

# DUFAS Position

## Market Integration and Supervision Package

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**DUFAS welcomes the European Commission's ambition to take further steps towards creating a well-functioning, integrated, and internationally competitive European capital market through the Market Integration Package (MIP). In the current economic and geopolitical context — where the European Union faces substantial investment needs in areas such as digitalisation, the energy transition, defence, and strategic autonomy — the mobilisation of private capital is essential. In this respect, the broader Savings and Investment Union strategy provides a logical and necessary policy framework, with the MIP playing a central role in its implementation.**

**DUFAS supports the objective of enhancing the scale, efficiency, and accessibility of European capital markets. At the same time, DUFAS stresses that genuine market integration requires more than legal and technical harmonisation alone; it also demands careful attention to institutional arrangements, policy coherence, and practical workability. Ultimately, the success of the MIP will depend on its ability to reduce barriers in a meaningful way, without creating new complexity, uncertainty, or disproportionate burdens.**

### Policy objective

Although the European asset management sector formally operates within a single internal market, in practice it continues to face significant divergences in national regulation, supervisory approaches, and administrative requirements. Fragmentation—particularly in the areas of cross-border fund distribution, marketing communications, and supervisory practices and fees—results in longer time-to-market, limits economies of scale, and increases costs. These effects are felt not only by market participants themselves, but ultimately by individual (retail) investors, who may face reduced choice and higher costs as a consequence.

The MIP seeks to address these frictions through further harmonisation and by constraining national discretion, including via the centralisation of processes, increased digitalisation, and a stronger role for European-level coordination. DUFAS recognises that this policy direction is, in principle, consistent with the objective of improving the functioning of the internal market. The sector broadly acknowledges that market integration benefits from greater uniformity and predictability.

At the same time, it is essential that harmonisation remains focused on clearly identified and demonstrable fragmented rules or practices, and that careful consideration is given to where further centralisation genuinely enhances efficiency and where it risks introducing new layers of complexity. Market integration should not be a goal in itself, but a mean to improve economic efficiency, investment opportunities, and investor outcomes. Achieving this requires a proportionate and targeted use of legislative and supervisory instruments.

### Funds and management companies

#### Passporting

DUFAS is positive about the proposals to streamline notification processes, limit additional national requirements and make use of central digital infrastructures.

Currently, asset managers are confronted with a patchwork of national portals, procedures and formalities, resulting in inefficiencies and higher costs. The proposed measures can contribute to a better-functioning passporting regime and a reduction in administrative burdens.

DUFAS supports the introduction of the ESMA platform (Article 12 CBDFR), as it can significantly simplify the fragmented and inefficient notification process with host NCAs, while at the same time improving data quality and transparency. The current fragmentation of national portals, procedures and registers leads to unnecessary administrative burdens, limited data usability and operational bottlenecks for asset managers operating cross-border. Moreover, the proposed procedure addresses several structural shortcomings, such as the absence of adequate acknowledgements of receipt, rigid timelines for material changes, the AIFMD pre-marketing black-out, complex de-notification requirements, and inconsistencies in notification forms and share class requirements.

## **Marketing**

DUFAS supports the ambition of the MIP to reduce additional national requirements relating to marketing communications. In practice, divergent national rules on marketing documentation, language requirements and presentation formats constitute a substantial barrier to cross-border distribution. Harmonisation in this area can contribute to a more level playing field and a broader offering for investors.

DUFAS also supports the principle that host NCAs should not be allowed to require prior approval or notification of marketing communications. This can improve time-to-market for fund managers and reduce unnecessary administrative burdens.

At the same time, it is important that harmonisation does not result in overly detailed or inaccessible marketing requirements. Marketing communications must remain understandable for investors and compatible with digital distribution channels. Alignment with existing disclosure frameworks, such as PRIIPs and SFDR, is therefore essential to avoid duplication and inconsistencies.

## **White-label structures**

DUFAS supports the shift towards a notification requirement at the point of authorisation instead of an ongoing disclosure obligation in the context of white-label structures. White-label arrangements are a common and legitimate business model within the asset management sector and contribute to product diversity, market access and the use of economies of scale. In current practice, the ongoing disclosure requirement leads to significant administrative burdens for market participants, while the added value of this additional information for investors is limited. A notification at the moment of authorisation offers a more proportionate approach, providing supervisors with insight into the relevant structure without unnecessary repetition.

## **Material changes**

DUFAS is positive about the proposal to replace the current system – under which material changes in many Member States are subject to prior approval by the competent authority – with a harmonised regime of prior notification. In current practice, national procedures and timelines differ significantly and often require explicit approval before a change can be implemented. This leads to uncertainty and unpredictability for market participants, particularly in a cross-border context.

The proposed framework, under which material changes are notified in advance and the competent authority may object within a fixed timeframe, provides a clearer and more proportionate approach. However, DUFAS stresses the importance of a clear and uniform definition of the concept of “material change” to avoid divergent interpretations by national supervisors. In addition, it would be desirable for supervisors to provide active and

timely feedback and, where no objections exist, to give explicit clarity as soon as possible, even before the expiry of the maximum one-month period.

### **Prohibition of local presence requirements**

Member States should not be allowed to require cross-border funds or managers to have a physical presence or to appoint a third party within their territory for the purposes of cross-border marketing (Article 17b CBDFR). In practice, such requirements take various forms depending on the Member State, including mandatory local correspondents, paying agents and tax representatives. DUFAS supports the proposed prohibition of these national requirements, as they undermine the European passporting regime and lead to unnecessary costs and operational complexity for market participants.

At the same time, DUFAS notes potential concerns regarding the practical effectiveness of this legislative change. It remains uncertain to what extent Article 17b CBDFR will effectively prevent such practices, particularly where other areas of national law, such as tax legislation, may indirectly continue to require the appointment of local (tax) agents. DUFAS therefore emphasises the importance of clear European guidance and consistent enforcement, so that the prohibition is not undermined by alternative or disguised national requirements and genuinely contributes to a well-functioning internal market.

### **Transparency of fees**

DUFAS agrees with the proposal that ESMA should publish information on supervisory fees charged by host NCAs and assess whether these fees are proportionate to the level of supervision provided. In practice, there is significant heterogeneity in host fees and payment processes, and transparency regarding their calculation is limited. While individual amounts are often relatively modest, they can quickly add up when funds are distributed in multiple Member States and thus constitute important a barrier to cross-border fund distribution.

Asset managers also experience difficulties in obtaining advance clarity on these costs, partly due to the lack of clarity and searchability of information on local supervisors' websites and in public registers. DUFAS therefore strongly supports greater transparency and the application of common principles for fees and charges at EU level.

### **Extension of UCITS limits**

DUFAS supports the proposed targeted adjustments to investment limits within the UCITS framework. In the case of index-tracking UCITS, increased flexibility with respect to concentration limits facilitates a closer replication of recognised benchmark indices, thereby strengthening the feasibility and adaptability of index-based strategies. The overall impact of this measure will, however, be contingent upon the use of clear, transparent and proportionate criteria by ESMA when recognising benchmark indices.

In addition, DUFAS supports the increase of the UCITS limit for STS securitisations, as this provides UCITS with greater scope to invest in high-quality securitisations and can thereby contribute to the financing of the real economy and the further development of the European securitisation market.

### **Intra-group delegation and definition of an EU group**

DUFAS welcomes the introduction of an EU group definition and the amendment of the delegation-regime which proposes that the performance of certain functions by management companies or AIFMs within an EU group will not be considered delegation.

DUFAS notes that the current delegation rules have, in an intra-group setting, disproportionate effects on integrated asset management groups, particularly where governance, information exchange and risk management arrangements are organized at a group level and as such are already robust and effective. A more proportionate approach to intra-group delegation enables more efficient group structures and reduces operational burdens without compromising investor protection.

In this context, DUFAS believes the introduction of a definition of an EU group is a logical step, insofar as it reflects the operational reality of integrated asset managers and serves as a basis for a risk-based and functional application of delegation rules within groups. A clear definition can contribute to legal certainty and consistency in supervisory practice.

However, the chosen restrictive definition of an EU group could be better aligned with current market practices. The exclusion of non-EU entities and the limitation to a narrowly defined set of authorised entities insufficiently reflects the often global group structures in which asset managers operate. In practice, such groups frequently make use of non-EU entities and of other group companies that are not, or only partially, regulated, such as entities that exclusively provide intra-group investment services and are therefore exempt from authorisation requirements.

Also, the exclusion of pension funds from the definition of an EU group does not reflect the current market practice. Dutch asset managers and pension funds are often part of the same group structure. The exclusion of pension funds from EU asset management groups will therefore lead to the doubling of operational requirements and therefore increased costs, which eventually will lead to lower returns for end-customers of pension funds. DUFAS therefore proposes to include pension funds in the definition of EU group.

It is furthermore important that, when introducing a group definition, due consideration is given to the impact on firms that are part of groups already subject to group-level requirements and obligations under different legal and/or regulatory frameworks. New provisions relating to groups should therefore be carefully aligned with existing frameworks under which a (different) group definition already exists in order to avoid overlap, inconsistencies and conflicting requirements.

In addition, care should be taken to ensure that the introduction of an EU group definition does not in practice become an automatic trigger for additional supervisory and reporting obligations at group level.

### **EU depositary passport**

DUFAS is positive about the introduction of an EU depositary passport. Such a passport can increase choice for AIFMs and UCITS management companies, particularly for firms with pan-European or cross-border structures. By allowing managers to select a depositary that better aligns with their business model and the specific fund type – including specialised or innovative investment strategies – the passport can contribute to more efficient fund structures.

An EU depositary passport can also stimulate innovation and competition within the depositary market by enabling access to depositaries with specific expertise, for example in certain asset classes, more complex structures or international activities. This can enhance service quality and better reflect the increasing diversity and specialisation of the European fund market.

DUFAS nevertheless recognises that the introduction of a depositary passport raises certain challenges, particularly in relation to legal complexity arising from differences in national private law, property law and insolvency regimes. These differences call for a clear allocation of responsibilities and the implementation of robust safeguards to ensure legal certainty and investor protection. Otherwise, divergent national rules relating to for instance the legal transfer of (financial) assets can lead to divergent legal outcomes based on the

jurisdiction in which the CSD is located. This may lead to regulatory arbitrage, undermining the harmonisation of EU capital markets.

## Supervision

### Institutional balance and the role of ESMA

DUFAS notes that the MIP significantly strengthens ESMA's direct supervisory role, which may be seen as a step towards further centralisation of supervision over, *inter alia*, AIFMs and MiFID investment firms.

This development raises questions regarding the institutional balance within the EU supervisory framework, particularly in light of ESMA's already substantial influence on Level 2 and Level 3 regulation. DUFAS points to the increasing concentration of powers within ESMA, which is progressively combining legislative, supervisory, enforcement and sanctioning roles, while democratic legitimacy and parliamentary oversight remain relatively limited.

Against this background, DUFAS considers it desirable that further expansions of supervisory powers are accompanied by careful attention to the allocation of roles and the institutional balance within the EU supervisory architecture.

### ESMA and competitiveness

DUFAS emphasises that market integration, innovation and competitiveness are not abstract policy objectives, but are directly linked to the attractiveness of the European Union as a place of establishment for financial firms. DUFAS has previously stressed that supervisors, within their mandates, also bear responsibility for a predictable, attractive and competitive business environment. In this light, DUFAS notes that this responsibility is equally relevant at European level for ESMA.

Although the MIP adds market integration and innovation to ESMA's objectives, it remains unclear how these elements will be concretely translated into supervisory and regulatory practice. DUFAS considers it important that ESMA, in the exercise of its tasks, systematically takes into account the impact of regulation and supervision on the functioning of the internal market and the European business environment, including through a proportionate approach, thorough impact assessments and timely engagement with market participants.

### ESMA powers

DUFAS recognises that ESMA must be able to act effectively in cases of clear and material breaches of EU law, particularly where cross-border activities undermine investor protection. In this context, DUFAS understands the European Commission's concerns about situations in which market participants distribute products that fall outside the applicable legislative framework, and in which national supervisory enforcement is insufficient or applied inconsistently.

At the same time, DUFAS emphasises that such exceptional misconduct should not serve as a basis for a structural and generic expansion of broad corrective powers for ESMA that would also unnecessarily affect regular, well-functioning supervisory relationships. The suspension of cross-border marketing should therefore only be used as a measure of last resort, in cases of clear non-compliance and after existing supervisory and convergence tools have been fully exhausted.

Additionally, DUFAS welcomes the establishment of a clear and binding escalation mechanism via ESMA in cases of disagreements between competent authorities on cross-border files. This can contribute to faster decision-

making, greater legal certainty for market participants and a more consistent application of the legislative framework in cooperation between home and host supervisors.

At the same time, DUFAS stresses that binding mediation should remain limited to concrete coordination disputes and should not evolve into a structural additional layer of supervision. Clear criteria, timelines and transparency regarding when and how cases are referred to ESMA are essential to prevent unnecessary escalation and delays.

### **ESMA reviews of large cross-border groups**

DUFAS recognises the importance of effective coordination and consistent supervision in a cross-border context and understands the objective of the MIP to remove barriers to market integration. However, DUFAS raises concerns regarding the proposed annual ESMA reviews of large cross-border asset management groups.

In their current design, there is a real risk that such reviews would in practice amount to duplicate supervision. Through these reviews, ESMA would effectively assess how national supervisors carry out their supervisory tasks, thereby creating overlap with existing national responsibilities. To reach substantive conclusions, ESMA would need to conduct analyses that closely resemble those of national supervisors, while lacking access to the same comprehensive information base, such as licensing files, detailed reporting, inspections and ongoing supervisory interactions. This may result in intensive information requests to national supervisors, diverting them from their core tasks and ultimately increasing supervisory costs. These information requests to NCAs may additionally lead to information requests to market participants if these NCAs cannot (easily) access this information, leading to increased costs for market participants.

Moreover, DUFAS notes that the purpose and added value of these reviews are insufficiently specified. While they are said to aim at addressing inconsistent or deficient supervision, there is a lack of concrete substantiation with specific examples of national supervisory practices that genuinely hinder the internal market.

Against this background, DUFAS considers there to be a risk that periodic ESMA reviews would lead to additional complexity, unclear allocation of responsibilities and increased caution among market participants, particularly with regard to innovation and product development. DUFAS sees greater value in a role for ESMA that is primarily supportive and facilitative, focused on coordination, knowledge sharing and the promotion of supervisory convergence. Therefore, the current proposal for a model that effectively results in additional group-level supervision should be abandoned.

### **ESMA fees**

DUFAS stresses that fees paid by market participants to ESMA pursuant to Article 17i CBDFR must demonstrably lead to a significant reduction in the supervisory fees payable to home and host NCAs. The introduction of ESMA fees can only be justified if accompanied by a genuine reallocation of supervisory tasks and costs, and if it does not result in a cumulative increase in supervisory burdens. If ESMA fees are not linked to a reduction in national supervisory charges in a clear and enforceable way, total supervisory costs for market participants will increase, which would undermine the objectives of proportionality, market integration and the international competitiveness of the European financial sector.

### **Cooperation between NCAs and ESMA**

Effective cooperation can contribute to reducing fragmentation and improving the functioning of the internal market. At the same time, DUFAS emphasises that cooperation should not result in an additional layer of supervision or lead to delayed decision-making due to mandatory coordination with multiple authorities. There is

a risk that supervisory processes become more complex and time-consuming, with longer timelines and a negative impact on the efficiency and predictability of European capital markets.

DUFAS therefore considers it essential that roles and responsibilities between ESMA and the NCAs are clearly delineated, with strict and binding timelines for cooperation and decision-making, and with safeguards ensuring that cooperation focuses on coordination and information exchange rather than substantive re-assessment of national supervisory decisions.

### **Data sharing**

DUFAS supports the objective of Article 35 to improve data sharing between supervisors and thereby reduce duplicate reporting and supervisory fragmentation. It is essential that home and host NCAs have access to relevant data in order to perform their supervisory tasks without imposing additional reporting requests on market participants.

DUFAS stresses that the success of Article 35 fully depends on tangible burden reduction: data sharing must replace certain national reporting obligations, not add an extra layer or parallel systems. In addition, DUFAS underlines the importance of clear governance, data quality, timeliness and data protection. Particularly given the dependence on non-EU third-party IT-providers.

### **ESMA governance**

DUFAS is in broadly supportive of the proposed changes to ESMA's governance and the expansion of its resources, but emphasises that their effectiveness will strongly depend on how ESMA operates in practice. It is important that ESMA retains sufficient room in its day-to-day activities to balance different policy objectives, including a well-functioning internal market and the competitiveness of the EU, and that it remains open to cooperation with market participants. In this respect, DUFAS considers it important that ESMA engages with stakeholders in a structured and timely manner.

### **Market Infrastructure**

#### **General considerations**

DUFAS supports a more centralised and harmonised supervisory framework for European market infrastructure, including central counterparties (CCPs), trading venues and central securities depositories (CSDs). In this respect, DUFAS sees clear benefits in strengthening ESMA's direct supervisory role, or at least in enhancing structured and binding coordination between national competent authorities (NCAs) and ESMA, rather than maintaining a predominantly national supervisory approach.

A more centralised model would contribute to the creation of a level playing field and further regulatory convergence within the EU. Under the current framework, a single set of EU rules is often subject to diverging enforcement practices, supervisory expectations and informal guidance at national level. This fragmentation undermines legal certainty and operational efficiency, particularly for market participants operating across multiple Member States.

For firms with pan-European structures and activities in several jurisdictions, divergent supervisory approaches can lead to duplicative discussions with different NCAs on substantively similar issues. Greater supervisory consistency at EU level would therefore reduce unnecessary complexity, support cross-border activity and enhance the effectiveness of EU market infrastructure regulation.

### **Open access, interoperability and porting**

DUFAS welcomes the proposal to promote interoperability and open access within European market infrastructures, in particular with regard to CCP access to trade feeds. The current lack of effective interoperability constitutes a barrier to healthy competition and limits the potential for the consolidation of clearing services, which ultimately has an adverse impact on costs for market participants.

While the preferred clearing model represents an improvement compared to fully vertically integrated silos, DUFAS notes that it does not, in itself, ensure genuine freedom of choice. In practice, where clearing members select a different CCP, transactions are often still automatically cleared through the incumbent default CCP. DUFAS therefore supports the proposal to prohibit trading venues from preventing two market participants executing a transaction on that venue from freely choosing different CCPs, including in cases where those CCPs have established interoperability arrangements.

In addition, DUFAS would welcome further regulatory measures to strengthen interoperability through the mandatory facilitation by CCPs of porting positions between CCPs. From a risk-management perspective, the EMIR Active Account Requirement (AAR) does not sufficiently address the operational risks associated with the potential need to migrate significant CCP exposures from a Tier 2 CCP to an EU CCP without the availability of business-as-usual (or post-default) porting mechanisms. Even where EU CCPs have the financial capacity to absorb a substantial increase in clearing activity, as evidenced by stress testing and clearing capacity attestations, DUFAS notes that such migration processes are likely to face severe operational and administrative bottlenecks. In the absence of harmonised infrastructure, procedures and regulatory frameworks designed to facilitate and accelerate sizeable swap book transfers between CCPs, receiving CCPs and clearing members would be required to process large volumes of simultaneous transfer requests from clearing members and end clients.

DUFAS therefore considers that effective porting arrangements should not be limited to EU CCPs only, but should also enable porting to and from Tier 2 CCPs that are of systemic importance. Such an approach would enhance operational resilience, reduce cliff-edge risks and support a more orderly adjustment of clearing activity in stress or transition scenarios.

Moreover, improved interoperability and porting capabilities could contribute to a further reduction of the CCP basis between EU and Tier 2 CCPs for swap rates. By lowering barriers to inter-CCP mobility, the derivatives market would become less bifurcated in terms of liquidity, thereby supporting more efficient price formation and deeper, more integrated EU derivatives markets and capital markets in general.

### Concluding remarks

DUFAS sees significant opportunities in the MIP to address structural bottlenecks in the European capital market and to deepen market integration. At the same time, DUFAS emphasises that the success of the package depends on a careful balance between harmonisation, supervision, proportionality and practical implementability.

A truly integrated capital market requires not only uniform rules, but also institutional clarity, regulatory stability and trust among market participants. By considering these elements in conjunction, the MIP can genuinely contribute to a sustainable, competitive and well-functioning European financial system.