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Presidency Discussion Paper
Market Integration and Supervision Package
ESMA Governance

28 May 2026

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1. Introduction

During the Council Working Party ('**CWP**') on 31 March 2026, the Presidency ('**PCY**') held an initial exchange of views on Article 1 of the Commission proposal revising Regulation (EU) No 1095/2010, in particular as regards the proposed amendments to the governance framework of the European Securities and Markets Authority ('**ESMA**') in light of its expanding responsibilities.

During that meeting, Member States ('**MS**') engaged in a discussion based on the Presidency non-paper of 31 March 2026 ('PCY' non paper) on "ESMA Governance", addressing particularly the following key provisions:

1. Accountability of ESMA vis-à-vis the Council (Article 3)
2. Composition and appointment of the Executive Board (Article 44a)
3. Appointment procedures for the Chairperson, Vice-Chairperson and Executive Director (Articles 48 and 51)
4. Decision-making arrangements within the Executive Board
5. Independence of the Executive Board (Article 46)
6. Participation of Executive Board members in the Board of Supervisors and related voting rights (Articles 40(1)(ba) and 44(1))
7. Allocation of responsibilities between the Board of Supervisors and the Executive Board (Articles 43 and 46a)
8. Internal committee structure and the respective roles of the Executive Board and the Board of Supervisors (Articles 41 and 45c)
9. Establishment and functioning of sub-committees (Article 57)

Following the CWP discussion, MS were invited to submit written comments in response to the thematic questions set out in the PCY non-paper of 31 March 2026.

The purpose of this non-paper is to consolidate the positions expressed by MS on the key elements proposed for ESMA Governance. It aims to provide an overview of areas where preliminary convergence may be identified, while highlighting issues that will require further discussion and potential compromise to advance negotiations. Building on both the CWP discussions and the written comments received, this non-paper, where appropriate, puts forward options to guide further technical work.

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2. Composition and Appointment of the Executive Board (Art 44a)

Relevant Article: 44a

The discussions on the proposed introduction and design of the Executive Board ('**EB**') reveal a broad recognition among MS that the evolution of ESMA's tasks, particularly in relation to direct supervision, necessitates adjustments to its governance structure. At the same time, views diverge significantly on the appropriate scope, composition and institutional balance of such reform.

2.1. Introduction of the Executive Board

A number of MS expressed support for the establishment of an EB, considering that a more streamlined governance structure could contribute to more efficient and agile decision-making, particularly in the context of direct supervision. A few of these MS underlined that the proposed model could enhance ESMA's capacity to act in a more European-oriented manner and respond more effectively to market developments.

However, this support is, in most cases, conditional. Some MS stressed that any new governance framework should preserve the central role of the Board of Supervisors ('**BoS**') and ensure continued, meaningful involvement of national competent authorities ('**NCAs**') in supervisory decision-making. A few MS linked their support for the EB to the outcome of discussions on the overall supervisory architecture.

A limited number of MS expressed reservations regarding the introduction of the EB. These delegations raised concerns that the proposal could weaken the current NCA-driven governance model and reduce the representation of national authorities, in particular from smaller markets. Some concerns were also raised regarding the concentration of decision-making powers in a limited number of independent members, as well as the legal basis of certain elements of the proposal under the Treaties.

2.2. Composition of the Executive Board

Against this background, the composition of the EB has emerged as a key point of discussion. A number of MS supported the composition proposed by the Commission, including the absence of permanent NCA membership, noting that this could enhance independence and reduce potential conflicts of interest. However, a significant number of MS expressed concerns and in particular, they stressed the importance of ensuring adequate involvement of NCAs, highlighting the need to preserve access to local market knowledge and maintain proximity to supervised entities.

In particular, several MS called for mechanisms to ensure NCA participation in the work of the EB, such as observer status or structured consultation arrangements. Others emphasised the importance of geographical balance, to ensure broad representation. Some MS also suggested revisiting the number of members of the EB, either to ensure a broader range of expertise or to improve decision-making dynamics, including through the use of an odd number of members.

Strong reservations on the proposed composition were expressed by a limited number of MS, which considered that the concentration of supervisory powers in a small group of independent members could undermine checks and balances as well as disadvantage smaller markets.

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2.3. ECB and other Central Banks participation

The involvement of the European Central Bank ('**ECB**') and other Central Banks in the context of supervisory discussions relating to CCPs and CSDs was generally supported across MS, although views differ on the appropriate modalities. Some MS supported the Commission's proposal to grant the ECB and central banks a consultative, non-voting role, considering that this would allow ESMA to benefit from their expertise while preserving institutional balance. At the same time, some MS called to align arrangements with existing sectorial frameworks.

2.4. Appointment of Executive Board Members

Turning to the selection criteria for EB members, a substantial number of MS considered the proposed criteria broadly sufficient, although some MS called for further specification or extension of the criteria at Level 1. At the same time, a number of MS also emphasised the importance of aligning the criteria with existing EU frameworks. One MS raised more fundamental concerns, arguing that an appropriate balance in terms of supervisory background, geographical origin and gender, may be difficult to achieve in practice given the limited size of the EB.

Significant divergences were observed regarding the role of the Commission in the process of appointing the EB members. Many MS advocated for entrusting the preparation of the shortlist to the BoS, in line with the current procedure for the appointment of the Chairperson.

By contrast, a small number of MS supported the proposed Commission's role in preparing the shortlist, noting that this could contribute to safeguarding the European interest and ensuring geographical balance, as well as aligning with the model adopted for the Anti-Money Laundering Authority ('**AMLA**').

A few MS expressed intermediate positions, indicating openness to both approaches while calling for further clarification of the rationale for the proposed model.

2.5. Duration of the mandate of Executive Board members

Finally, with regard to the duration of the mandate of EB members, many MS supported the proposed five-year term, renewable once for an additional two years (5+2), considering that this strikes an appropriate balance between continuity and independence.

Nevertheless, several MS raised concerns regarding the proposal that relate to short-term incentives linked to the possibility of renewal, the overall length of the mandate and the need to ensure stability in governance. In this context, alternative approaches were suggested, including longer non-renewable mandates, different renewal structures (such as 4+4 or 4+2 years), or the introduction of staggered terms to avoid simultaneous turnover of EB members.

2.6. Conclusion

In conclusion, while many MS expressed support for the introduction of an EB, in principle, this support is often conditional upon ensuring appropriate checks and balances, preserving the central role of the BoS and maintaining meaningful involvement of NCAs.

Concerns were raised regarding the potential concentration of powers and the representation of smaller markets, as well as the risk of weakening the existing NCA-driven governance model.

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Divergences were also identified on key elements, including the composition of the EB, the role of the Commission in the appointment process, and the appropriate level of involvement of NCAs.

Following the discussion, which highlighted the need for governance reform to ensure a balanced approach combining efficiency, independence and MS involvement, MS are invited to consider the following proposal.

The EB would be composed of the Chairperson and six (6) independent members, combined with the participation of relevant NCA(s) where decisions concern entities established in their jurisdiction.

The addition of one independent member in the composition of the EB would respond to concerns raised by a number of MS regarding both geographical balance and the need to ensure a broader range of expertise within the EB. At the same time, the involvement of relevant NCA(s) would reflect the position expressed by a significant number of MS for stronger NCA participation in the decision-making process, in particular in relation to decisions with direct implications at national level. Such an approach would contribute to preserving local market knowledge and supervisory expertise, while addressing concerns regarding the weakening of the NCA-driven governance model and the representation of smaller markets. It would also respond to concerns related to transparency, accountability and trust in the decision-making process.

Against this background and provided that this overall approach receives sufficient support, the PCY would invite MS to reflect further on the appropriate level and form of NCA involvement in the EB. Particularly MS are invited to indicate their preferred approach among the following policy options:

Option 1: The relevant NCA(s) would participate as full members of the EB, with voting rights, where decisions directly concern entities established in their jurisdiction. Supervisory decisions would therefore be taken by a composition of an "extended EB", i.e. composed of the EB and the directly concerned relevant NCA(s), acting by simple majority.

Option 2: The relevant NCA(s) would participate in the EB as observers, with full access to discussions but without voting rights, where decisions concern entities established in their jurisdiction.

Option 3: The EB would be required to seek a non-binding opinion from the relevant NCA(s) on draft decisions directly concerning entities established in their jurisdiction and to provide reasons where it decides to deviate from that opinion.

Questions to MS

1. ***Which of the 3 options do MS prefer? Do MS consider that any further adjustments are necessary? Please explain.***

Regarding the other elements regulated under Article 44a of the Commission proposal, the PCY would also invite MS to reflect on the following possible options:

1. **Appointment procedure:**

   Align the appointment procedure for EB members with that of the Chairperson, with the BoS preparing the shortlist and the Commission playing a supporting or advisory role. This would

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respond to the preference expressed by a large majority of MS for a stronger role of the BoS in appointments. It is considered that BoS is particularly well-placed to assess the appointment criteria, including the technical qualifications, supervisory experience and market expertise required for the role.

2. **Selection criteria:**

   Strengthen the appointment criteria for independent EB members, including through possible alignment with Joint ESA standards[1], in order to ensure a diverse and high-quality skillset within the EB.

3. **Staggered mandates:**

   Introduce staggered mandates for the initial appointment of EB members in order to ensure continuity and stability in the functioning of the EB and avoid simultaneous turnover of all members.

4. **Participation of Central Banks of Issue:**

   Allow Central Banks of Issue of non-euro area-EU currencies of the instruments cleared or settled by the CCP/CSD, to participate in relevant EB discussions concerning, with no voting, thereby ensuring the appropriate involvement of key stakeholders while preserving the overall institutional balance.

Question to MS:

2. ***Do MS agree with the above possible options? If yes, are further adjustments necessary? If not, why?***

[1] Joint European Supervisory Authorities' criteria on the independence of supervisory authorities (JC 2023 17), https://www.esma.europa.eu/sites/default/files/2023-10/JC_2023_17_Joint_ESAs_Supervisory_Independence_criteria.pdf, with particular emphasis on page 10 (-3.2 Selection criteria).

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3. Decision Process and Non-Objection Procedure

Relevant Articles: Articles 44(1) and 44b

Discussions on Article 44b indicate a general recognition among MS of the need to establish a structured and efficient decision-making framework for the EB. At the same time, divergences emerge regarding the design and practical functioning of the proposed non-objection procedure in the BoS, the balance of powers between the EB and the BoS and the safeguards necessary to ensure effective oversight by MS.

3.1. Non-objection procedure

Many MS expressed support in principle for the introduction of a non-objection procedure, with one MS highlighting that the mechanism could ensure agility in supervisory decisions, while maintaining BoS oversight.

Nevertheless, this support is largely qualified. A significant number of MS stressed the need to ensure that the BoS retains a meaningful and effective role in supervisory decision-making and raised concerns that the proposed design may limit BoS ability to exercise oversight. Several MS called for safeguards, including lowering the objection threshold, extending timelines and strengthening the involvement of BoS. In this context, some MS argued that decisions directly affecting NCAs—such as breach of Union law, failure in supervision, or peer reviews- should remain within the competence of the BoS or be subject to stronger oversight.

By contrast, a limited number of MS expressed opposition to the proposed non-objection procedure. These MS raised concerns that the combination of a high objection threshold and short timelines would render the mechanism ineffective and weaken BoS oversight. They also pointed to potential conflicts of interest arising from the participation of EB members in the BoS, arguing that this could further reduce the likelihood of objections being raised in practice.

3.2. Two-thirds majority requirement

A central issue emerging from the discussions concerns the two-thirds majority requirement for objecting to the EB's decisions in BoS. While one MS explicitly supported maintaining this threshold as a necessary safeguard to prevent excessive use of veto powers and ensure operational efficiency, a large number of MS questioned its appropriateness. MS raised concerns that the threshold is too high to be operational in practice, particularly in combination with short objection periods, rendering the objection procedure largely theoretical.

In this context, several MS proposed alternative approaches. A few MS suggested lowering the threshold to a simple or qualified majority, while others proposed introducing a minimum number threshold (e.g. at least 5 voting members). One MS also suggested differentiating thresholds depending on the type of the decision, in order to strike a more proportionate balance.

In addition, many MS stressed that the effectiveness of the objection procedure is dependent on the quality, completeness and timeliness of information flows from the EB to the BoS. In this context, some MS requested procedural guarantees, including the provision of comprehensive

documentation, early notification of draft decisions, as well as mechanisms to ensure that the BoS can adequately assess decisions within the available timeframe.

3.3. Timelines

The proposed timelines, including the ten-day objection period and the 48-hour deadline in emergency situations, were also widely discussed. While some MS expressed general acceptance, often subject to adequate information flows, other MS considered the deadlines to be too short, particularly for smaller authorities with limited resources. Some MS highlighted the need to strike a better balance between urgency and effective scrutiny, suggesting mechanisms to extend deadlines or differentiate between types of decisions (e.g. crisis/emergencies).

3.4. Rules of Procedure

Regarding the allocation of procedural details between L1 and the Rules of Procedure, a number of MS expressed general support for leaving certain operational aspects to the Rules of Procedure. However, other MS stressed that key elements should be defined in L1, including voting thresholds, timelines and information requirements.

3.5. Commission triggering a second reading

Finally, discussions on the Commission's role in triggering a second reading on budgetary matters indicate a more balanced position amongst MS. A number of MS supported or accepted the mechanism, recognising the Commission's role as guardian of the Union's financial framework. At the same time, several MS expressed conditional support, stressing the need to ensure that the mechanism remains narrowly framed, limited to compliance with financial and staff regulations, and does not undermine the EB's independence.

3.6. Conclusion

In conclusion, while there is general openness among MS to establishing a more efficient decision-making framework for the EB, discussions highlighted that this would depend on ensuring a genuine and effective role for the BoS. Significant concerns remain regarding the practical functioning of the non-objection procedure, particularly the combination of a high objection threshold, short timelines and limited information flows, which may constrain the ability of MS to exercise meaningful oversight.

- **Threshold**

Against this background, which highlighted the need to explore adjustments to the design of the proposed procedure, including its thresholds, the PCY would invite MS to indicate their preferred approach among the following **policy options**:

Option 1

Maintain the non-objection procedure in the BoS for decisions listed in Article 44b(2) of the Commission proposal and adjust the objection threshold notably by replacing the two-thirds majority required with a lower threshold (e.g. qualified majority, simple majority or a minimum number of BoS members, such as five).

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Provided that this overall approach receives sufficient support, the PCY would invite MS to reflect further on the appropriate threshold to be introduced for BoS to object to EB's decision and in particular to indicate which of the following options is preferable:

(i) Simple majority
(ii) Qualified majority
(iii) Two-thirds majority (as is proposed by the Commission) but removing the EB members' voting rights (see Section 4 below for further discussion/Q.10).

Option 2

Extend the scope of the non-objection procedure to all decisions adopted by the EB and retain the two-thirds majority requirement for an objection by the BoS.

Option 3

Extend the scope of the non-objection procedure to all decisions adopted by the EB and adjust the objection threshold notably by replacing the two-thirds majority required with a lower threshold (e.g. qualified majority or a simple majority).

Provided that this overall approach receives sufficient support, the PCY would invite MS to reflect further on the appropriate threshold to be introduced for BoS to object to EB's decision and in particular to indicate which of the following options is preferable:

(i) Qualified majority
(ii) Simple majority

Question to MS:

3. ***Which of the 3 Options do MS prefer. Do MS consider that any further adjustments are necessary? Please explain.***

- **Timelines**

In order to provide greater flexibility and efficiency, the PCY would invite MS to reflect on the following possible option regarding timelines applicable to decision-making within the BoS:

The suggestion is to maintain the ten (10) day objection period, providing additionally for the possibility **to extend** the objection period once at the request of NCA(s) by [X] days, except in emergency cases. In emergency cases, specific ex post accountability mechanisms could be envisaged.

In this context, the following **questions arise for the MS**:

4. ***Should the possibility to extend the objection period be limited to duly justified and/or particularly complex cases?***
5. ***What would be an appropriate duration for such an extension (e.g. up to 15-20 days)?***
6. ***Should the extension possibility be limited to a single extension only?***
7. ***What level of support within the BoS should be required in order to grant an extension of the objection period?***

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Against this background and provided that this overall approach receives sufficient support, PCY would invite MS to indicate their preferred approach among the following policy options regarding the **ex-post accountability mechanisms in case of emergency situations**:

Option 1:

The EB to present and discuss its decision at a subsequent meeting of the BoS.

Under Option 1 the EB would be allowed to adopt decisions with immediate effect, subject to subsequent discussion and scrutiny by the BoS. Under such an approach, the EB would be required to present and explain the decision at a subsequent meeting of the BoS, including the reasons justifying the urgency of the measure and the considerations underlying its adoption. This would allow the BoS and NCAs to discuss and scrutinise the decision and ensure appropriate transparency and accountability, while preserving the EB's ability to act rapidly where immediate action is required.

Option 2:

The EB's decision to apply provisionally pending subsequent review by the BoS within a limited timeframe.

Under Option 2, decisions adopted by the EB would apply for a limited period, and may only be extended pending subsequent review by the BoS. The mechanism would be akin to the one under Article 28 of the Short-Selling Regulation[2], whereby ESMA (specifically the EB) would take a measure of a temporary nature which would be subsequently reviewed by the BoS to determine whether to extend its validity or not. Such a mechanism would aim to preserve the EB's ability to act swiftly in emergency situations, while ensuring that the BoS retains an effective oversight and accountability role.

In this context, the following questions arise for MS for the procedure under Option 2:

8. ***What would be an appropriate timeframe for the BoS to review decisions adopted provisionally by the EB in urgent situations?***

- **Information requirements**

The effectiveness of the mechanism would be reinforced through strengthened information requirements. This would ensure that the BoS receives complete and timely documentation at the start of the objection period, thereby enabling informed scrutiny.

Generally, this approach seeks to respond to concerns raised by a large number of MS regarding the practical functioning of the proposed non-objection procedure, in particular the combination of short deadlines and high objection thresholds, which several delegations considered could significantly limit the ability of the BoS to exercise meaningful oversight in practice.

[2] Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps

At the same time, the proposed adjustments would preserve the operational capacity of the EB to act swiftly in urgent or market-sensitive situations, while strengthening accountability, transparency and the role of NCAs within ESMA's governance framework.

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4. Participation of EB Members in the BoS and Voting Rights

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

The discussions on the participation of EB members in the BoS highlighted divergences among MS, in particular regarding the institutional balance, the role of NCAs, and the design of effective checks and balances within ESMA's governance framework.

4.1. Participation

A few MS expressed support, in principle, for the participation of EB members in the BoS, with one MS emphasising that such an arrangement could enhance information flow, ensure greater coherence between the two bodies, and strengthen the European dimension in decision-making, while allowing the BoS to benefit from the expertise and experience of EB members.

By contrast, some MS either opposed or expressed reservations regarding the participation of EB members as full members of the BoS, particularly where accompanied by voting rights. These MS raised concerns about the risk of weakening the NCA-driven nature of the BoS and the potential for conflicts of interest, especially where EB members would participate in reviewing their own decisions.

However, a significant number of MS adopted a conditional or cautious approach, indicating openness to EB participation in the BoS but only under certain safeguards. These MS stressed the need to preserve institutional balance and ensure that NCAs remain at the core of decision-making.

4.2. Executive Board Members voting in BoS

In this context, the question of **voting rights for EB members in the BoS emerged as a central and highly contested issue**.

A majority of MS opposed granting voting rights to EB members altogether, stressing the need to preserve the decision-making role of NCAs within the BoS and arguing that voting rights should remain with national authorities in order to ensure accountability and institutional balance, avoid conflict of interests and preserve clarity in roles. Some MS advocated against membership of EB members in the BoS, while allowing them to participate in discussions.

Another group of a few MS expressed support for a more limited approach to voting rights. They recognised the potential benefits of EB participation but called for safeguards to prevent conflicts of interest and preserve checks-and-balances, such as excluding EB members from voting on decisions originating from the EB or within their areas of responsibility or limiting EB voting rights to single collective vote.

Only one MS expressed clear support for full voting rights for EB members, as proposed by the Commission.

4.3. Conclusion

In conclusion, while there is some openness to enhancing interaction between the EB and the BoS, the discussions revealed that voting arrangements raise fundamental questions regarding

institutional balance. A clear majority of MS expressed concerns about granting voting rights to EB members, pointing to risks of conflicts of interest and a potential weakening of the NCA-driven governance model.

In light of concerns expressed by a significant number of MS, an alternative approach could consist in allowing EB members to participate in discussions of the BoS **without granting them voting rights.**

Under this approach, EB members would continue to participate in BoS discussions in order to ensure effective information-sharing, institutional coherence and operational coordination between the two bodies.

This option would seek to preserve the central role of the BoS within ESMA's governance framework and respond to concerns expressed by several MS regarding:

- the need to maintain the NCA-driven nature of the BoS;
- the importance of preserving appropriate checks and balances within ESMA;
- the risk of conflicts of interest where EB members participate in the review of their own decisions; and
- the need to ensure continued trust and legitimacy in ESMA's governance arrangements.

At the same time, this approach would preserve the benefits identified by some MS in ensuring close interaction between the EB and the BoS, including improved information flows, greater consistency between strategic and supervisory activities and the possibility for the BoS to benefit from the expertise and operational experience of EB members.

Question to MS:

9. ***Against this background PCY invites MS to reflect on the aforementioned option.***
10. ***Provided that MS support allowing EB members to participate in discussions of the BoS without granting them voting rights, would MS consider retaining the Commission's proposal of keeping the 2/3 majority requirement for objecting to the EB's decisions in BoS?***

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