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Presidency Discussion Paper
Market Integration and Supervision Package
Operationalising the Day-to-Day Supervision of Significant Entities

28 May 2026

Introduction

Following the discussions held during the Council Working Party meetings of 30 and 31 March, as well as subsequent written comments from Member States ('**MS**'), the Presidency ('**PCY**') notes broad support for establishing a structured cooperation framework between the European Securities and Markets Authority **('ESMA')** and National Competent Authorities ('**NCAs**'), particularly in the context of ESMA's potential direct supervisory responsibilities.

While the balance between the Executive Board ('**EB**') and the Board of Supervisors ('**BoS**') remains central, the overall system also depends on how supervisory tasks are carried out in practice.

Under the Commission proposal, the exact practical modalities of ESMA's day-to-day supervision are not fully specified in the Level 1 text and would instead be further developed by ESMA, granting this power to the EB, through cooperation arrangements pursuant to Article 8a. This has raised concerns regarding cost allocation as well as the role of NCAs within the future proposed framework.

Heeding the calls from a significant number of MS, this PCY paper seeks to examine questions of governance through the lens of operational reality.

Sections 1 and 2 lay out in detail the questions that have been brought forward by MS, including during the 5 May ECOFIN by the Ministers.

Section 3 will bring to delegations' attention a series of policy options that the Presidency believes could pave the way for sufficient progress to be made at the June 12 ECOFIN.

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1. Operationalising the Day-to-Day Supervision of Significant Entities

1.1. Governance and Institutional Balance

Several MS requested additional clarification at Level 1 on the respective roles and responsibilities of ESMA and NCAs, including task allocation, governance arrangements, information-sharing obligations and cost allocation principles.

A number of MS also requested clearer escalation mechanisms in situations where disagreements arise between ESMA and NCAs or where operational responsibilities overlap.

Several MS further questioned whether cooperation arrangements should be determined solely by the EB and suggested a stronger involvement of the BoS. Specifically, MS suggested that the BoS should play a formal role in the approval, endorsement or oversight of cooperation arrangements, particularly where such arrangements directly affect NCA responsibilities, resources or operational involvement.

1.2. Scope and Legal Basis of the Cooperation Arrangements

A recurrent concern raised by a number of MS relates to the wording requiring NCAs to "follow ESMA instructions". Several MS argued that cooperation arrangements should not create a hierarchical relationship between ESMA and NCAs or lead to de facto subordination of national authorities.

Several MS also stressed the importance of preserving the role and operational capacity of NCAs, particularly where national authorities would continue to perform supervisory tasks or provide operational support to ESMA.

1.3. Operational Functioning and Transitional Arrangements

Several MS also highlighted the need to clarify the practical functioning of cooperation arrangements in situations where responsibilities remain shared between ESMA and NCAs, including a possible transition phase.

A few MS requested a clearer distinction between:

- the steady-state supervisory framework applicable once ESMA supervision becomes fully operational, and
- transitional arrangements applicable during the transfer of supervisory responsibilities.

1.4. Cost Allocation and Reimbursement

Concerns were also raised regarding the potential operational and resource implications for NCAs, including the maintenance of expertise and the financing of tasks performed in support of ESMA.

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Many MS stressed that NCAs should not bear unfunded operational obligations arising from ESMA supervision and requested clear principles regarding reimbursement.

In particular, MS suggested that cooperation arrangements should explicitly provide for full reimbursement by ESMA of costs incurred by NCAs when carrying out tasks on behalf of ESMA, including:

- staff costs,
- on-site inspections,
- data gathering,
- operational support, and
- participation in supervisory activities.

Some MS also requested greater predictability regarding:

- budgetary planning
- methodologies for cost allocation, and
- timelines for reimbursement.

1.5. Sector Specific Considerations and Supervisory Models

Concerns were also raised regarding the possible use of cooperation arrangements for supervisory convergence purposes beyond situations involving direct ESMA supervision.

Several MS questioned whether Article 8a should be used in the context of supervisory convergence activities, stressing that convergence tools and coordination mechanisms are already governed by existing ESMA procedures and the BoS framework.

They considered that extending Article 8a beyond direct supervision could blur the distinction between direct supervision and convergence tasks and lead to an indirect expansion of ESMA's operational role vis-à-vis NCAs.

The majority of the MS were more open to a broader use of cooperation arrangements, provided that:

- the scope and safeguards are clearly defined at Level 1; and
- NCAs remain appropriately involved in decision-making and implementation.

Several MS referred to existing EU supervisory frameworks, including the Single Supervisory Mechanism ('SSM') and Anti-Money Laundering Authority ('AMLA'), as possible sources of inspiration for the organisation of cooperation between ESMA and NCAs.

In particular:

- MS referred specifically to Joint Supervisory Teams ('JSTs') as a possible operational model to ensure structured NCA involvement in ESMA supervisory activities.
- some MS highlighted the relevance of such arrangements in the context of CCP supervision given the cross-border nature, systemic importance and financial stability implications of CCP activities. In this context, MS also considered that structured operational involvement of NCAs would help preserve supervisory expertise at national level and facilitate access to local market knowledge and supervisory information.

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- A few MS also referred to supervisory colleges as a possible source of inspiration for sector-specific cooperation arrangements, particularly in areas where responsibilities remain shared between ESMA and NCAs.

Some MS also suggested that cooperation arrangements may need to be calibrated differently depending on:

- the sector concerned
- the type of entity supervised,
- supervisory intensity
- financial stability risks, and
- the degree of cross-border activity.

2. Political Guidance from ECOFIN Ministers

Following the technical exchanges with MS, ECOFIN Ministers discussed the future supervisory framework on 5 May and provided political guidance on two core institutional elements:

- the scope of direct supervision by ESMA; and
- the governance arrangements underpinning the supervisory model.

Please note that in this section, the PCY focuses on the discussion regarding the cooperation arrangements underpinning the supervisory model. The results of the ECOFIN discussion on the scope of direct supervision by ESMA is reflected separately in the PCY non-paper on the Scope of Direct Supervision by ESMA prepared for this CWP.

During the discussion pertaining to these arrangements, many of the Ministers highlighted several reasons why stronger NCA involvement in significant market infrastructures' supervision may be necessary:

First, a number of material obstacles would make it difficult for ESMA to assume direct supervisory responsibilities given its current situation, notably as ESMA lacks sufficient supervisory expertise, operational capacity and resources to immediately assume effective direct supervisory responsibilities.

Second, many Ministers have pointed out that in the Commission's proposal, responsibilities between ESMA and national authorities could remain blurred across different domains. For example:

- for trading venues, market surveillance would remain with national authorities, while ESMA would supervise market operators;
- national authorities would remain responsible for supervision of closely related areas, such as transparency requirements for listed companies and the prevention and detection of market abuse;
- crisis management responsibilities would continue to remain largely on national authorities.

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3. The Presidency Proposals

Close cooperation within the supervisory system is essential for its effective functioning. To do so, the PCY believes it is critical to establish a clear and balanced framework for the supervision of significant entities, set out in Level 1, ensuring a meaningful and proportionate involvement of NCAs, efficient operational processes and effective supervisory outcomes.

The following sections will distinguish between phases. Indeed, operational needs may differ between the initial transfer of supervisory responsibilities (transitional phase) and the permanent functioning (steady-state) of the framework depending on the sectors which the Commission envisages to be captured under ESMA's direct supervisory tasks and related cost implications.

1.1. The Steady-State

The purpose of this section is to examine how day-to-day supervision of significant entities should be operationalized in the steady-state once the transfer of supervisory tasks to ESMA over significant entities will be completed.

The PCY considers that two broader policy questions remain to be addressed:

- whether the same supervisory model should apply across all sectors subject to direct ESMA supervision; or
- whether differentiated sector-specific supervisory models should instead be envisaged, taking into account the operational realities and supervisory characteristics of the different sectors concerned.

In this context, MS may also consider whether a degree of flexibility could be introduced in relation to this proposed supervisory model set-up, including through an opt-in or opt-out mechanism allowing ESMA and the relevant NCA(s), by mutual agreement, to rely instead on more tailored arrangements where appropriate.

Taking the above considerations into account, the PCY invites MS to reflect on the following two policy options for the operationalisation of ESMA's direct supervision during the steady-state phase and to indicate their preferred approach.

1.1.1. Policy Option 1: A single supervisory model for all sectors: the establishment of Joint Supervisory Teams ('JSTs')

Drawing inspiration from existing EU financial services-related supervisors, including the SSM and AMLA, the creation of JSTs, composed of ESMA and NCA staff, could be set out in L1 and apply to all sectors in the steady-state.

The PCY considers that this option addresses the positions raised by a number of MS requesting for alternative organizational arrangements. In particular, led by ESMA staff but composed too of NCA staff, local specificities would be brought to the attention of the JST and cooperation with NCAs institutionalized. Moreover, these teams could build trust among NCAs and ESMA staff while ensuring

effective cooperation. By setting out in Level 1 the basic details of the composition, role, decision making processes and main features of these teams, uncertainties would be dispelled over whether/how NCAs would be involved in future ESMA activities.

It should be noted however that in many areas, ESMA already has direct supervisory powers, notably for third-country T2 CCPs where ESMA has direct supervisory powers in EMIR, but also CRAs, benchmark administrators, data reporting services providers, including CTP, trade and securitisation repositories, ESG rating providers, Green Bonds external reviewers etc. For such areas, joint supervisory teams do not seem to be a practical solution, given that for these specific sectors NCAs do not or no longer retain experts that could compose the JSTs. The setup described above would therefore not apply for the financial services sectors that are already under direct supervision of ESMA.

1.1.1.1. Possible features of JSTs

In addition to setting out in detail their tasks, tools and composition, the L1 text could spell out the decision-making process whereby JSTs prepare draft EB decisions and measures. In addition, escalation mechanisms in case of disagreements in the JST could be set out in L1.

Examples

JSTs have first been introduced in the context of the Single Supervisory Mechanism to ensure adequate involvement of NCAs in ongoing supervisory activities over significant credit institutions under the ECB direct supervision. They also feature in the AMLA's framework; a similar organizational arrangement – named "Internal Resolution Team – is also envisaged in the context of the Single Resolution Mechanism. These teams consist of staff from both the ECB (or AMLA or SRB) and the relevant NCAs where the supervised entity (or its subsidiaries) is located. A JST coordinator from the relevant European authority - usually a senior staff member not from the country where the supervised entity is located - leads the team, while national sub-coordinators focus on specific geographical or functional areas.

Article 16 AMLAR also provides a useful reference point for the operational design of JSTs, notably as regards their composition, coordination and allocation of responsibilities between the central authority and national supervisors. In particular, AMLAR clarifies that JST members remain integrated within their respective national authorities while acting under the coordination of a central JST coordinator. It also establishes the possibility of national sub-coordinators, and specifies the operational tasks of JSTs, including supervisory reviews, on-site inspections, preparation of draft decisions and cooperation with national supervisors.

A similar dedicated Level 1 provision could usefully be introduced in the MISP framework in order to provide greater legal clarity on how JSTs should operate in practice. Such an article, inspired by Article 16 AMLAR, could specify the governance, composition, reporting lines and operational responsibilities of JSTs, including the respective roles of ESMA and NCAs, the appointment of JST coordinators within ESMA, the allocation of staff and resources, and the modalities for carrying out supervisory activities and preparing supervisory decisions. This

could help ensure that JSTs function in a coherent and operationally effective manner while preserving the contribution of national expertise and avoiding unnecessary duplication of supervisory structures.

Therefore, drawing inspiration from existing EU supervisory models (such as the SSM model and the AMLA model), the PCY believes that JSTs could support the operational supervision of directly supervised entities as indicated by a number of MS.

1.1.1.2. Level 2 Measures

The PCY also suggests that operational flexibility could be achieved through a L2 mandate empowering:

- ESMA to develop Regulatory Technical Standards ('RTS') or ITS as per AMLA model, or
- the Commission to develop a delegated act.

Such L2 measures could further specify:

- operational coordination
- information sharing arrangements,
- reimbursement methodologies
- the operational functioning of JSTs.

Note:

In this regard an article in the L1 text would include an exhaustive list of what needs to be further specified. A good example how this L2 text should look is the draft Implementing Technical Standards ('ITS') on cooperation within the AML/CFT supervisory system for the purposes of direct supervision under Article 15(3) of Regulation (EU) 2024/1620.

It should be further noted that the draft AMLA ITS sets specific rules regarding those aspects, mirroring the corresponding provisions of the SSM Framework Regulation.

The draft AMLA ITS combines principle-based provisions with more detailed guidance when a higher level of legal certainty is necessary.

1.1.2. Policy Option 2: Sector-Specific Supervisory Models

As an alternative to introducing permanent JSTs for all sectors, the supervisory architecture could make a distinction between what is most appropriate for supervising trading venues, PEMOs, CSDs, CCPs and CASPs. This would allow for tailor-made modes of cooperation between NCAs and ESMA, based on clear justifications and objective grounds.

The degree of NCA involvement in day-to-day supervision would depend on the characteristics of the relevant sector, taking into account:

a) cross-border relevance;
b) operational complexity;
c) existing supervisory structures;

d) supervisory costs; and
e) the need for local expertise and information-sharing.

As such, the PCY contends that the following supervisory models could be considered for each sector:

A. Trading Venues (TVs) and PEMOs

For TVs and PEMOs, ESMA and NCAs/National Surveillance Authorities ('**NSAs**') could share day-to-day supervisory tasks through JSTs, as they represent the most integrated form of supervisory cooperation and would ensure:

a) seamless information-sharing and equal access to information
b) operational coordination
c) supervisory consistency, and
d) efficient interaction between ESMA competences and retained national competences.

This is particularly important given the division of supervisory responsibilities, whereby NCAs/NSAs would continue to retain certain competences (including market abuse supervision), while ESMA would supervise the venues themselves.

In this context, JSTs would justify their operational cost by ensuring close coordination between interconnected supervisory functions.

B. Trading Venues (TVs) and PEMOs

Alternatively, supervisory arrangements could be more ESMA-led in the steady state. That said, drawing inspiration from AMLA's FIU Delegates (Article 44 AMLAR), ESMA's teams could be supplemented by Supervisory Liaison Officers (SLOs).

SLOs would:

- be NCA staff delegated to ESMA;
- be deployed within relevant home and significant host NCAs;
- facilitate day-to-day coordination and information exchange; and
- support on-site inspections and interactions with national authorities.

The intention would be to deliver enhanced coordination and cooperation in a sector where, as was mentioned above, NCAs/NSAs retain important prerogatives.

C. Significant CSDs

For significant CSDs, supervision could be more ESMA-led but supplemented by SLOs.

SLOs may be particularly useful to ensure an appropriate level of involvement by national resolution authorities, in response to the concerns raised by certain MS as regards the fiscal responsibility gap.

Significant host NCAs entitled to an SLO would correspond to those already identified under the existing CSDR framework, notably Article 24a CSDR and its RTS, where the CSD bears "substantial importance".

Additional NCAs could participate where:

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- the relevant NCA requests participation; and
- the EB consents following consultation with the relevant NCAs.
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In order to address specific MS concerns, particularly regarding CSDs providing banking-type ancillary services, additional clarifications on the practical application of Article 60 CSDR could also be envisaged. As it stands, Article 60 CSDR governs the interaction between the CSD supervisor and the banking prudential supervisor. For cases where ESMA becomes the supervisor, banking prudential supervisors could be added to the list of authorities subject to sectorial cooperation arrangements referred to Article in 14 CSDR. Alternatively, interaction with banking prudential supervisors could be one of the tasks to be conferred to the SLO.

D. Significant CCPs

For significant CCPs, supervision could equally be more ESMA-led and complemented by SLOs deployed within home and significant host NCAs.

Significant host NCAs would correspond to the existing supervisory college composition under Article 18(2) EMIR, including:

a) the NCAs from the three MS with the largest contributions to the CCP's default fund; and
b) additional NCAs where participation is requested and approved by the EB.

Given the highly cross-border nature of CCP activities, envisaging the introduction of a SLO model could ensure:

a) operational coordination;
b) local supervisory engagement;
c) efficient information-sharing; and
d) appropriate consideration of MS interests.

E. Significant CASPs

As an emerging sector, many MS considered that a more centralised supervisory model for significant CASPs could be more easily justified than in more established sectors.

In this context, the role of NCAs in day-to-day supervisory activities could differ from supervisory arrangements in more established financial sectors. At the same time, several MS stressed the importance of ensuring appropriate cooperation arrangements and structured information-sharing mechanisms between ESMA and relevant NCAs, including for the purposes of operational assistance, local market knowledge and enforcement support where relevant.

1.1.2.1. Sectoral Cooperation Arrangements

Additional technical adaptations may also be necessary in sector-specific legislation in order to ensure the effective operationalisation of the future supervisory framework and the appropriate involvement of relevant national authorities.

In the post-trade area, cooperation with additional authorities would continue to be ensured through the dedicated provisions already contained in CSDR and EMIR. In particular, the relevant provisions

under CSDR (notably Articles 14 and 24) and EMIR (including Articles 22, 23(3) and 22e) already reflected in the ESMA Regulation could, where necessary, be further adapted to align with the compromise supervisory architecture and the envisaged allocation of responsibilities between ESMA and national authorities.

In the trading area, several MS have underlined the importance of ensuring appropriate operational cooperation between ESMA and NSAs that would remain responsible for market surveillance functions.

In this context, further L1 clarifications in MiFIR could be envisaged concerning the interaction between ESMA and relevant NSAs in the context of PEMO supervision and authorisation procedures.

Possible adjustments could include:

- notifying relevant NSAs of changes to PEMO authorisations through a centralised ESMA database;
- allowing NSAs to provide factual information capable of informing ESMA's supervisory assessments and decisions, including information relating to previous applications or the fit and proper status of board members; and
- enabling relevant NSAs to submit observations in the context of initial PEMO authorisation procedures.

Such mechanisms could contribute to ensuring:

- effective information-sharing;
- efficient operational coordination between ESMA and national authorities;
- coherent supervisory outcomes;
- proportionate supervisory integration.

1.1.3. The new role of Cooperation Arrangements

As has been set out above, in order to provide sufficient legal certainty regarding the steady-state supervisory model, the PCY suggests that the core allocation of competences and the differing levels of NCA involvement across sectors be established directly in Level 1.

In particular, Level 1 would provide:

a) the chosen supervisory model (JSTs and/or differences between sectors, etc.);
b) the resulting degree of NCA participation in day-to-day supervision;
c) the allocation of decision-making powers between the BoS and the EB and escalation mechanisms in case of disagreement.

Cooperation arrangements between ESMA and NCAs would nonetheless remain useful to further specify technical details within the framework provided by the L1. These could in particular spell out:

a) information-sharing arrangements;
b) cost/compensation and resource considerations for NCAs, including cost-control measures;
c) coordination mechanisms;
d) operational support;
e) escalation procedures;
f) confidentiality arrangements; and
g) modalities for participation in supervisory structures.

Given their institutional importance for the supervisory framework, such arrangements would be approved by the BoS, another change as compared to the Commission proposal.

Questions to MS:

1. ***Which of the proposed policy options do MS prefer? Do MS consider that further adjustments are needed in their preferred option? Please specify.***
2. ***Do MS agree that additional technical adaptations in sector-specific legislation (notably CSDR, EMIR and MiFIR) may be necessary in order to ensure the effective operationalisation of the future supervisory framework and appropriate cooperation between ESMA and relevant national authorities? Please specify.***

1.2. The Transitional Phase

Contingent upon the supervisory model that is preferred for the steady-state, appropriate transitional arrangements could be made to:

- ensure supervisory continuity;
- support ESMA capacity-building;
- preserve national expertise and local market knowledge;
- ensure meaningful NCA involvement; and
- avoid market disruption.

The transitional phase could be limited to a maximum period from the entry into force of the amending Regulation, with the possibility of a short single extension where justified by operational circumstances and following a request by the BoS. This would follow the SSM example where a short extension was possible, although it was ultimately not used.

For instance, immediately after the entry into force of the new supervisory architecture, ESMA will most likely not be equipped to perform the direct supervisory responsibilities envisaged by the Commission proposal, and to this extent, the Commission itself acknowledges that a transition phase might be necessary before moving to the steady-state.

Questions to MS:

3. ***Do MS agree that a transitional timeframe needs to be specified? If yes, please indicate an appropriate timeframe that would be most appropriate.***

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