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Presidency Discussion Paper
Market Integration and Supervision Package
General Tasks and Powers of ESMA – Article 8 Amendments

30 March 2026 10:00

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1. Article 8 Amendments

The proposed amendments to Article 8 aim to update the description of ESMA's tasks and powers in order to reflect the proposed direct supervisory responsibilities and align its mandate with the objectives of promoting innovation and ensuring effective enforcement. The Commission also proposed amendments with the aim to clarify that ESMA's role in promoting supervisory convergence also encompasses the convergence of enforcement practices across the Union.

The amendments mainly concern the addition of references to enforcement, the introduction of tasks relating to data and supervisory technology, clarification of provisions relating to ESMA's direct supervisory responsibilities and adjustments concerning the legal basis on which ESMA may exercise its powers. Furthermore, article 8(2) is also amended to clarify the legal basis on which ESMA may exercise its powers, by specifying that, where Union law consists of directives, ESMA may act on the basis of national provisions transposing those directives, interpreted in conformity with Union law.

The proposed amendments introduce explicit references to enforcement alongside supervision in the description of ESMA's convergence-related tasks (, such as the Union supervisory handbook and peer reviews). The Presidency understands that these were added to emphasize the ESMA's role in the area enforcement.

Similarly, the description of ESMA's role in contributing to the consistent application of Union law refers to promoting a common supervisory and enforcement culture and to ensuring effective and consistent supervision and enforcement of the rules regulating the activity of financial market participants. The instrument of a common supervisory handbook is further specified within the framework of Article 29 of ESMAR, which provides for the development of tools aimed at fostering a common supervisory and enforcement culture across the Union and proposes the inclusions of a comply-or-explain mechanism (par.2 sub. 2).

These proposed amendments aim to stress that enforcement is an integral and important component of convergence tasks and emphasise the role of ESMA in promoting consistency of enforcement approaches across the Union for all financial market participants, including financial market participants not under the Authority's supervision.

The proposed amendments also aim to modify the description of ESMA's coordination role by adding a reference to ensuring the coherent functioning of "other forms of supervisory cooperation", in addition to colleges of supervisors. It is the Presidency's understanding that this reference is intended to cover in particular supervisory convergence activities, such as introduction of collaboration platforms.

Additionally, new tasks are proposed in relation to the use of technology and data in supervision. Article 8(1) now aims to provide that ESMA shall contribute to the development of supervisory technology and other tools, in cooperation with competent authorities and other relevant bodies, in order to enhance supervisory analysis and monitoring capabilities (Article 8(1)(iaa)).

Article 8 is further amended to reflect ESMA's direct supervisory tasks, which is one of the most consequential changes to Article 8. It is specified that ESMA shall perform supervisory duties and exercise powers with regard to financial market participants under its supervision in accordance with Union law (Article 8(1)(l)). In addition, Article 8(2)(k) provides that ESMA may adopt individual decisions

addressed to financial market participants under the Authority's supervision when exercising its direct supervisory tasks.

Depending on the outcome of the proposed centralisation of central counterparties ('CCPs') and central securities depositories ('CSDs'), the text also empowers ESMA to carry out the prudential supervision of CCPs and CSDs (Article 8(1)(m)).

A further proposed amendment introduces a task for ESMA to assess the resilience of the Union financial system and risks arising from cross-border activities of financial market participants under its supervision, including risks stemming from interconnectedness or concentration risks (Article 8(1)(n). This provision aims to expand the description of ESMA's monitoring tasks in relation to cross-border risks and therefore reflect ESMA's increasing role in direct supervision and in monitoring cross-border risks.

Finally, the amendments in Article 8(2)(l) propose to introduce an explicit reference providing that ESMA may undertake assessments and issue technical advice upon request, making explicit its advisory role. This refers to the assessment and the technical advice ESMA may provide (mostly) to the Commission, but also to one of the co-legislators, in preparation of a proposal or upon request in case there is an issue that requires technical input.

Preliminary Views of the Member States ('MS'):

MS noted that Article 8 refers broadly to "financial market participants" without specifying the relevant entities and one MS suggested that the provision should either consistently identify the relevant entities or avoid such references to ensure clarity.

MS also questioned the repeated references to "enforcement", noting that enforcement remains primarily a national competence and requesting clarification on how Union-level coordination would interact with national enforcement frameworks.

Regarding the Union supervisory handbook, MS raised questions about its legal nature and its relationship with existing convergence tools, notably guidelines and recommendations and the framework under Article 29, including the application of the comply-or-explain mechanism, as well as possible implications for publication and level of detail. With regard to point (b), clarification was requested on the reference to "other forms of supervisory cooperation".

One MS supported strengthening ESMA's role as a data hub, notably in cooperation with NCAs and initiatives such as ESAP, while another stressed that such developments should not create additional costs or resource burdens for NCAs. In relation to point (iaa) which introduces the development of supervisory technology and analytical tools, one MS cautioned that the development of new supervisory tools should not give rise to additional costs supported by the NCAs nor negatively impact their resources and another MS requested clarification interaction with existing collaboration platforms.

Regarding point (l), one MS suggested replacing "under the Authority's supervision" with "under the Authority's direct supervision" to clarify the scope of the provision.

On the prudential supervision of CCPs and CSDs under EMIR and CSDR, two MS raised concerns regarding possible centralisation of supervision as they do not support it and another MS sought

clarification on the nature of this cooperation and, more specifically on the involvement of the ECB in the decision-making process.

On the introduction of a task for ESMA to assess the resilience of the Union financial system and risks arising from cross-border activities of financial market participants under its supervision, two MS disagreed with the assumption that risks arise as a result of cross-border activities in the Union, while another MS suggested clarifying whether the assessment should concern Union-wide risks only or also risks at MS level.

Regarding paragraph 2, three MS raised legal concerns, including implications for the balance of competences, judicial protection, and the Commission's role in monitoring transposition.

With regard to point (f), three MS raised concerns and one MS suggested clarifying that ESMA may take individual decisions only where it exercises direct supervisory powers and deleting reference to Article 17aaa. On the proposed deletion of point (ga) on the use of Q&A, two MS considered it a useful supervisory convergence tool.

Finally, new point (l) of par. 2 that proposes that ESMA may may undertake assessments and issue technical advice upon request; one MS requested clarification as to whose request would trigger such assessments.

Questions to MS:

1. ***Do MS agree with the proposed tasks and powers attributed to ESMA?***
2. ***Do MS agree with the increased focus of ESMA's tasks on enforcement? Are there any adjustments or clarifications MS may deem necessary?***
3. ***Do MS agree with tasking ESMA to develop supervisory technologies? Are there any adjustments or clarifications MS may deem necessary?***
4. ***Do MS agree with tasking ESMA to assess risks arising from cross-border activities of financial market participants under its supervision, including risks stemming from interconnectedness or concentration risks? Are there any adjustments or clarifications MS may deem necessary?***

2. ESMA's Powers

Relevant Article 8(2)

Article 8(2) is proposed to be amended to reflect the new proposed powers of ESMA and to clarify the legal basis on which ESMA may exercise its powers. The amendment intends to provide that, where Union law consists of Directives, ESMA may act on the basis of national provisions transposing those Directives, interpreted in conformity with Union law. This clarification addresses situations where the applicable Union framework requires transposition into national law. This wording mirrors Article 4(3) of the SSM Regulation, with the addition that national law has to be interpreted consistently with Union Directives. This specification comes from well-established ECJ case-law, i.e. the recent judgment of the European Court of Justice in Joined Cases C-777/22 P and C-789/22 P (ECB and European Commission

v Francesca Corneli). Before the recent changes to the EBA Regulation following the establishment of AMLA, similar wording was also included in Article 9b.

A couple of other provisions related to the tasks of ESMA are proposed to be amended for consistency with other proposed changes made elsewhere in the text, namely:

- The deletion of the power to reply to Q&As, in light of the deletion of the provisions on L2 Q&As (par.ga)
- The addition of the powers to take individual decisions in two contexts:
  a. the new Article 17aaa
  b. the exercise of direct powers

Preliminary Views of the MS:

Several MS raised concerns about granting ESMA the power to overrule national decisions based on legislation transposing directives, in particular regarding its interaction with the Commission's role in monitoring MS transposition and the potential constitutional implications. Concerns were also expressed that, unlike in the Corneli judgment context, such powers would apply in sectors without a fully harmonised rulebook or supervisory framework, raising questions about legal robustness and effective judicial protection.

One MS commented that the Q&A is a much appreciated tool and questioned the Commission's proposal to remove them.

Questions to MS:

5. ***Do MS agree with the changes in Art 8(2)? Are there any adjustments or clarifications MS may deem necessary?***

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