

# DUFAS Position on ESMA powers in the Market Integration and Supervision Package

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The European Commission presented the Market Integration and Supervision Package (MISP) on 4 December 2025 as a central element of the Savings and Investments Union, with a clear focus on integration, efficiency and competitiveness.

In the January 2026 position, DUFAS welcomed the MISP as a meaningful step towards a more integrated and better-functioning European capital market. At the same time, we stressed that success depends on proportionality, institutional clarity and practical workability. We also note that fragmentation in supervisory approaches, fees, procedures and administrative requirements continues to increase costs and delay cross-border market access for asset managers.

Against this background, the discussion on ESMA's role should be firmly grounded in first principles. While greater harmonisation and more efficient supervision are legitimate objectives, any expansion of ESMA's mandate must be clearly justified by concrete cross-border risks or demonstrable market failures. New powers should deliver measurable improvements in supervisory outcomes and be assessed against the effectiveness of existing tools. This requires a framework with clear governance, well-defined responsibilities, and strong safeguards to ensure proportionality, accountability and legal certainty.

## Supervisory challenges in EU asset management

Supervision of the asset management industry across the EU remains uneven. National competent authorities (NCAs) apply supervisory practices differently – partly by design, given EU funds legislation has been developed under Directives, allowing for national specificities – which creates a non-uniform approach in oversight of cross-border activities. Both ESMA and the European Commission (EC) have acknowledged this issue. As noted in the EC's Questions and answers on the market integration package, "diverging supervisory practices create additional barriers to integration."

These divergences may be particularly relevant in a cross-border asset management context, where firms operate under multiple supervisory regimes. In the same Q&A, the EC refers to "limited tools and powers available at the EU level to enforce convergence," suggesting that such limitations allow national differences to persist, increase the cost of doing business and undermine consistent investor protection.

However, this characterization warrants closer scrutiny. ESMA already has an extensive supervisory convergence toolkit and a defined mandate, including technical standards, guidelines, peer reviews, mediation powers and, under MiFIR, product intervention powers. These instruments are actively used to shape supervisory practices across the Union, including in the supervision of cross-border investment firms and asset managers.

The core issue therefore does not appear to be an absence of tools or powers. Rather, experience indicates that existing instruments are not always used to their full potential or do not consistently translate into effective supervisory outcomes. ESMA itself has identified shortcomings in NCA supervision of cross-border activities, including insufficient risk identification and limited supervisory follow-up. Crucially, where ESMA issues recommendations or guidance, implementation ultimately depends on NCA responsiveness.

From an asset management perspective, the key question is therefore not whether ESMA lacks tools or powers, but whether more consistent and disciplined use of its existing mandate and instruments could address current shortcomings. On this basis, it is difficult to conclude that there is genuinely a lack of tools and powers at EU

level; instead, the challenge lies in their application and enforcement. Against this backdrop, we set out below our assessment of the EC proposals concerning ESMA's powers.

### Proposed new powers

The MISP introduces a material expansion of ESMA's role through a hybrid supervisory model. While significant infrastructures (e.g. trading venues, CCPs and certain CSDs) and crypto-asset service providers would fall under direct EU-level supervision, asset managers would remain primarily under national supervision. However, ESMA's role in asset management would be significantly strengthened through enhanced convergence and escalation powers.

In particular, ESMA would gain new powers affecting cross-border asset management, including group-wide supervisory reviews, centralised notification processes, collaboration platforms and powers to address divergent or inefficient national supervisory practices. In certain cases, ESMA could also directly suspend cross-border marketing of UCITS and AIFs.

This architecture reflects a targeted approach rather than full centralisation. The EC explicitly opted for a middle course, combining stronger convergence tools with selective EU-level supervision, while rejecting full centralisation due to disproportionate costs and risks. This provides an important proportionality benchmark for assessing the necessity of the proposed powers, particularly in the asset management context.

Against this background, the following sections examine in more detail the specific proposed changes that are most relevant to asset management, with a focus on their necessity, proportionality and practical impact on cross-border supervisory arrangements.

### Scope and mandate changes

The proposed amendments to the ESMA Regulation significantly expand ESMA's mandate, notably by strengthening its role in supervisory convergence and introducing the possibility of more direct supervisory involvement in cross-border activities. These changes aim to address fragmentation in the current supervisory landscape and to promote a more consistent application of EU rules.

From a market perspective, increased central coordination has the potential to enhance harmonisation and reduce regulatory arbitrage. However, the expansion of ESMA's mandate also introduces a tangible risk of duplication with national competent authorities (NCAs), particularly where supervisory competences are not clearly delineated. For asset managers, this may translate into increased compliance complexity, including overlapping supervisory expectations and reporting obligations.

DUFAS supports the objective of enhanced supervisory convergence and recognises the value of a stronger coordinating role for ESMA. However, it emphasises that supervisory tasks should be allocated in a manner that avoids duplication and ensures efficiency, irrespective of whether they are performed at EU or national level. To ensure an efficient supervisory framework, DUFAS recommends that responsibilities between ESMA and NCAs be clearly defined.

### ESMA enforcement and intervention powers

The proposed amendments regarding enforcement and intervention powers significantly strengthen ESMA's enforcement role. ESMA is granted broader powers to investigate breaches of Union law, issue recommendations to NCAs, and, where necessary, adopt binding decisions directly addressed to financial market participants. In addition, ESMA may intervene in cases of supervisory shortcomings by requiring NCAs to seek its opinion prior to granting authorisations, and may ultimately impose corrective

measures. A further new element allows ESMA, in urgent cross-border situations, to require the suspension of services and, if necessary, directly mandate such suspension at entity level.

DUFAS acknowledges the rationale behind reinforcing ESMA's powers to ensure that harmonised EU legislation is applied consistently across Member States, particularly in cross-border contexts where supervisory gaps may have wider market implications. A credible EU supervisory framework requires effective mechanisms to address material breaches and supervisory failures.

At the same time, the expansion of these powers raises important considerations regarding legal certainty, proportionality, and the overall functioning of supervision. Market participants must be able to rely, in good faith, on supervisory guidance, decisions, and authorisations granted by NCAs. If these can be overridden or revisited without clear safeguards, this risks undermining predictability and trust in the supervisory framework.

Moreover, the cumulative effect of these powers may influence supervisory behaviour at national level. If NCAs anticipate that their decisions may be subject to intervention or reversal, this could lead to more cautious, formalistic, or delayed decision-making, potentially reducing supervisory dialogue and slowing down innovation.

In such a scenario, the cumulative effect of these dynamics may, in practice, amount to a form of de facto direct supervision by ESMA, without the corresponding clarity, safeguards, and accountability typically associated with an explicit transfer of supervisory competences.

DUFAS therefore emphasises that the application of these powers should be subject to clear and consistent safeguards, which must be defined ex-ante and provide sufficient stability over time, rather than being subject to frequent revision under the guise of temporary or "trial" arrangements (e.g. reviewing the framework after a short period such as two years). In particular:

- ESMA intervention should be limited to clearly defined, material breaches or supervisory failures, and applied as a measure of last resort;
- market participants should be able to rely on supervisory positions and authorisations granted by NCAs, unless there is a clear, evident, and well-justified basis for intervention, applied in a transparent manner;
- the criteria and thresholds triggering ESMA action should be clearly defined, predictable, and publicly available;
- procedures should ensure due process, including reasoned decisions, appropriate timelines, and the possibility for affected parties to be heard; and
- the framework should avoid creating disincentives for efficient, proportionate, and innovation-friendly supervision at national level.

Overall, while DUFAS supports the objective of strengthening enforcement and supervisory convergence, we stress that this should be carefully balanced with the need to preserve legal certainty, efficient supervisory processes, and a well-functioning EU passporting regime.

### **No-action letters**

The MISP empowers ESMA to issue no-action letters in specific circumstances, providing temporary relief from enforcement of certain regulatory requirements.

This tool can offer valuable flexibility, particularly in situations where regulatory uncertainty arises or where immediate compliance is not feasible due to transitional issues. No-action letters can enhance legal certainty and support orderly market functioning.

DUFAS welcomes the introduction of no-action letters as a pragmatic supervisory instrument.

### **Allocation of powers in technical standard-setting**

The MISP introduces changes to the process for adopting regulatory and implementing technical standards (so-called Level 2 legislation). In particular, they strengthen the role of the EC by allowing it, under certain conditions, to adopt or amend technical standards without a draft from ESMA. The amendments also introduce mechanisms for the EC to request revisions, set deadlines, and, in urgent situations, suspend existing standards.

These changes have important institutional implications. They reinforce the EC's capacity to act where delays occur or where immediate action is required to safeguard investor protection, market integrity, or financial stability. At the same time, they rebalance the relationship between ESMA and the EC in the development of Level 2 legislation.

DUFAS welcomes this evolution. ESMA already plays a highly influential role in shaping Level 2 and Level 3 measures, which has, over time, contributed to a concentration of regulatory, supervisory, and interpretative functions within a single authority. This raises legitimate concerns regarding the institutional balance within the EU framework.

The MISP therefore touches upon a broader governance question that goes beyond operational supervision. While an expanded role for ESMA can be justified in the context of advancing capital markets integration, it is essential that the distinction between policy-making, law-making and supervision remains clear. The power to adopt Level 2 measures should remain firmly anchored with the EC, which operates under democratic accountability through the co-legislative process.

In this context, we consider that ESMA should continue to play a strong technical role, providing expertise, data and draft standards, while not evolving into a de facto rule-maker. This role should be comparable to that of other stakeholders contributing input to the regulatory process. A framework in which ESMA both interprets and effectively defines the rulebook risks blurring accountability and weakening institutional checks and balances.

We therefore emphasise that the EC should retain a decisive role in Level 2 legislation, that ESMA's role remains primarily technical and advisory, and that clear boundaries are maintained between rule-making, supervision and enforcement.

### **Additional ESMA powers in relation to asset managers**

Beyond the amendments to the ESMA Regulation, the MISP also introduces new, asset manager-specific powers through targeted changes to the AIFMD and UCITS Directive. These changes significantly expand ESMA's role in relation to large, cross-border asset management groups.

In particular, ESMA is empowered to identify large EU asset management groups and to subject them to mandatory annual supervisory reviews. These reviews assess supervisory practices applied by NCAs across key areas such as governance, resource allocation, and risk management, and may result in recommendations and subsequent escalation under ESMA's broader intervention powers.

DUFAS does not support the introduction of this framework. While improving supervisory convergence is a legitimate objective, the proposed annual review mechanism is neither necessary nor proportionate in light of ESMA's already significantly expanded toolkit. With strengthened powers to address supervisory failures, ensure the application of Union law, and coordinate cross-border supervision, ESMA is already equipped to act where material issues arise.

A mandatory annual review of large asset management groups risks creating a systematic and resource-intensive process with limited added value, particularly where it is not clearly linked to identified risks or supervisory deficiencies. The proposed frequency is excessive and does not reflect a risk-based approach to supervision.

Furthermore, although formally framed as a review of supervisory practices, the mechanism effectively introduces a continuous layer of indirect supervision at EU level. Through recurring assessments, data consolidation, and follow-up actions, ESMA's role extends beyond coordination and moves towards ongoing monitoring of large asset managers. This represents a significant shift in the supervisory framework without a clear justification.

We consider mandatory annual reviews disproportionate and unnecessary. ESMA involvement should be strictly risk-based and avoid creating a de facto layer of EU-level supervision over asset managers. We therefore oppose the proposed mechanism, as it introduces complexity and supervisory overlap without clear benefits for market integration or investor protection.

### **Data platform**

The MISP introduces a central ESMA data platform to support data collection, analysis, and supervisory coordination.

DUFAS supports the objective of enhancing information sharing. However, strict safeguards are essential to ensure that the platform does not lead to additional reporting burdens. The "collect once, use multiple times" principle must be rigorously applied, with full alignment to existing reporting frameworks to avoid duplication. This should also imply that NCAs, to the extent possible, refrain from requesting additional or parallel data beyond what is collected centrally through ESMA, unless clearly justified.

The centralisation of supervisory data also raises material concerns regarding data governance, access, and confidentiality. Given the sensitivity of firm-level data, robust controls must be in place to ensure secure handling, strictly limited access, and, preferably, data storage within the European Union, in light of geopolitical developments and the increasing emphasis on data sovereignty expected from financial institutions, which should equally apply to ESMA.

### **Duty of cooperation**

The MISP introduces reinforced obligations for NCAs to cooperate with ESMA, aiming to improve the flow of information and ensure more consistent supervisory outcomes across Member States.

The proposed framework for cooperation appears broadly logical and reflects the need for ESMA to further build its supervisory capacity by drawing on the expertise and experience of national competent authorities (NCAs). In particular, the ability for ESMA to rely on national knowledge, such as local market practices and supervisory experience, can contribute to more effective and informed supervision at EU level.

DUFAS also welcomes the principle that ESMA should bear the costs incurred by NCAs in the context of such cooperation. This is an important safeguard to prevent a further increase in national supervisory fees, which are already under upward pressure due to the growing volume of EU legislation. Ensuring

that costs are appropriately allocated at EU level helps to avoid indirect cost pass-through to market participants.

At the same time, it is essential that the operationalisation of these cooperation arrangements remains efficient and does not translate into additional administrative burdens for firms. In particular, cooperation between ESMA and NCAs should not lead to duplicative or overly complex information requests towards market participants. From an industry perspective, supervisory coordination should remain largely “behind the scenes”, without creating new reporting layers or inconsistencies in data requests. Importantly, exchanges of information between ESMA and national competent authorities should not, in themselves, give rise to frequent or incremental modifications to the data that regulated entities are required to submit to their national supervisors. Any structural expansion of firms’ reporting obligations should be clearly justified, subject to an appropriate impact assessment, and implemented through formal legislative or regulatory processes at either national or EU level. In particular, ad hoc information requests from ESMA should not lead NCAs to systematically incorporate individual data fields or one-off requests into their ongoing national reporting frameworks.

### **Collaboration platforms**

The proposed introduction of collaboration platforms provides ESMA with a formal mechanism to coordinate cooperation between national competent authorities (NCAs) in cases where there are justified concerns regarding investor protection, financial stability, compliance with Union law, or diverging supervisory practices, particularly in cross-border contexts. These platforms are intended to facilitate information exchange, promote convergence, and identify coordinated supervisory responses, with the possibility for ESMA to escalate matters where cooperation proves insufficient.

DUFAS acknowledges that enhanced coordination in cross-border supervision can be beneficial, particularly where fragmentation or inconsistent supervisory practices may undermine a level playing field. In this respect, collaboration platforms may serve as a useful tool to improve information sharing and supervisory alignment in complex, multi-jurisdictional cases.

At the same time, DUFAS questions the necessity and added value of this new instrument in light of existing mechanisms, including supervisory colleges, peer reviews, and ESMA’s mediation powers. Without clear differentiation, there is a risk of duplication and increased complexity in the supervisory framework.

Moreover, the formalisation of such platforms, combined with ESMA’s coordinating and escalation role, may have broader implications. While presented as a coordination tool, collaboration platforms could, in practice, lead to increased EU-level steering of national supervisory decisions, particularly where escalation mechanisms are used. This raises concerns regarding clarity of responsibilities and accountability.

### **Governance changes**

The proposed amendments introduce a significant shift in ESMA’s governance structure, notably through the establishment of a strengthened Executive Board composed of the Chair and five independent, full-time members. This body is entrusted with key operational and supervisory decision-making powers, including the adoption of decisions under ESMA’s expanded intervention and enforcement toolkit. In parallel, the role of the Board of Supervisors is reoriented towards strategic oversight, with a more limited role in individual supervisory decisions.

DUFAS is, in principle, supportive of a more efficient and centralised governance structure. A stronger Executive Board may contribute to a more coherent EU-wide supervisory approach. In this context, a

strengthened Executive Board can be justified, provided it is equipped to take timely and well-founded decisions. Independence from national interests is an important feature to support a genuinely European supervisory approach. Governance arrangements should ensure that decision-making remains well-informed and benefits from the supervisory expertise and market knowledge present across Member States.

### Competitiveness & Market Impact

A key element currently missing from the MISP framework is a clear focus on competitiveness as a supervisory design principle. While ESMA's mandate now includes promoting innovation, this is not sufficient: innovation and an attractive business environment are distinct objectives and should not be conflated.

As MISP is positioned within a broader competitiveness strategy, supervisory frameworks should actively support a predictable, efficient and attractive EU market environment. This requires a more outcome-based approach, with measurable indicators such as reduced time-to-market for cross-border activity, lower cumulative supervisory costs, fewer divergent national interpretations, faster resolution of home-host issues and reduced duplication in data requests.

A stronger role for ESMA can contribute to a more level playing field for cross-border operators. However, the key risk lies in supervisory layering, overlapping EU and national supervision, increased reporting and uncertain escalation mechanisms. If not carefully designed, this would undermine rather than strengthen EU competitiveness.

### Concluding remarks

The MISP represents an important step towards a more integrated and efficient European capital market, and a stronger role for ESMA can support more consistent supervision in a cross-border context. DUFAS supports this direction in principle.

At the same time, the package marks a structural shift in the EU supervisory framework. This requires a disciplined approach to the design and application of new powers. Expansion of ESMA's role should be clearly justified by concrete cross-border risks or market failures and should demonstrably improve supervisory outcomes.

Across the proposals, the key risk is not individual measures in isolation, but their cumulative effect. Increased convergence, stronger enforcement powers and new coordination tools can together lead to supervisory layering, duplication and increased complexity. This would undermine legal certainty, raise costs and ultimately weaken the competitiveness of the EU market.

A well-functioning framework should therefore be guided by clear principles: proportionality, legal certainty, institutional balance and operational efficiency. Responsibilities between ESMA and NCAs must be clearly defined, duplication must be avoided, and safeguards must ensure predictable and transparent supervisory outcomes.

Finally, competitiveness should be embedded as a core design criterion. A stronger EU supervisory framework should not only enhance consistency, but also support a predictable, efficient and attractive market environment for cross-border activity.

DUFAS remains committed to a constructive dialogue and supports a calibrated approach in which enhanced convergence and targeted EU-level powers deliver tangible benefits, without creating unnecessary complexity or supervisory overlap.