, the European Commission prepares a short list of candidates and the European Parliament may conduct hearings of those candidates. The BoS then, based on the Commission's shortlist, proposes candidates for appointment (to be confirmed by the European Parliament and the Council by a qualified majority). The procedure to select members of the Executive Board differs from the current appointment procedure of the Chairperson, under which the BoS draws up the shortlist with assistance of the Commission.

The Commission proposal further provides for the Executive Board members to serve a five-year term, which can be extended by two years following a performance assessment conducted by the BoS (for further explanations and questions see section 2.3).

Preliminary views of MS:

As regards the overall approach, views among MS were mixed. Some MS expressed support for the proposal, while underlining the need to preserve appropriate checks and balances involving the BoS. Other MS opposed the proposal but indicated openness to a coordinating role for ESMA in the supervision of significant financial market infrastructures, provided that the relevant NCAs retain supervisory leadership. Another MS questioned the need to modify ESMA's governance model where the number of entities subject to direct ESMA supervision would remain limited, suggesting that the existing framework could be maintained in such circumstances.

Regarding the composition of the Executive Board, suggestions were made to consider granting voting rights to the ECB and allow other central banks to participate on equal terms.

As regards the appointment procedure, some MS raised comments on the proposed selection process and eligibility criteria. One MS questioned the role of the Commission in preparing the shortlist of candidates and suggested that this task could instead be carried out by the BoS. Concerns were also

raised regarding the involvement of the BoS and the Council due to their limited role in the selection procedure.

Some MS called for further clarification and specification of the eligibility requirements, including the notion of "other relevant qualifications", suggesting to explicitly refer to prior professional experience within financial market participants.

In addition, concerns were raised that the proposed criteria do not fully align with the criteria on the independence of supervisory authorities developed in the context of the work of the Joint Committee of the European Supervisory Authorities, in particular as regards issues related to previous employment, penalties and conflicts of interest.

Finally, one MS pointed to a potential risk of short-termism resulting from the proposed limitation of the maximum term of office to seven (7) years across different functions.

Questions to MS:

2. ***Do MS support the introduction of an Executive Board as proposed in light of the expected scope of direct supervision?***
3. ***Do MS agree with the composition of the Executive Board? (no NCA participation, number of members, observers etc.)?***
4. ***How should the involvement of the ECB and other central banks be reflected where supervisory matters concerning CCPs and CSDs are discussed?***
5. ***Do MS consider the criteria for the selection of the Executive Board members sufficient, or should they be further extended/clarified in Level 1 and, if yes, which criteria would MS propose to add?***
6. ***Do MS agree with the proposed role of the Commission in preparing the shortlist of candidates for the members of the Executive Board? Would MS consider an alternative approach, such as entrusting this task to the BoS by aligning the appointment process with the current appointment process for the Chairperson[1]?***
7. ***Do MS agree with the proposed duration of the term of office (5 years + possible 2-year extension)?***

2.3. Appointment of the Chairperson, Vice-Chairperson and Executive Director

Relevant Articles: Articles 48 and 51

The main change introduced in Article 48 concerns the election of the Vice-Chairperson from among the members of the Executive Board. Given that the Executive Board will operate on a full-time basis and meet more frequently than the BoS, the Commission proposal aims to ensure the continuity and

[1] Article 48(2) ESMAR : 2. *The Chairperson shall be selected on the basis of merit, skills, knowledge of financial market participants and of markets, and of experience relevant to financial supervision and regulation, following an open selection procedure which shall respect the principle of gender balance and shall be published in the Official Journal of the European Union. The BoS shall draw up a shortlist of qualified candidates for the position of the Chairperson, with the assistance of the Commission. Based on the shortlist the Council shall adopt a decision to appoint the Chairperson, after confirmation by the European Parliament.*

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smooth functioning of the Executive Board by providing for the election of a Vice-Chairperson from among its members to perform the Chairperson's functions in case of absence.

On the basis of both provisions, no individual may serve for more than seven years in roles of Chairperson, Executive Director, or independent member of the Executive Board, with prior service in one role counting towards the overall term limit across positions. The duration of the mandate is set at five years, with the possibility of a single extension of two years.

The Commission proposal aims at limiting the duration of service in order to support supervisory independence and reduce the risk of conflicts of interest associated with prolonged tenure. It aims further to promote rotation, which may contribute to a broader geographical representation.

Preliminary views of MS:

Views among MS diverged on the proposed amendments. Some MS supported maintaining the current framework, whereby the Vice-Chairperson is elected from among the members of the BoS, in order to ensure the involvement of NCAs. Clarifications on the procedure for the election of the Vice-Chairperson were also requested.

As regards the limitation of the term of office, one MS raised concerns that the proposed maximum duration of seven years across different functions may give rise to risks related to short-termism. Another MS suggested that time served as an independent member of the Executive Board should not count towards the maximum term of office of seven years.

Questions to MS:

8. ***Do MS agree with the proposed change to elect the Vice-Chairperson from the Executive Board, or should the current approach of election from the BoS be maintained?***
9. ***Do MS consider that further clarifications is required regarding the procedure for the election of the Vice-Chairperson?***
10. ***Do MS agree on the proposed maximum cumulative term of seven years across senior functions? Do MS consider that this limitation contributes to supervisory independence and broader geographical representation?***

2.4. Decision Process Within the Executive Board

Relevant Article 44b

The newly proposed Article 44b of the Commission proposal aims to set out the decision-making procedure in the Executive Board. As a general rule, decisions are adopted by simple majority of its members, with each member having one vote and the Chairperson holding a casting vote in the event of a tie.

Paragraph 2 of Article 44b specifies the scope and conditions for the non-objection procedure of the BoS. The procedure is modelled on the approach applied for the Governing Council of the ECB for the draft decisions of Supervisory Board[2]. Under the proposed procedure, the BoS can object within a

[2] Art 26(8) of Council Regulation (EU) No 1024/2013.

specified period to the following decisions of the Executive Board by a two-thirds majority of its voting members (Article 44b (2)):

- Article 17(3) and (6): Breach of Union Law
- Article 17aa: Failure in supervision on approval of financial products, services or entities
- Article17aaa: Suspension of rights to provide services on a cross-border basis
- 18(3) and (4): Action in emergency situations
- Article 22(4): recommendations for action to the competent authorities based on an inquiry (systemic risk)
- Article 30(4) and (8): Peer reviews
- Article 39h(a), (b), (f), (g), (i): Supervisory measures (withdrawal of authorisations, prohibition of activity, fines, periodic penalty payments, removal of a natural person from the management board)
- Article 39i: Sanctions against natural persons.

Paragraph 3 of Article 44b introduces a budgetary control role for the Commission when the Executive Board approves the draft budget in line with Articles 46a(8)(b) and 63. The mechanism reflects arrangements applied for the European Maritime Safety Agency (EMSA)[3]. Particularly it provides for the participation of a Commission representative with voting rights on budgetary matters and further introduces a mechanism whereby, in cases of serious concerns raised by the Commission in relation to the Financial Framework Regulation and the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, the Executive Board must re-examine the draft decision and adopt it in a second vote by a two-thirds majority, including the Commission representative. It should be noted that the final adoption procedure of the budget by the BoS is maintained.

Preliminary views of MS:

Views among MS diverged on the proposed decision-making arrangements. Some MS expressed support for maintaining the current framework and questioned the need to modify ESMA's governance model where the number of entities subject to direct supervision remains limited. Other MS indicated openness to strengthening ESMA's role, in particular in coordinating the supervision of significant financial market infrastructures, while emphasising that NCAs should retain a leading supervisory role.

As regards the transfer of powers to the Executive Board, views were mixed. One MS supported limiting such transfer to what is strictly necessary for the exercise of direct supervision. Other MS supported the proposed transfer of powers more broadly, including additional elements such as the establishment of ad hoc peer review committees (Art 30(2)).

Regarding the non-objection procedure, several MS raised concerns regarding its effectiveness and practical implementation. Some MS considered that the combination of a two-thirds majority requirement and a short objection period may limit the effectiveness of the BoS' power to object. Other MS suggested alternative thresholds for objections, with a view to ensuring that the mechanism can

[3] See Article 20 on Voting rules in the Management Board of Regulation (EU) 2025/2434 of the European Parliament and of the Council of 26 November 2025 on the European Maritime Safety Agency

operate effectively in practice. The same MS suggested objection by at least five voting members of the BoS, which is analogous to the regime applicable to the Supervisory Board decisions' in SSM.

One MS questioned the rationale for removing the previous mechanism, noting its role in ensuring transparency and oversight for NCAs, and requested further clarification. The same MS also raised concerns regarding the practical functioning of the non-objection procedure, in particular as regards notification, timelines and availability of information for the BoS to object effectively.

On specific procedural aspects, one MS indicated that the 48-hour period foreseen for emergency situations may be too long. With regard to budgetary matters, some MS requested further justification for granting voting rights to the Commission.

Questions to MS:

11. ***Do MS agree with the proposed non-objection procedure by the BoS for the decisions outlines in Article 44b(2)?***
12. ***Do MS consider the proposed non-objection procedure to be effective and operational in practice? Do MS consider the two-thirds majority requirement for an objection appropriate?***
13. ***Do MS consider the that the proposed timelines, including the 48-hour period in emergency situations, allow sufficient time and information for the BoS to assess and, where appropriate, object to decisions?***
14. ***Do MS agree that the details of the non-objection procedure will be laid down in the Rules of Procedure?***
15. ***Do MS agree to the mechanism whereby the Commission may trigger a second reading of a decision in the Executive Board regarding the draft budget? Does it strike an appropriate balance between Commission oversight and the independence of the Executive Board?***

2.5. Independence of the Executive Board

Relevant Article 46

The newly proposed Article 46 of the Commission proposal is modelled after the independence provision applicable to the Executive Board members of AMLA (Article 63(6)-(8) AMLAR). The provision aims to set out the general principles governing the independence of the Executive Board members, the conditions and procedure for the removal of an Executive Board member, and a cooling-off period to prevent post-public employment conflicts of interests. The aim is to apply an independent regime that matches the Executive Board's responsibilities in direct supervision and to avoid (any possible perception of) conflicts of interests. The provision does not envisage compensation for the cooling-off period. The proposal allows former Executive Board members to take up new roles, provided these do not present conflicts of interest or reputational concerns for the Authority.

Preliminary views of MS:

Some MS welcomed the safeguards set out in Article 46, in particular the introduction of an 18-month cooling-off period. One MS noted that the provision does not clarify whether former Executive Board members would be entitled to remuneration or other financial compensation during the cooling-off period, nor how any such costs would be financed, and requested further clarification on both points.

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Additionally, clarifications were requested on the scope of the prohibition and particularly whether the cooling-off prohibition covers entities that were subject to direct supervision **during the member's mandate**. One MS suggested extending the prohibition to entities affected by ESMA decisions, as well as to entities belonging to the same group as directly supervised entities.

Questions to MS:

16. ***Do MS agree with the proposed independence requirements for the Executive Board members?***
17. ***Do MS consider that further clarification is needed in the Level 1 text regarding the cooling-off period, including as regards the possible provision of remuneration and its financing?***
18. ***Do MS consider that the scope of the cooling-off prohibition sufficiently addresses potential conflicts of interest, or should adjustments be considered?***
19. ***Do MS consider that the BoS should be able to propose the removal of an Executive Board member, similar to the arrangements under Art 63(7) of AMLAR4?***
20. ***Does the proposal strike the right balance between duration of the term of employment at ESMA, the conditions for taking up employment after the term at ESMA and the need to attract high quality applicants?***

2.6. Participation of Executive Board Members in the BoS and Voting Rights

Relevant Articles: Articles 40(1)(ba) and 44(1))

The proposed amendments aim to introduce changes to the governance model of the BoS. They provide for the participation of the five (5) independent members of the Executive Board as full members of the BoS. At the same time, it is proposed for the Chairperson and the independent members of the Executive Board not to exercise voting rights in respect of certain decisions referred to in the second subparagraph of Article 44(1) (i.e. budget and regulatory matters). It is the Presidency's understanding that the reason for the Commission proposal is twofold: first, the Executive Board members already take a position on budgetary matters at Executive Board level during the establishment of the budget, and secondly, on regulatory matters, it is proposed to separate between supervisory and regulatory matters, with the latter being decided with the same voting modalities as in Council.

Furthermore, a specific voting arrangement is established for the BoS in the Commission proposal. By way of derogation from the general voting rule, decisions falling within the scope of Article 44b(2) are to be adopted by the BoS by a two-thirds majority of its voting members. The Commission proposal aims to enable the members of the Executive Board, in their capacity as voting members of the BoS, to contribute their expertise to the BoS. It also aims to establish a system of checks and balances between the two Boards, to ensure the inclusion of an EU perspective and a coherence between decisions of the Executive Board and the BoS.

[4] Art 63(7) of Regulation (EU) 2024/1620: '7. If an Executive Board member referred to in paragraph 1, point (b), no longer fulfils the conditions required for the performance of that member's duties or has been guilty of serious misconduct, the Council may, acting on its own initiative or following a proposal by the European Parliament or the General Board in either composition, adopt an implementing decision to remove that member of the Executive Board from office. The Council shall act by qualified majority'.

Preliminary views of MS:

MS expressed differing views on the proposed changes to the governance model. Some MS raised concerns regarding the voting rights granted to the independent members of the Executive Board when participating in the BoS and suggested that their participation could be without voting rights, or alternatively not to exercise voting rights where items related to their areas of responsibility are discussed. MS suggested that the participation of Executive Board members in the BoS requires further discussion.

Other MS expressed reservations regarding the proposed governance changes more broadly, considering that they may not ensure sufficiently balanced representation of MS within ESMA's decision-making bodies.

As regards the specific voting arrangements for decisions falling within the scope of Article 44b(2), one MS suggested an alternative approach (i.e. at least five voting members of the BoS to object instead of the 2/3 majority), drawing on comparable arrangements of the ECB Rules of Procedure.

Questions to MS:

21. ***Do MS agree that the Executive Board members, should be members of the BoS?***
22. ***Do MS consider that Executive Board members should exercise voting rights in the BoS, or should their role be limited (e.g. no voting rights or no voting on items within their areas of responsibility)?***
23. ***Do MS consider the proposed objection mechanism with the two-thirds majority requirement, to be appropriate, or should alternative thresholds be considered (for example arrangements applied for SSM)?***

2.7. Respective Tasks of the BoS and Executive Board

Relevant Articles: Articles 43 and 46a

Articles 43 and 46a of the Commission proposal specify the respective tasks of the BoS and the Executive Board. The BoS retains responsibility in regulatory matters (adoption of draft Regulatory Technical Standards and Implementing Technical Standards, no action letters, Articles 9a-16a) and remains the competent body for the final adoption of strategic planning and budgetary decisions (work programme, single programming document including budget, annual report).

On the other hand, the Executive Board is assigned responsibilities for decisions relating to direct supervision, in accordance with Chapter IIa or sectoral legislative acts. It is also entrusted with decisions in the area of supervisory convergence that are addressed to individual entities or national authorities. These include decisions under the following articles:

- Article 9(5): temporary prohibitions for consumer protection reasons
- Article 17(3) and (6): Breach of Union Law
- Article 17aa: Failure in supervision on approval of financial products, services or entities
- Article17aaa: Suspension of rights to provide services on a cross-border basis
- 18(3) and (4): Action in emergency situations
- Article19: Binding mediation

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- Article 19a(1) and (4): collaboration platforms
- Article 22(4): Inquiries and recommendations
- Article 30: Peer reviews

The Executive Board will also be responsible for decisions on supervisory convergence where sector legislation explicitly refers to the Executive Board, for example in the asset management sector.

In addition, the Executive Board is tasked with adopting the working arrangements according to Article 8a(4) and carry out the current tasks of the Management Board, i.e. adoption of the draft planning and budget documents, certain HR decisions (staff policy, implementing decisions, conflicts of interest, nomination of members of Board of Appeal etc.).

Article 46a also aims to set out the interaction between the Executive Board and the BoS. For example, the Executive Board may examine and provide opinions on matters to be decided by the BoS and may request opinions from the BoS on supervisory matters. Also, the Executive Board is required to provide the BoS with a biannual briefing on supervisory activities.

Preliminary views of MS:

MS held differing views on the proposed allocation of tasks between the BoS and the Executive Board. Some MS did not support the introduction of Article 46a. One MS indicated that the allocation of tasks between the two Boards requires further discussion. Another MS emphasised the importance of ensuring that NCAs remain operationally involved in supervision and day-to-day decision-making, in order to take into account local legal and market specificities, while indicating openness to a coordination role for ESMA provided that national authorities retain a leading role.

As regards the scope of powers of the Executive Board, some MS suggested that decision-making powers should be limited to what is strictly necessary for the exercise of direct supervision.

On the interaction between the Executive Board and the BoS, one MS suggested specifying a time frame within which the BoS should provide its opinion when requested by the Executive Board.

Questions to MS:

24. ***Do MS agree to the proposed allocation of tasks between Executive Board and BoS as outlined above?***
25. ***Do MS agree that certain decisions on supervisory convergence, where they are addressed to individual (or a limited number of) entities or authorities are attributed to the Executive Board?***
26. ***Do MS consider the role of NCAs in supervision and decision-making is sufficiently preserved?***
27. ***Should a specific timeframe be introduced for the BoS to provide opinions when requested by the Executive Board?***
28. ***Do MS agree that decisions on Peer reviews are adopted by the Executive Board?***

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2.8. Internal Committees: Respective Power of the Executive Board and BoS

Relevant Articles: Articles 41 and 45c

Proposed amendments to Articles 41 and 45c of the Commission proposal lay down the possibility for the BoS and the Executive Board to establish internal committees for the performance of specific tasks attributed to them. The main change introduced is the possibility for the Executive Board to establish internal committees in relation to its tasks, including the possibility to delegate certain tasks to those committees, to the Chairperson or to the Executive Director. An amendment to Article 41 also introduces the possibility for the BoS to delegate certain tasks to the Executive Director.

In addition, both proposed provisions provide for the participation of the ECB and relevant central banks of issue of Union currencies in internal committees where matters relating to CCPs and CSDs are discussed as non-voting members.

It is the Presidency's understanding that the aim of the Commission proposal is to give greater flexibility to ESMA in terms of internal organisation and additional tools to involve NCAs where needed. It also aims to simplify rules under current Article 41.

Preliminary views of MS:

Some MS did not support amendments to Article 41 or the introduction of Article 45c. Also, clarifications were requested on the rationale for allowing the participation of central banks in internal committees dealing with CCPs and CSDs, while not providing for the participation of NCAs.

Questions to MS:

29. ***Do MS agree with the proposed amendments to Article 41 and the introduction of Article 45c?***
30. ***What are MS views on the participation of central banks and NCAs, in internal committees dealing with CCPs and CSDs? Do MS agree that this is laid down in the internal Rules of procedures?***

2.9. Sub-Committees

Relevant Article 57

The Commission proposal amending Article 57 aims to introduce the possibility for sub-committees established by a Joint Committee, to be chaired by one of the European Supervisory Authority's chairpersons (or a representative). The Commission proposal aims to enable a more stable and efficient organisation of the work of sub-committees.

Preliminary views of MS:

Clarification is requested on why the proposed amendments are not extended to Regulations (EU) No 1093/2010 and (EU) No 1094/2010, and on the implications of this single change for the functioning of the Joint Committees.

Question to MS:

31. ***Do MS consider that the rationale for limiting the amendment to a single Regulation is sufficiently clear?***