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Presidency Discussion Paper
Market Integration and Supervision Package
ESMA Supervision for Significant Entities and Determination of Significance

28 May 2026

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Introduction

On 4 December 2025, the European Commission ('**Commission**') published the proposal on the Market Integration and Supervision Package (**'MISP'**). The purpose of this paper is to provide a structured basis for the technical discussions of the Council Working Party ('**CWP**') meeting on 28 May 2026, which is dedicated to the provisions of the MISP that are relevant to the European Securities and Markets Authority **('ESMA')** supervision for significant entities and the determination of the significance criteria.

During the first reading of the above provisions, at the CWP meeting on 5 March 2026, Member States **('MS')** expressed diverging views, particularly regarding the appropriateness of the proposed significance criteria, the proportionality of centralised supervision and the allocation of supervisory responsibilities between ESMA and National Competent Authorities ('**NCA**s').

In light of the comments received from MS, the Presidency ('**PCY**') proposes a number of possible options and compromise approaches for consideration by the MS on the criteria for ESMA supervision and significance criteria for the following:

1. **Trading Venues**
2. **Central Securities Depositories ('CSDs')**
3. **Central Counterparties ('CCPs')**
4. **Crypto-Asset Service Providers ('CASPs')**

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1. Trading Venues

Article 3 of the MISP Master Regulation introduces amendments to the Regulation (EU) No 600/2014 ('**MiFIR**'). Under the proposal, significant infrastructures would fall under direct supervision of ESMA, while less significant TVs would remain under national supervision with strengthened supervisory convergence mechanisms.

1. **Criteria for ESMA Supervision of Significant Trading Venues ('STVs')**
   Relevant Articles: 38fa and 38fb of MiFIR

Article 38fa aims to establish the supervisory framework applicable to STVs under the MISP proposal. In particular, it provides for direct ESMA supervision over market operators and investment firms operating trading venues that meet the significance criteria set out in Article 38fb. It also specifies the scope of ESMA's supervisory powers and the role of national surveillance authorities ('**NSAs**') in relation to market surveillance and enforcement tasks.

Article 38fb aims to set out the criteria and methodology used to determine whether a trading venue qualifies as a STV and therefore falls under the supervisory regime established in Article 38fa. The Article combines quantitative criteria as market share thresholds and cross-border activity indicators with certain structural criteria relating to cross-border group structures. It also establishes the methodology for calculating the thresholds, the reassessment process, and the conditions under which a trading venue may enter into or exit the STV regime.

During the CWP meeting on 8 of May and following a request by some MS during the March CWP, the Commission was invited to provide information on which TVs would fall under direct ESMA supervision on the basis of the proposed criteria. Following the above request, the Commission provided a list with twelve STVs.

Views of the MS:

1.1.1. Use of objective criteria for determining STVs

MS broadly supported the use of objective criteria for determining STVs, in particular:

- the combination of a 5% EU market share threshold, and
- a cross-border relevance criterion.

Several MS considered that the proposed approach appropriately captures genuinely relevant venues and contributes to supervisory convergence and market integration. A number of MS also stressed the importance of maintaining cumulative criteria combining both economic relevance at EU level and a genuine cross-border dimension.

At the same time, concerns were expressed by a number of MS regarding the scope and consequences of the proposed framework. Some MS questioned the necessity and proportionality of direct ESMA supervision, arguing that insufficient evidence has been provided of supervisory divergence at national level and warned against increased costs, reduced supervisory proximity, loss of local expertise and possible supervisory fragmentation. One MS additionally highlighted constitutional and legal constraints concerning the transfer of supervisory powers to EU level.

As regards to the proposed criteria, important concerns were raised by MS as regards to the proposed group-based approach, under which ESMA competence could arise solely because a trading venue belongs to the same group as a CCP or CSD supervised by ESMA.

In addition, other MSs considered that group affiliation alone does not necessarily imply cross-border significance and warned that identical activities could become subject to different supervisory regimes purely due to ownership structure.

One MS suggested that such ESMA supervision should instead remain optional and subject to a request by the relevant entity.

Furthermore, a number of MS expressed concerns regarding the extensive use of delegated acts and considered that key significance criteria and methodologies remain in L1 legislation, while limiting Regulatory Technical Standards to genuinely technical elements. One MS specifically proposed deleting Article 38fb(8).

Some MS also emphasised the need for safeguards to ensure stability and proportionality in supervisory status, including multi-year averaging, minimum duration periods, transitional arrangements and clearer reassessment methodologies, in order to avoid regulatory uncertainty, operational burden, supervisory discontinuities and unnecessary compliance costs.

Finally, some MS suggested complementing the proposed criteria with additional indicators such as:

- market capitalisation,
- outstanding bond issuance,
- systemic importance,
- contribution to EU price formation, and
- the geographic distribution of liquidity and market participants.

1.1.2. The cross-border criterion

Based on the comments provided, some MS supported the proposed criterion concerning the existence of a significant cross-border element in its current formulation, while other MS supported it only conditionally or expressed reservations, particularly regarding the group-based approach. In particular one MS supported a cross-border criterion only where the cross-border footprint is genuinely material and meaningful but strongly opposes group-level aggregation involving CCPs/CSDs. Another MS did not support ESMA supervision generally, but indicated that if such supervision would exist, it should be limited to entities with a truly systemic footprint. Other MS did not reject cross-border relevance as such but strongly questioned the group-based criterion and its supervisory consequences. One MS opposed the criterion as proposed by the Commission.

1.1.3. A venue located in a single MS but meeting the “significant” criteria

MS expressed diverging views on whether trading venues located in a single MS but meeting the proposed significance criteria, should fall under direct ESMA supervision.

A few MS supported centralised supervision in such cases, arguing that economic relevance and systemic importance should prevail over purely geographic considerations. These same MS stressed that certain trading venues, although formally established in a single MS, play a significant role in EU-wide price formation, liquidity allocation and cross-border market activity. One MS underlined that the largest trading venue in Europe is currently operated from a single MS while serving predominantly non-domestic EU participants, illustrating that national location does not necessarily reflect the economic reality of market activity. Another MS supported a more integrated supervisory approach, while favouring a differentiated framework based on reinforced supervisory colleges and Joint Supervisory Teams ('JSTs') chaired by ESMA, rather than a fully centralised model.

By contrast, some MS expressed reservations or opposition to extending direct ESMA supervision to venues operating primarily within a single MS. These MS argued that effective supervision may already be exercised at national level and warned that quantitative thresholds alone should not automatically justify a transfer of supervisory competences to ESMA. They stressed that centralisation should only occur where genuine cross-border externalities or risks can be demonstrated and highlighted the importance of subsidiarity, supervisory proximity and the preservation of national market expertise and knowledge of local market structures.

1.1.4. The combination of a 5% EU market share threshold and a cross-border relevance criterion

MS broadly supported the proposed combination of a quantitative market share threshold and a cross-border relevance criterion for determining significant trading venues, considering this dual-threshold approach to be conceptually consistent with the principles of proportionality and subsidiarity. Some MS considered that the proposed framework broadly moves in the right direction and capable of ensuring that direct ESMA supervision would apply only to genuinely significant and cross-border relevant venues. These MS generally considered that the combination of economic relevance and cross-border activity could provide an appropriate balance between market integration objectives and the need to avoid unnecessary centralisation of supervision.

At the same time, a number of MS expressed concerns regarding certain technical aspects of the proposed criteria, in particular the use of group-level calculations, the complexity of the proposed cross-border metrics and the risk that some venues without genuine EU-wide significance could nevertheless fall within the scope of the regime. One MS notably questioned whether some of the proposed indicators adequately capture real market interconnectedness and meaningful cross-border relevance.

1.1.5. The additional absolute 50% market share criterion

Most MS are supportive or at least open to the introduction of an additional 50% market share criterion as part of the framework for determining STVs. Several MS considered that this additional criterion could serve as an important safeguard to ensure that highly dominant venues are not excluded from the supervisory framework merely because they may not fully meet other quantitative or cross-border thresholds.

In particular, MS highlighted the relevance of such a criterion for derivatives markets and for trading venues dealing with pan-European instruments, where market concentration may be particularly significant despite the venue being formally established in a single jurisdiction. Supportive MS generally viewed the criterion as a proportionate complement to the broader significance framework and as a tool to better capture venues with substantial influence on EU market functioning and liquidity.

At the same time, some MS expressed reservations or requested further clarification. One MS questioned the necessity of introducing an additional criterion, while two MS indicated that they were still assessing the proposal and its implications. Another MS specifically requested clarification regarding the definition of the term "counterparty" used in the context of the criterion, underlining the need for legal certainty and consistent application across MS.

1.1.6. Further technical clarification on the methodology for calculating market share or cross-border activity

Several MS requested additional technical clarification regarding the framework for determining STVs and the related supervisory arrangements. In particular, MS highlighted the need for further details on:

- calculation methodologies,
- definitions of cross-border activity,
- reassessment mechanisms, and
- transition arrangements.

The key areas identified for clarification include:

- aggregation methodologies,
- the avoidance of double counting,
- the hierarchy and reliability of data sources,
- the applicable reference periods,
- the treatment of bilateral trading activity,
- stabilisation mechanisms to avoid excessive volatility in supervisory status, as well as
- procedural safeguards surrounding designation and de-designation decisions.

1.2. <u>The Presidency Proposals:</u>

In order to reconcile the above MS views regarding the proposed framework for determining the significance of Trading Venues, the PCY proposes the following options for MS consideration.

1.2.1. Scope of ESMA Supervision for STVs

i. **<u>Option 1:</u> Maintain the original Commission proposal**
ii. **<u>Option 2:</u> Deletion of the criterion of Financial Market Infrastructure ('FMI') groups by amendment to the group criterion under 38fa(1), points (b) and (c)**

Under Option 2, the proposed scope would no longer capture trading venues because of their belonging to the same group as a CCP/CSD subject to ESMA supervision. However, the group criterion would remain as regards groups of trading venues (i.e. ESMA would be the competent authority for all the trading venues of a group that includes at least one STV).

Option 2 would ensure that the scope of direct ESMA supervision is not automatically extended on the basis of ownership links with FMIs performing different regulated functions. This amendment addresses the serious concerns of several MS, as stated above, regarding proportionality and supervisory consistency, while preserving the possibility for ESMA supervision to apply to groups of trading venues carrying out integrated trading activities across the Union.

Question to the MS:

1. ***Do those MS that support a targeted amendment to the group criterion under Article 38fa(1), points (b) and (c), consisting in the deletion of the criterion of FMI groups (Option 2), also see merit in a broader approach consisting in the deletion of the group criterion in its entirety, including the deletion of the fourth subparagraph of Article 38fa(1), which extends ESMA supervision to all trading venues within the same group as a significant trading venue?***

1.2.2. Cross Border Criterion under article 38fb(2)

i. **Option 1: Maintain the original Commission proposal.**
ii. **Option 2: Amendment to the cross-border criterion for STVs under Article 38fb(2) by deleting points (a)(ii) and (iii)**

Under Option 2, as per multiple requests in the CWPs, the PCY suggests to amend the cross-border criterion for STVs under Article 38fb(2), by deleting points (a)(ii) and (iii) to remove the possibility for that criterion to be met when a trading venue is part of a group that comprises a CCP or a CSD in another MS. A trading venue that is part of a group that comprises another trading venue in another MS would still meet the cross-border criterion.

The deletion of points (a)(Ii) and (Iii) of Article 38fb(2) would ensure that the assessment of the cross-border dimension of a trading venue is based on more direct and objective indicators of trading activity, rather than on ownership links with other entities within a group. This option addresses the concerns expressed by several MS that group affiliation with other trading venues, CCPs or CSDs may not, in itself, appropriately reflect genuine cross-border relevance or systemic importance, and could result in supervisory outcomes driven primarily by corporate structure rather than by the actual activities carried out by the trading venue concerned.

Question to the MS:

2. ***Do those MS that support a targeted amendment to the group criterion to the cross-border criterion for STVs under Article 38fb(2) by deleting points (a)(ii) and (iii) consisting in the deletion of the criterion of FMI groups (Option 2), also see merit in a broader approach consisting in the deletion of the group criterion in its entirety, including deleting point (a) of Article 38fb(2), with the effect that the assessment of the cross-border dimension of a trading venue would rely exclusively on the quantitative indicators of cross-border trading activity set out in points (b) and (c)?***

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2. Central Securities Depositories

Article 4 of the MISP Master Regulation introduces amendments to the Regulation (EU) No 909/2014 (**'CSDR'**), among others, aimed at distinguishing between "significant" and "less significant" Central Securities Depositories **('CSDs')**. Under the proposal, significant infrastructures would fall under direct supervision of ESMA, while less significant CSDs would remain under national supervision with strengthened supervisory convergence mechanisms.

2.1. Criteria for ESMA Supervision of CSDs

Relevant Articles: Article 11 and 11a CSDR, Recital 50

Under the Commission proposal, EU CSDs would be categorised by ESMA as either *significant* or *less significant* based on a set of criteria and thresholds set out in the Level 1 text. Significant CSDs would fall under ESMA supervision, and no colleges would be established for such CSDs. Less significant CSDs would remain under the supervision of their NCAs.

According to recital 50 of the MISP proposal, Union-level supervision could be of value in the following cases:

- CSDs with substantial settlement activity,
- CSDs with a material cross-border dimension, and
- CSDs that are part of a group that includes other market infrastructures that are supervised by ESMA.

In the above cases, it could be argued that the infrastructures may provide services on a cross-border basis. The assumption is that national level supervision, may not fully capture cross-border business models or broader Union objectives related to market integration. In this context, more integrated supervisory arrangements may help reduce duplicative efforts and contribute to simplification. While four distinct significance criteria are identified, they are connected by a common rationale concerning the potential added value of EU-level supervision for activities with cross-border relevance and for certain CSDs with cross-border significance.

Under the Commission's proposal, the four non-cumulative criteria would be used to assess whether a CSD is *significant* and would therefore be supervised by ESMA. A CSD would be considered significant if it meets *any one* of the criteria as mentioned in the proposals. These are listed below for the MS kind reference once more:

A. The *first criterion* is **quantitative**, based on the value and the substantial importance of the activities of a CSD in the host MS, namely if:

- it operates a settlement system that settles more than 5% of the settlement instructions by value settled annually in the EU; and
- it is of substantial importance for the functioning of the securities markets and the protection of investors in at least three host MS in accordance with the criteria set out in Article 11a(2) of the CSDR.

These criteria are the same used to determine the CSDs that would become CSD-hubs

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B. The *second criterion* is a '**group'** criterion meant to capture CSDs that belong to the same group as at least one of the following:

- a CSD that is established in the territory of another MS;
- a CSD, a CCP or a trading venue for which ESMA is the competent authority.

C. The *third criterion* is meant to capture **CSDs that operate a securities settlement system ('SSS')** governed by the law of a different MS than the MS where the legal person is established, where such system has been designated in accordance with the Settlement Finality Regulation. This criterion therefore also has a cross-border dimension as the CSD operates under another MS law.

D. The *fourth criterion* would allow a MS to **opt-in for ESMA supervision** for the CSDs established in their jurisdiction which do not meet any of the three other criteria for significance mentioned above. This option should also be understood as encompassing the ability to 'opt out', should no other criterion be met.

During the CWP meeting on 8 May and following a request by some MS during the March CWP, the Commission was invited to provide information on which CSDs would fall under direct ESMA supervision on the basis of the proposed criteria. Following the above request, the Commission provided a list with fifteen significant CSDs.

Views of the MS:

A number of MS raised concerns that the proposed criteria may not adequately reflect the EU-wide systemic relevance of CSDs. Five MS argued that the criteria appeared to measure significance primarily at the host MS level rather than at the EU level, which could lead to infrastructures with limited cross-border importance being classified as significant. They suggested that the criteria should be recalibrated to focus more clearly on EU-wide systemic relevance and market size. In this context, some MS also stressed the need to ensure a proportionate link between the designation of a CSD as significant and the corresponding supervisory implications, so as to avoid capturing entities with limited cross-border activity.

As regards the first criterion (quantitative criterion), several MS expressed support for a quantitative approach. However, one MS proposed raising the threshold to five MS, which is likely to impact the entities covered by the proposal.

The second criterion (group criterion) raised more concerns. Twelve MS expressed opposition or doubts on the group criterion, under which a CSD could be classified as significant if it belongs to a group including other financial market infrastructures. Those MS argued that group membership did not necessarily imply systemic importance and warned that applying the group criterion could lead to disproportionate supervisory consequences, particularly where relatively small infrastructures were part of larger corporate groups. One MS explicitly declared that a CSD belonging to a group with a TV or CCP under ESMA supervision should not be supervised by ESMA due to this criterion. One MS suggested introducing quantitative thresholds to ensure that ESMA supervision would only apply where the combined activity of group entities reached a meaningful EU-wide scale.

On the third criterion, some MS indicated openness, while eleven MS expressed concerns questioning its suitability for determining the significance of a CSD and noting that the choice of governing law was primarily a legal construct and did not reflect the scale, risk profile, or cross-border significance of a CSD's activities. Other MS expressed scepticism regarding the relevance of this criterion for determining supervisory significance.

With regard to the fourth criterion of a proposed opt-in mechanism allowing MS to designate ESMA as the supervisor of CSDs established in their territory, many MS expressed openness or support for providing such flexibility. Some of those MS nonetheless stressed that the interaction of the proposed opt-in mechanism with the significance criteria should be carefully designed in order to avoid unintended supervisory consequences. Two MS opposed the opt-in possibility, arguing that a deliberate choice by one MS to opt-in should not affect the supervision of other MS CSDs within the same group. In particular, concerns were raised that the application of the opt-in mechanism in a group context could have implications beyond the jurisdiction of the requesting MS. However, it is important to underline that such unintended supervisory consequence would not materialise so long as the second criterion is preserved, because all existing groups containing more than one CSD would be automatically captured under that criterion.

2.2. The Presidency Proposals

In order to reconcile the above MS views, regarding the proposed framework for determining the significance of EU CSDs, the PCY suggests to the MS the following proposals for consideration, which can be combined. It should be noted that amendments to the significance criteria as included in the Commission proposal, would amend the number of CSDs subject to ESMA supervision and split groups of FMIs.

2.2.1. Proposal 1: Remove the FMI Group Criterion and Focus on CSD groups

Under this proposal, the PCY suggests the removal of the group criterion in point (2)(b)(ii) of Article 11 of the CSDR proposal, according to which "*the CSD belongs to the same group as a CSD, a CCP or a trading venue for which ESMA is the competent authority.*"

The group criterion would remain as regards groups of CSDs (i.e., ESMA would be the competent authority only for groups of CSDs that include at least two CSDs authorised under Article 16 of the CSDR, where not all of those CSDs are established in the territory of the same MS).

Proposal 1 reflects the position of many MS that expressed opposition or doubts on the relevance of the group criterion, questioning whether belonging to a group including other financial market infrastructures adequately reflects the systemic relevance of a CSD, while recognizing the Commission's views on the potential supervisory efficiencies when it comes to multiple CSDs in the same group.

With the deletion of the FMI group criterion, it is noted that two CSDs would be removed from the list of significant CSDs. One of those CSD would be added back to the list with the new criterion under option 3.

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2.2.2. Proposal 2: Remove the criterion based on the CSD operating an SSS under the law of another MS

Under this proposal, a CSD that operates an SSS governed by the law of a different MS than the MS where the CSD is established would not be considered as significant.

Proposal 2 reflects the doubts of many MS about the suitability of this criterion for determining the significance of a CSD.

With the deletion of this criterion, it is noted that one CSD would be removed from the list of significant CSDs.

2.2.3. Proposal 3: Add a criterion for CSDs that have been granted five or more passports under Article 23 of the CSDR

Under this proposal the PCY suggests that a CSD that provides its services to issuers established in five or more MS different from the MS of authorisation of the CSD (host MS), for the issuance of financial instruments under the law of a host MS ("cross-border criteria"), including through setting up a branch to provide such services would be considered significant.

This criterion would capture 2 CSDs (1 CSD removed under the removal of the FMI group criterion but reinstated under this option and another CSD) in addition to CSDs already covered by other criteria.

Proposal 3 reflects the position of several MS that the criteria should be recalibrated to focus more clearly on EU-wide systemic relevance.

Questions to MS:

3. ***Do MS agree with the proposed amendments to the criteria for determining significance of EU CSDs as described in the above options? If not, why?***
4. ***For those MS who support keeping the 1st element of the group criterion (Proposal 1), would MS consider that its application could be further tightened with an additional quantitative threshold in order to ensure that only genuinely significant CSDs fall within the scope of direct ESMA supervision?***

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3. Central Counterparties

Article 2 of the MISP Master Regulation introduces amendments to the Regulation (EU) No 648/2012 (**'EMIR'**), among others, aimed at distinguishing between "significant" and "less significant" CCPs. Under the proposal, significant infrastructures would fall under direct supervision of ESMA, while less significant CCPs would remain under national supervision with strengthened supervisory convergence mechanisms.

3.1 Criteria for ESMA Supervision of CCPs

Relevant Articles: Articles 22 and 22a

Under the Commission's proposal, EU CCPs would be categorised by ESMA as either *significant* or *less significant* based on a set of criteria and thresholds set out in the Level 1 text. Significant CCPs would fall under ESMA supervision, and no colleges would be established for such CCPs. Less significant CCPs would remain under the supervision of their NCAs. In order to promote supervisory convergence with significant CCP supervision, colleges would be chaired by ESMA rather than co-chaired by ESMA and the relevant NCA.

The Commission's proposal introduces a new Article 22a in EMIR that sets out the criteria for determining whether an EU CCP is significant or less significant. The five criteria are non-cumulative; therefore, a CCP would be considered significant if it meets any one of the criteria as mentioned in the proposal. These are listed below for reference.

A. The *three* proposed quantitative criteria are based on a 12-month assessment period:

- **i.** 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
- **ii.** the average gross notional outstanding of OTC derivatives transactions cleared by the CCP is more than EUR 500 billion; or
- **iii.** 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.

B. The *fourth* criterion contained is the 'group' criterion, which comprises two elements:

- **i.** the CCP belongs to the same group as another EU CCP or a Tier 2 TC-CCP; or
- **ii.** the CCP belongs to the same group as a CSD or a trading venue for which ESMA is the competent authority.

C. Finally, the *fifth* criterion in the Commission's proposal includes a mechanism allowing MS to opt in to direct ESMA supervision by requesting 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.

During the CWP meeting on 8 May and following a request by some MS during the March CWP, the Commission was invited to provide information on which CCPs would fall under direct ESMA supervision on the basis of the proposed criteria. Following the above request, the Commission provided a list with nine significant CCPs.

Views of the MS:

During the CWP meeting on 5 March, MS expressed diverging views regarding the proposed framework for determining the significance of EU CCPs and the allocation of supervisory responsibilities between ESMA and NCAs.

MS broadly supported the alignment of the quantitative criteria with those used for the assessment of third-country CCPs, emphasizing the importance of methodological consistency and legal certainty, yet indicating that further technical clarification may be required. One MS, in particular, raised concerns regarding the calibration of the thresholds and argued that the proposed threshold for OTC derivatives may be too low, suggesting that it should be significantly increased. Seven MS stressed that full replication of the TC-CCP framework may not be appropriate and that calibration should reflect the specific characteristics of EU CCPs and the objective of identifying genuinely systemically relevant CCPs at EU level.

During the CWP meeting on 5 March, the Commission reiterated that the proposed criteria for determining CCP significance were chosen for consistency with the third-country CCP framework under EMIR. They also highlighted levels of the thresholds related to the overall business of the CCP were set at lower values in comparison with those used in the third-country CCP framework. This was done to specifically account for differences in supervisory context between CCPs established in the EU and those established in third countries, as well as to reflect the size of the EU market. In addition, according to the Commission, the 'group' criterion aims to improve supervisory efficiency and ensure that all the relevant EU infrastructures belonging to the same group are supervised at the same level by the same supervisor. This is particularly relevant for cross-border groups, which are subject to the supervision of multiple authorities.

Furthermore, while four MS agreed with the Commission on the merits of the group criterion and with the proposal, eleven MS disagreed or raised concerns on its relevance, questioning whether group affiliation adequately reflects the systemic relevance of a CCP and arguing that this criterion may not capture the actual scale of activity or risk exposure of the infrastructure.

Eleven MS expressed support for the proposed MS opt-in mechanism. Although two MS suggested that there should also be the possibility to opt out at a later stage. One MS expressed clear opposition to the mechanism, arguing that it implies a degree of supervisory centralization that it does not support.

Five MS asked for consideration of EU-wide cross-border relevance as an additional or cumulative criterion for determining CCP significance. One of those MS suggested that the level of exposures of EU clearing members should be considered.

During the CWP meeting on 5 March, the Commission noted that introducing a cross-border activity criterion would be technically difficult, as reliable data and appropriate indicators are not readily available and could require new reporting obligations. Moreover, when it comes to the measurement of

EU-wide cross-border relevance considering only clearing members in assessing cross-border relevance would skew the picture as:

i. most clearing is done on behalf of clients, which can be established anywhere in the world and
ii. clearing members may also be established as local subsidiaries of EU groups from another country.

Finally, the Commission emphasized that maintaining alignment with the current framework helps avoid creating diverging methodologies between EU and third-country CCP assessments, which could complicate the supervisory regime.

3.2 *The Presidency Proposals*

It should be noted that amendments to the significance criteria as included in the Commission proposal would amend the number of CCPs subject to ESMA supervision and split groups of FMIs.

The following proposals are presented by the PCY for MS consideration:

3.2.1 Proposal 1: Removal of the FMI group criterion but, keeping a CCP group criterion

Under this proposal, the PCY suggests the removal of the group criterion in point (2)(d)(ii) of Article 22a of the EMIR proposal, according to which "*the CCP belongs to the same group as a CSD or a trading venue for which ESMA is the competent authority.*"

A group criterion would remain as regards groups of CCPs (i.e., ESMA would be the competent authority for all the CCPs of a group that includes at least two CCPs authorised under Article 14 of EMIR, or at least one CCP authorised under Article 14 of EMIR and at least one Tier 2 TC-CCP), but would no longer capture CCPs because of their belonging to the same group as a trading venue/CSD subject to ESMA supervision.

This considers the position of many MS that raised concerns on the relevance of the group criterion, questioning whether group affiliation adequately reflects the systemic relevance of a CCP while recognizing the Commission's concerns about supervisory efficiency when it comes to multiple CCPs in the same group.

Under this option, 8 CCPs would be considered as significant, 4 of which would also be covered by the quantitative criteria.

3.2.2 Proposal 2: Introduction of an 'interoperability arrangement' criterion

As a complement or alternative to the above, and with the aim to reflect the MS view on the importance of introducing or strengthening cross border related criteria for significant CCPs, an 'interoperability arrangement' criterion is proposed by the PCY to be added. Under this proposed criterion, CCPs that enter into interoperability arrangements with any other CCPs (either EU or TC CCPs), in accordance with Article 51 of EMIR, would be considered significant.

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There are three reasons supporting this recommendation. First, the proposed criterion recognises that interoperability links create cross-border systemic interdependencies for interoperable CCPs, thereby justifying their direct supervision by ESMA. Second, the condition would enhance supervisory efficiency, as the Commission proposals already confer on ESMA the competence to approve interoperability arrangements. Third, the condition could encourage broader use of interoperability arrangements and promote market integration by providing CCPs seeking to establish such arrangements with greater reassurance that they will be subject to harmonised supervision by ESMA[1].

Based on this criterion only one additional CCP would be considered as significant.

Question to MS:

5. ***Do MS agree with the proposed amendments to the criteria for determining significance of EU CCPs as described in the above proposals. If not, why?***
6. ***For those MS who support keeping the 1st element of the group criterion (Proposal 1), would MS consider that its application could be further tightened with an additional quantitative threshold in order to ensure that only genuinely significant systemic CCPs fall within the scope of direct ESMA supervision?***

[1] *Opinion of the European Central Bank of 9 April 2026 on proposals as regards the further development of capital market integration and supervision within the Union (CON/2026/13).*

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4. Crypto-Asset Service Providers

During the CWP on 30 March 2026, MS had the opportunity to express their views on the proposed amendments of Regulation (EU) 2023/1114 on Markets in Crypto Assets (‘**MiCAR**’) as introduced in Article 9 of the MISP Master Regulation.

4.1 CASPs authorised pursuant to Article 63 of MiCAR

The majority of MS do not support granting ESMA direct supervisory powers over all Article 63 CASPs. The predominant view of the MS is that any transfer of supervisory responsibilities to ESMA should be limited to CASPs that are considered “significant”, while smaller and primarily domestically oriented entities should remain under the supervision of NCAs. These MS emphasized subsidiarity, proportionality and the value of preserving national expertise and market proximity. Some MS also raised concerns that centralisation could create fragmentation of supervision, given that certain frameworks such as the Anti-Money Laundering (‘**AML**’), Payment Services (‘**PSD**’), would remain supervised at national level.

Several MS expressed broader reservations or outright opposition to transferring any supervision of CASPs to ESMA, citing limited evidence of supervisory divergence, increased costs and bureaucracy, legal constraints, and concerns about disrupting a framework that has only recently been enforced. In contrast, some MS supported direct ESMA supervision, with a limited number of MS explicitly endorsing direct supervision of all Article 63 CASPs in order to ensure a uniform supervisory approach and prevent regulatory arbitrage considering the inherently cross-border and technologically complex nature of crypto-asset activities.

Overall, while there is limited support for full centralisation of supervision, the predominant view among MS being that, if ESMA is to assume a supervisory role, it should generally be limited to significant CASPs, with NCAs continuing to supervise less significant CASPs and, in some cases, participating in a shared supervisory model led by ESMA.

Among MS favouring a significance-based model, there is broad convergence that significance should be determined on the basis of a combination of objective quantitative and qualitative criteria rather than a single threshold. Frequently cited quantitative criteria include the number of active clients, assets under custody or management, transaction volumes or trading activity, revenues generated from MiCAR-regulated services, and the degree of cross-border activity, notably the number of MS in which services are provided. Several MS also referred to other factors such as business model complexity, the range of services offered, outsourcing arrangements, interconnectedness with the broader financial system, and potential implications for financial stability.

One MS proposed using the significance framework of Article 85 of MiCAR as a starting point, whereas another MS proposed introducing a stepwise classification approach where if a primary threshold is not met, other thresholds are checked. A few MS expressed a preference for a framework similar to the one used for classifying asset reference tokens (**‘ART’**s) and electronic money tokens (**‘EMT’**s) as significant in articles 43 and 56 of MiCAR respectively, where an ART or an EMT is considered significant if a number of criteria from a prescriptive list is met.

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4.1.1 The Presidency Proposals

Taking into account the MS views and the repetitively expressed request for objective, measurable and cumulative criteria to ensure legal certainty and predictability for market participants and NCAs alike, the PCY proposes the following criteria and methodology options for classifying CASPs as significant.

4.1.1.1 Criteria for Classifying Significant CASPs

The PCY proposes the following criteria without specific thresholds at this time. The thresholds can be further considered once the Commission provides information on the actual sizes of authorised CASPs.

a. **Total number of active users irrespective of their location:** (i.e. irrespective of whether the services are provided on a cross-border basis or not). Considering that under the current text of Article 85 (‘*at least 15 million active users, on average, in one calendar year, where the average is calculated as the average of the daily number of active users throughout the previous calendar year*’) no CASP qualifies as a significant CASP, the PCY proposes a lower threshold to be determined (e.g. X million active users).

b. **Total number of active users located in a MS other than its home MS:** this is calculated using the same methodology as point a. MS have suggested different ways of capturing the cross-border activities of CASPs such as a binary (yes or no) indicator, the number of host MS and the % of active users. The PCY proposes using the absolute number of cross-border active clients (e.g. X million of active users located in a MS other than the home MS) in order to ensure that genuinely large CASPs are captured and to avoid the paradox whereby smaller CASPs could be classified as significant solely because of a geographically diverse client base. While several MS appear to consider cross-border provision of services as a risk factor in its own right, the threshold for this criterion could be lower than the one under point a. Nevertheless, proposed that it remains sufficiently close so as to avoid excluding a CASP under point a, while at the same time capturing a materially smaller CASP under point b solely because its activities are cross-border in nature. Such calibration would also help mitigate the risk of fragmentation of activities across multiple subsidiaries established to provide services predominantly on a domestic, rather than cross-border, basis, thereby avoiding centralised supervision.

c. **Total value of crypto-assets under custody for CASPs that provide custody services:** since the said service is considered riskier for investors in terms of losses. The PCY proposes to use an average, in one calendar year, using the calculation methodology of point a above for consistency (i.e. the average Total value of crypto-assets under custody in one calendar year, where the average is calculated as the average of the daily Total value of crypto-assets under custody throughout the previous calendar year), with the relevant threshold to be determined (e.g. EUR X billion assets under custody).

d. The **interconnectedness of the CASP with other CASPs**. This criterion aims to capture CASPs that are extensively relied upon by other CASPs for the provision of crypto-asset services and whose disruption could therefore have broader market implications. Possible thresholds could be formulated on the basis of:
    i. the average value of crypto-assets under custody on behalf of clients of other CASPs;

ii. the volume or value of client transactions executed, settled, or transmitted to this CASP by other CASPs; and/or
iii. the number of other CASPs relying on the CASP for the provision of critical services.

e. The **interconnectedness of the CASP with the wider financial system**. This criterion aims to capture CASPs whose activities create material links between the crypto-asset sector and the wider financial system, such that their distress or disruption could generate broader contagion risks. Possible thresholds or indicators could be formulated on the basis of the level of exposure of regulated financial entities (including credit institutions, investment firms, payment institutions, e-money institutions, insurance undertakings, or financial market infrastructures) to the CASP, including through provision of accounts, custody arrangements, settlement services, or processing of crypto- asset related flows

4.1.1.2 Proposed Methodology for Classifying Significant CASPs

The PCY proposes that a CASP shall be classified as significant on the basis of whether **at least two of the five criteria** mentioned above are met during:

- the period covered by the first report of information by the NCA following authorisation, or
- during the period covered by at least two consecutive reports of information by the relevant NCA.

In such a scenario, supervision of the CASP shall be transferred to ESMA. This classification methodology and the criteria above should be introduced in the reinstated and amended Article 85.

CASPs should be reporting the information on the criteria to their NCA and ESMA.

ESMA shall be assessing the classification annually and **a significant CASP can be deemed as non-significant if it does not meet two of the five criteria for at least two consecutive reports**, in which case the supervision should return to the NCA.

Questions to MS

7. Do MS agree with the list of criteria presented above?

7a. If yes, do MS have any evidenced based proposals in relation to the appropriate thresholds?
7b. Do MS agree that the threshold under point (b) should remain sufficiently close to that under point (a) to mitigate the risk of fragmentation and avoid the paradox whereby CASPs with relatively limited overall activity are classified as significant due solely to a geographically dispersed client base? If not please provide alternative solutions and the relevant rationale.
7c. Do MS believe that the qualitative criterion of interconnectedness with the financial system is adequate or needs further framing? Do MS believe that it should be quantified through a delegated act or specific quantitative thresholds should be included in Level I?
7d. If MS believe that the criteria are not comprehensive enough, please explain which additional criteria are needed (along with proposed evidenced based thresholds) and what are they additionally capturing?

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8. ***Do MS agree with the proposed methodology for classifying a CASP as significant? In particular, do MS agree with the need for at least two of the five criteria to be met at authorisation or in two consecutive years?***
9. ***Do MS agree with the proposed CASP reporting obligations to their home NCA and ESMA? If not, please explain.***
10. ***Do MS agree that if a significant CASP does not meet the significance criteria for two consecutive years, the supervision should return to the NCA?***

    10a. If yes, should the process for transferring the supervision be set out in Level 2?
    10b. Do MS have any further comments?

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4.2 Entities allowed to provide Crypto-Asset Services pursuant to Article 60 of MiCAR

In relation to Article 60 CASPs, the MS written comments revealed that as regards the proposal to transfer to ESMA the supervisory functions and duties arising under other sectoral legal acts, the majority expressed significant reservations and consider that supervisory responsibilities under other sectoral legislation should remain with the NCA that issued the original authorisations and possesses the relevant technical expertise.

The MS explicitly opposing the transfer of such powers to EMSA cited concerns relating to proportionality, duplication of supervisory structures, increased administrative costs, and the risk of creating an uneven playing field whereby identical regulated activities would be supervised by different authorities depending solely on whether the entity also provides crypto-asset services.

Several MS also questioned whether ESMA currently has the operational capacity and sector-specific expertise necessary to supervise activities beyond its established mandate.

A few MS were supportive of the full transfer of supervisory responsibilities, including under other sectoral legislation, when an Article 60 CASP meets the relevant threshold.

There is a cautious approach towards the Commission proposal to confer direct supervisory powers to ESMA for Article 60 CASPs whose main activity is the provision of crypto-asset services, and to transferring to ESMA the supervision of other sectoral legislations. The responses indicate that, while several MS recognise the rationale for greater centralisation in respect of entities whose business is predominantly focused on crypto-asset services. However, there is limited support for an automatic transfer of supervisory responsibility based solely on a turnover-based "main activity" criterion and for the extension of ESMA's remit to non-crypto activities authorised under other Union legislation.

MS argued that while the turnover offers a simple and objective metric on determining whether crypto-asset services constitute the main activity of an Article 60 entity, several MS considered that exclusive reliance on the proposed criterion will not accurately reflect the size, risk profile or systemic relevance of the entity, and could at the same time lead to legal uncertainty and operational disruption, with fluctuations resulting in repeated transfers of supervisory responsibility between ESMA and NCAs.

Regarding the principle of direct ESMA supervision of Article 60 CASPs, several MS remain, in principle, opposed to it, while some MS indicated, as a fall-back, that any enhanced role for ESMA should be narrowly circumscribed and subject to the same significance-based approach as that proposed for Article 63 CASPs.

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4.2.1 The Presidency Proposals:

In light of the views express by MS, consistent with the predominant position expressed by MS, the PCY proposes that supervisory responsibilities arising under other sectoral Union legislation remain with the NCAs, including AML and DORA supervision and **sets out the following two options for MiCAR supervision**:

4.2.1.1 Option 1: Significant Article 60 CASPs to ESMA

The supervision of Article 60 entities is transferred to ESMA where they meet the same thresholds and methodology as Article 63 CASPs above. However, in the case of Article 60, where CASPs are subject both to MiCAR and to other EU financial services frameworks, supervisory responsibilities for overlapping requirements (e.g. governance, internal control functions, shareholders, risk management and internal audit) will arise. This creates complexities and may be organised either under a single competent authority or split according to the applicable regulatory framework. The latter case, might not be straightforward, as the respective supervisors may not have visibility of the needs arising from activities they do not supervise and/or their requirements may affect the operations of activities they do not directly oversee. Where ESMA assumes direct responsibility for the supervision of crypto-asset services, appropriate cooperation arrangements should be established between ESMA and the relevant NCAs to ensure effective coordination, efficient information exchange and supervisory continuity.

4.2.1.2 Option 2: Article 60 entities remain under national supervision

This approach provides a clear and operationally straightforward framework, ensuring that entities operating in the crypto-asset space by virtue of their status as other sectoral institutions, continue to be supervised by their existing NCAs. However, there may be cases where Article 60 entities reach a comparable level of scale, complexity, and cross-border activity, while nevertheless remaining subject to national supervision.

In the case of this option, the PCY proposes that an obligation of enhanced cooperation and coordination with ESMA be introduced where such entities exceed the relevant thresholds set out for Article 63 CASPs. Such cooperation would be limited to matters falling within the scope of MiCAR and would include coordination on supervisory priorities and supervisory plans, as well as the exchange of supervisory findings, risk assessments, and supervisory views between NCAs and ESMA, insofar as these relate exclusively to MiCAR-related requirements.

In line with the above options, the PCY also proposes the reinstatement of Article 65 on the cross-border provision of crypto-asset services. This proposal reflects the view expressed by the majority of MS that Article 60(7) on its own does not provide enough information to NCAs in relation to cross-border activities.

Questions to MS:

11. ***Which option do MS support for the supervision of Article 60 entities and why:***
    a. ***Option 1 (transfer of supervision to ESMA where thresholds are met) or***
    b. ***Option 2 (continued national supervision with enhanced coordination with ESMA)?***
12. ***(Option 1) In the case of direct ESMA supervision, how should supervisory responsibilities be organised where Article 60 entities are also subject to other EU financial services frameworks, particularly with regard to overlapping requirements such as governance, qualifying holdings,***

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internal control functions, risk management, internal audit and how should potential overlaps between ESMA and NCAs be managed in practice?

13. ***(Option 2) Under a national supervision model with enhanced coordination, how should such coordination be operationalised in practice (e.g. supervisory priorities, supervisory plans, and exchange of supervisory findings and risk assessments) to ensure consistency across the Union?***
14. ***Do MS have any additional views or alternative approaches regarding the supervision of Article 60 entities that are not captured in the options above?***

4.3 Title of VI of MiCAR on prevention and detection of Market Abuse

The comments received by the PCY indicate support by several MS for the Commission's proposal for ESMA to be responsible for monitoring and enforcement actions against market abuse in relation to all crypto-asset activities, irrespective of whether the CASP is directly supervised by ESMA. A number of MS considered that entrusting ESMA with responsibility for market abuse surveillance and enforcement could enhance consistency, reduce fragmentation and strengthen the overall integrity of the Union crypto-asset market. Several MS highlighted that ESMA's Union-wide visibility over transaction data, suspicious transaction reports and market developments would enable more effective detection of market abuse and unauthorised activities than could be achieved through a decentralised supervisory model.

At the same time, support for the proposal was generally accompanied by a strong emphasis on the need to preserve an important operational role for NCAs stressing that market abuse investigations often require close cooperation with national law enforcement authorities, financial intelligence units and other domestic bodies, as well as the use of national legal powers and on-site investigative tools. Several MS therefore underlined the importance of establishing clear and detailed cooperation arrangements, information exchange, escalation procedures and the allocation of enforcement responsibilities between ESMA and NCAs, in order to avoid duplication, ensure timely intervention and maintain legal certainty.

On the other hand, some MS expressed reservations regarding the proposed market-abuse centralisation on grounds of subsidiarity, proportionality and practical effectiveness. More specifically, a few MS argued that prudential supervision and market abuse enforcement are closely linked and should remain under the responsibility of the same NCA, with one MS cautioning that the investigation of unauthorised activities is deeply rooted in national legal and enforcement frameworks and may be less effective if conducted at Union level due to additional coordination requirements and possible delays. Lastly, one MS indicated that the principle of limiting ESMA supervision to significant CASPs, should be considered in the context of market surveillance.

4.3.1 The Presidency Proposal

In line with the views express by MS, PCY sets out the following two options:

4.3.1.1 Option 1: ESMA centralised monitoring and enforcement

ESMA is entrusted with responsibility for Union-wide market abuse surveillance and enforcement in relation to crypto-asset markets, irrespective of whether CASPs are directly supervised by ESMA. NCAs would continue to play an important operational role, in particular in supporting investigations and

exercising national enforcement powers where required, under clearly defined cooperation, escalation, and information-sharing arrangements between ESMA and NCAs.

4.3.1.2 Option 2: Split supervision (with MIDAS support)

Market abuse monitoring and enforcement remain with the competent authority under MiCAR, namely with ESMA for significant CASPs and the NCAs for non-significant CASPs. In such case, NCAs could continue relying on the centrally developed parameters and monitoring solution MIDAS, under which NCAs have delegated to ESMA the development of a centralised monitoring tool, thereby supporting a more harmonised detection capability while preserving national enforcement competences. NCAs would continue to use existing national legal powers, investigative tools, and cooperation channels with domestic authorities, including law enforcement authorities and financial intelligence units.

Question to MS:

15. ***Do MS consider that the MIDAS-based centralised monitoring solution, provides a sufficient basis for effective and consistent market abuse surveillance under Option 2, or do MS consider that a further centralisation of monitoring (potentially through MIDAS) and enforcement responsibilities at ESMA level (Option 1) would be more appropriate?***

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