Position on the Market Integration & Supervision Package (MISP)

Deep and efficient EU capital markets for a competitive and resilient Europe

APRIL 2026

EXECUTIVE SUMMARY

The Federation of European Securities Exchanges (FESE) welcomes the European Commission's Market Integration & Supervision Package (MISP) as a timely and important initiative to strive to strengthen the efficiency, resilience and competitiveness of EU capital markets. Building on FESE's long-standing commitment to fair, transparent and well-functioning markets, this package represents a key opportunity to remove long-standing barriers to cross-border activity, modernise regulatory frameworks, and ensure that Europe's capital markets infrastructure remains strong, future-proof and globally attractive.

Europe faces a pivotal moment. Against a backdrop of intensifying geopolitical headwinds, the EU must strengthen its economic sovereignty by unlocking growth, deepening capital markets, and reducing fragmentation that undermines efficient price formation.

This executive summary outlines FESE's key messages across three core policy areas covered in our position: Trading, DLT, and Supervision. It reflects FESE's positive, forward-looking approach while highlighting essential considerations to ensure the package delivers on its objectives.

Trading - Strengthening market structure and supporting a competitive listing ecosystem

FESE supports the Commission's ambition to remove cross-border barriers in order to enhance efficiencies across the Union and advance market integration.

However, to attract, support, and retain Europe's most innovative companies, the EU needs deeper, more liquid, and more transparent secondary markets that reinforce price formation, enhance investor confidence, and support vibrant primary markets.

Key messages

- **Equity market structure reform is essential, but is missing from the MISP.** Meaningful reforms must tackle the long-standing challenges linked to liquidity fragmentation, regulatory asymmetries, and the growth of bilateral trading. FESE encourages policymakers to prioritise measures that strengthen visible, multilateral liquidity as the foundation of trust, market efficiency, and the EU listing ecosystem, while ensuring a level playing field across execution mechanisms.
- **Maintain the Consolidated Tape as already agreed.** Revisiting the scope of the equity CT at this stage is premature. Any changes should be supported by a robust impact assessment grounded in actual data following its implementation and be accompanied by appropriate safeguards and a broader reassessment of the Level 1 equilibrium.
- **Remove unnecessary friction to cross-border activity.** FESE welcomes the Commission's proposals to facilitate cross-border activity and calls for focused refinements to avoid unintended challenges in implementation and operational complexity.

DLT & Innovation - Modernising frameworks to enable responsible innovation

FESE welcomes the Commission's ambition to support digital innovation and integrate DLT-based models into the EU rulebook. Exchanges have long been pioneers of safe technological progress and stand ready to support a modern, competitive and innovation-friendly regulatory environment.

Key Messages

- **Modernise standard regulatory frameworks.** To fully harness the potential of DLT and tokenisation, the EU should also prioritise updating CSDR, EMIR, and MiFID/MiFIR to reflect the specific features of DLT. Without such changes, innovation risks shifting to less transparent OTC channels.

- **Ensure a coherent update of the DLT Pilot Regime.** FESE supports targeted amendments to improve the scalability of DLT while ensuring strong investor protection and a level playing field for participants outside the pilot. Clear transitional pathways into the standard regulatory frameworks should be provided, contributing to predictability for DLTPR participants and supporting the experimental purpose of the regime.

Supervision - Enhancing convergence while preserving efficiency and proportionality

FESE stands with the Commission's ambition to tackle fragmented supervisory outcomes under the single rulebook. The landscape of European market operators is diverse. They have varying corporate structures, activities, instruments and levels of economic and cross-border significance.

Regardless of the supervisory model, the framework should remain clear, agile and well-calibrated, prioritising simplicity, efficiency and a level playing field. Any changes should deliver coherence and consistent supervisory outcomes across trading venues while avoiding new complications through dual supervisory layers.

Key messages

- **Avoid duplicative supervision.** Harmonised practices across the EU and the avoidance of costly, overlapping layers of supervision should be the guiding principle. A clear allocation of responsibilities between ESMA and NCAs is essential, along with avoiding repetitive information requests.
- **Ensure cost-effective supervision.** Supervisory reforms should avoid double fees for the same regulatory obligations and ensure that any fee adjustments are closely linked to clearly defined supervisory needs.
- **Strengthen legal protections.** Any potential transfer of supervisory powers must be accompanied by robust procedural safeguards, including clarity on intervention powers, effective appeal rights and well-defined multi-stage procedures.

Table of contents

TRADING

High-level statement on the MISP 5

1. A competitive EU listing ecosystem through a healthy market structure 6
2. A growing momentum on the need for market-structure reform 7
3. Consolidated Tape revisions require evidence, timing, and safeguards 8

Concrete proposals on equity market structure 9

1. Introduction 9
2. Proposals 13
   - 2.1. Post-Trade Transparency & Reporting 13
   - 2.2. Regulatory Supervision & Enforcement 15
   - 2.3. Pre-Trade Transparency & Quoting Obligations 16

Other trading-related aspects 19

1. Harmonisation of provisions on regulated markets 19
2. Authorisation of regulated markets 20
3. Enhanced passporting arrangements 20
4. Membership authorisation 21
5. Activities performed by a market operator – Ancillary activities 21
6. Outsourcing/internal allocation arrangements 22
7. Right to designate a CSD 22
8. Other trading aspects transferred from MiFID to MiFIR 23

DIGITAL

Position on digital aspects (DLT & innovation) 26

1. Modernisation of standard (non-DLTPR) frameworks 27
2. DLT Pilot Regime Review 28
   - 2.1. Scope and scale of the DLT Pilot Regime & Transitional rules 29
   - 2.2. New Simplified Regime under DLTPR & Additional ad-hoc exemptions 32
   - 2.3. Removal of time limits & ESMA report on the functioning of the DLTPR 33
   - 2.4. Preserving the integrity of core CSD functions 34
3. MiCA Regulation – Centralised supervision of CASPs 34

SUPERVISION

Position on supervision 35

1. Supervisory calibration across diverse exchanges 35
2. Risk of duplicative supervisory layers 35
3. Risk of increased costs 36
4. Central Supervisory Database 37
5. Amendments required to ensure legal protection for supervised entities 37

High-level statement on the MISP

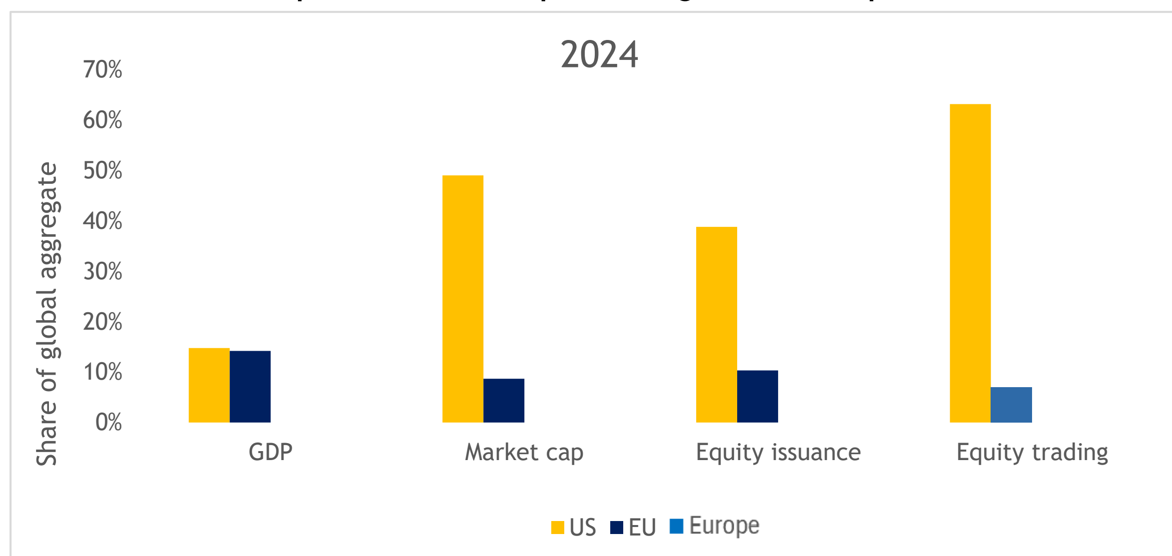
Introduction

With growing geopolitical tension and global competition, boosting the European Union's competitiveness and resilience has become more important than ever. A well-functioning, deep and efficient EU capital market is critical to this objective. It will enable companies to innovate and scale, provide households with better long-term savings opportunities, and support the EU's broader policy ambitions like the digital transition and strategic autonomy.

A cornerstone of this effort is ensuring that Europe's most innovative and high-growth companies can raise capital, scale and thrive within the EU rather than seeking opportunities abroad. Public markets are central to this ambition, as IPOs remain one of the most effective channels for large-scale fundraising, continued growth financing, and venture-capital exits. Strong domestic primary markets would help anchor companies — and the talent, strategic functions, and value chains around them — within Europe's economy.

Experiences across other jurisdictions show how dynamic equity markets and strong IPO pipelines can fuel entrepreneurship and industrial leadership. Europe can cultivate similar strengths by advancing reforms that foster vibrant public markets. In this context, **deeper and more liquid secondary markets are essential to encouraging companies to list, grow and remain listed in the EU**.

EU capital markets are performing below their potential[1]



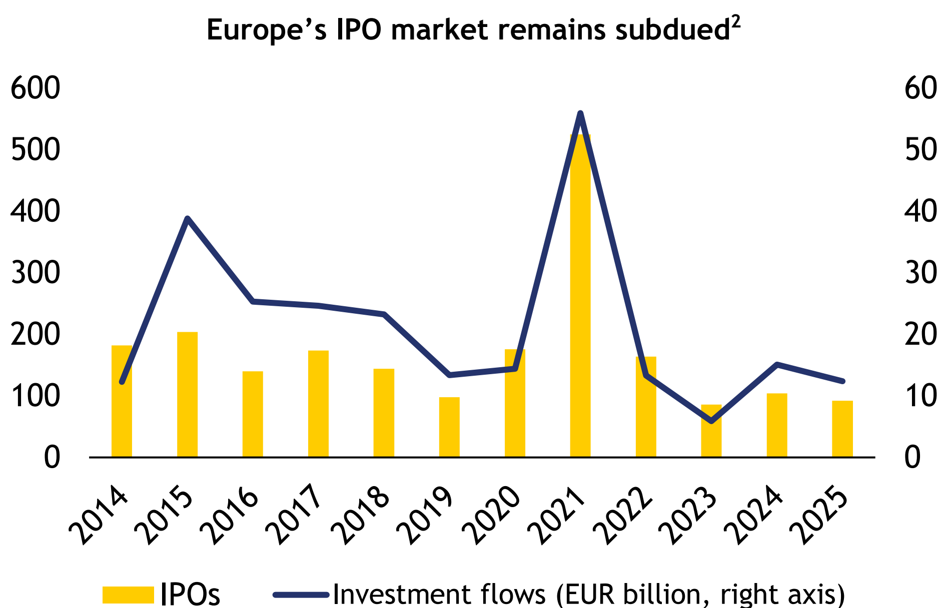
The EU should seize every opportunity to strengthen the foundations of its competitiveness. FESE welcomes the European Commission's ambition and its renewed efforts through the Market Integration and Supervision Package (MISP) to promote cross-border integration, improve supervisory efficiency, and remove remaining barriers within the Single Market. **To achieve Europe's strategic objectives, however, the MISP must go further, taking decisive action to address market structure challenges, reduce liquidity fragmentation, and revitalise primary market activity.**

[1] The chart shows the US and EU's (or Europe's) share of the global aggregate, which varies depending on the indicator and its source. It has been prepared by FESE using IMF data for GDP, SIFMA and WFE data for market cap and equity issuance, and WFE and FESE data for equity trading.

1. A competitive EU listing ecosystem through a healthy market structure

A vibrant primary market is central to Europe's competitiveness. IPOs provide companies with permanent and diversified sources of financing, supporting innovation, strategic value chains, and job creation. While initiatives such as the Listing Act will hopefully help stimulate the IPO pipeline, **reviving Europe's listing landscape requires more than issuer-focused reforms**. It depends on a healthy market ecosystem in which issuers and investors have confidence in the quality of trading, price formation, and transparency.

Europe's IPO market remains subdued[2]



However, today's EU market structure is not conducive to a fair, transparent, and efficient trading environment. MiFID II opened competition in trading and delivered important benefits, but it also enabled the proliferation of parallel trading mechanisms, such as systematic internalisers (SIs) and dark venues, which have highly fragmented liquidity. A growing share of activity has been migrating away from lit multilateral venues towards bilateral execution subject to lighter transparency and regulatory requirements. This trend will not reverse under the recent reforms, as regulatory asymmetries continue to disadvantage lit multilateral markets.

This fragmentation has direct consequences for Europe's primary markets. **Primary and secondary markets are correlated.** Strong, visible secondary-market liquidity is one of the most powerful drivers of IPO activity[3]. It underpins credible valuations, reduces spreads, and lowers the cost of capital, all of which are undermined by growing fragmentation and opacity. Consolidating liquidity around transparent primary venues would create a positive feedback loop: stronger price formation, reduced volatility, and improved funding conditions, making Europe a more attractive listing destination[4].

Other structural factors, such as fragmented investor pools, limited retail participation, and national barriers, also weigh on IPO activity. However, the central challenge remains a

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[2] Source: FESE Monthly Statistics and Annual Statistical Report 2025. Available here.

[3] Demir, I., Ghofrani, E., & Liu, Y. (2025). "Attracting new listings: what shapes IPO activity across markets", *WFE research working paper,* No. 10, available here.

[4] Burkl, M., Cailleteau, A., Dienerowitz, N., Martin, D., & Camiciola, E. (2025). "The Liquidity Matrix: Addressing fragmentation in European equity markets", *Oliver Wyman*, available here.

market structure that increasingly disadvantages the very venues providing listings and transparent price formation. Europe cannot build a competitive listing ecosystem on a weak market structure foundation. **Reinforcing the integrity and centrality of transparent, multilateral venues must therefore be a strategic economic priority** to attract and support the next generation of European growth companies.

2. A growing momentum on the need for market-structure reform

FESE welcomes the increasing recognition of the need to strengthen market structure. The recent Franco-German "FIVE" initiative report[5] noted the decline in the market share of primary (lit) venues from 38% in 2020 to 30–31% in 2025, and explicitly recognised the need to consider additional measures to restore an effective level playing field between on-exchange and off-exchange trading, while improving the listing ecosystem on multiple fronts. Similarly, the CNMV's December 2024 report[6] called for a renewed debate on whether MiFID's objectives are being met, noting the little shift from OTC trading to on-exchange trading. The report also raised the question of whether the EU should prioritise lit trading given its central role in the price formation process.

Despite this momentum, the MISP proposal does not address these issues. Meanwhile, the continued shift toward off-exchange execution risks further weakening transparency, reducing investor trust and protection, and limiting retail investors' access. Without meaningful action, these dynamics will continue to undermine IPO activity, impair price formation and overall EU competitiveness.

FESE therefore encourages policymakers to use the MISP to tackle long-standing structural issues through balanced reforms. While FESE continues to develop proposals to improve the broader framework, some initial proposals include:

1. Post-trade transparency & reporting

- Require SIs to be individually identified in post-trade feeds like trading venues.
- Enhance the consistency, completeness, and overall quality of SIs data, including through the inclusion of appropriate trade flags.

2. Regulatory supervision & enforcement

- Reinforce the authorisation and supervision of SIs to ensure consistent and enforceable SIs obligations.

3. Pre-trade transparency & quoting obligations

- Expand the SIs' quoting scope, potentially via an extended liquid market definition.
- Strengthen SIs' quote-update obligations for price improvement.
- Enhance market integrity through multilateral execution for below-SMS orders or a broader volume cap coverage.

Please refer to the next section for a broader description and concrete proposals for these non-exhaustive measures.

[5] Kukies, J., Noyer, C. (2026). "Financing Innovative Ventures in Europe (FIVE) report", available here.

[6] Riba, Q., & Cambón, M. I. (2024). "Fragmentation, price formation and liquidity of Spanish equities in a European Context", *CNMV Working Paper*, No. 87, available here.

3. Consolidated Tape revisions require evidence, timing, and safeguards

Despite the need to prioritise core market structure reforms, the MISP takes a narrow focus by only reopening aspects of the Consolidated Tape (CT) months after agreement on the Level 1 framework compromise and before the CT has gone live. **Revisiting the scope now is premature; any changes should be supported by a robust ex-ante impact assessment grounded in practical experience and actual data following its implementation**. At present, there is limited transparency-based justification for expanding the CT perimeter.

FESE strongly supports the objective of the CT and maintains that **the agreed design, based on anonymised EBBO and post-trade data, is sufficient to enhance transparency and improve the functioning of EU markets**. It provides high-value, low-cost information for most users and accommodates all relevant industry use cases. By contrast, reopening the CT perimeter will not advance more pressing SIU priorities such as strengthening price formation, correcting liquidity fragmentation, or supporting IPOs.

If CT discussions are nevertheless reopened, they must form part of a broader reassessment of the Level 1 equilibrium, including the revenue-distribution and RCB model of the tape, the framework for value-added services, and measures to prevent arbitrage. This would also require revamping the technical and operational framework for the CT (e.g., input/output data, methodology for output data, CTP performance and operational resilience requirements, etc.). Crucially, any reconsideration of the CT perimeter must also be strictly conditional on the complementary structural reforms outlined earlier, which are necessary to improve bilateral transparency, reinforce price formation, and mitigate potential unintended effects on market structure.

Conclusion

The MISP offers a unique opportunity to strengthen Europe's capital markets. FESE welcomes the Commission's proposals to remove cross-border barriers, a vital condition for a stronger Single Market. But competitiveness will only improve if Europe also addresses the underlying market structure challenges that have weakened liquidity, impaired price formation, and constrained primary markets for too long.

Europe cannot afford incremental progress. With the MISP, the EU has a unique opportunity to make its capital markets fit for purpose, fit for growth, and fit for global competition. This means a market environment where competition is fair, regulated markets can continue to perform the critical price formation function, retail investors benefit from fair, transparent and high-quality execution, and Europe's listing and fundraising ecosystem is globally competitive.

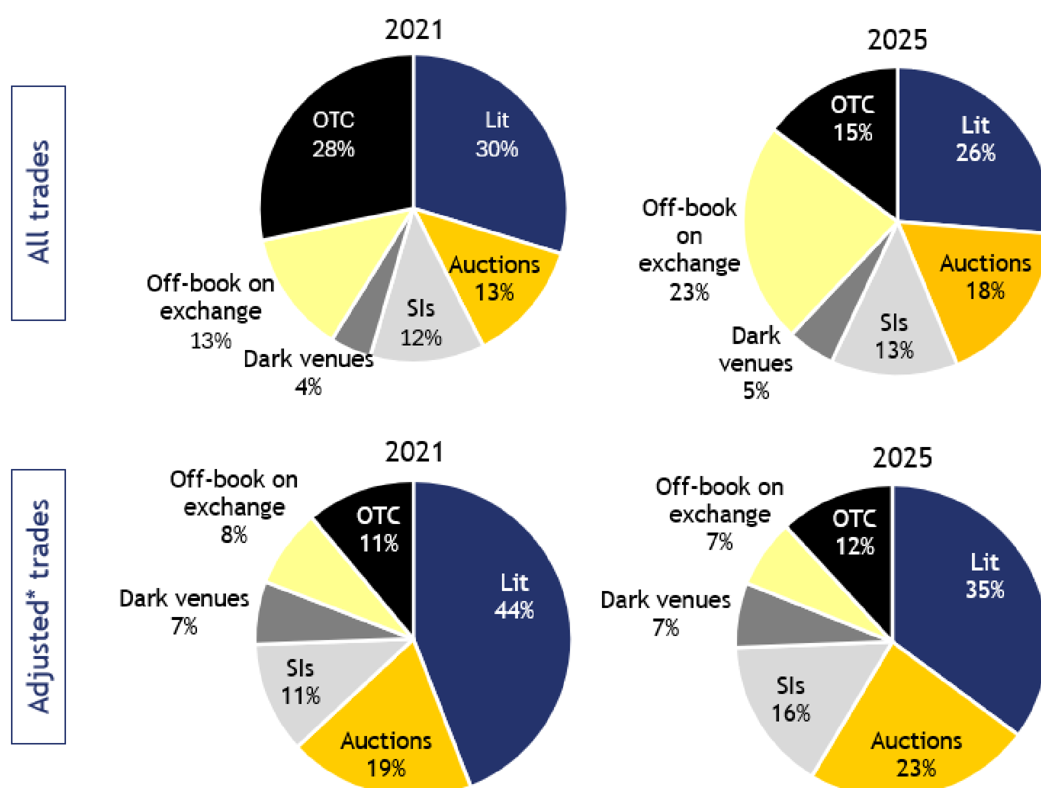
Exchanges stand ready to work constructively with policymakers and stakeholders to realise this ambition and ensure that strong, transparent, and competitive EU capital markets remain a cornerstone of Europe's economic strategy.

Concrete proposals on equity market structure

1. Introduction

The MiFID II and MiFIR frameworks have been successful in fostering innovation, competition, and technological development across European equity markets. They have enabled new execution mechanisms, such as systematic internalisers (SIs) and dark venues, to grow rapidly. However, this has also contributed to **a steady dispersion of liquidity across different channels and a gradual decline in the proportion of equity turnover executed on lit multilateral venues**. In doing so, it has gradually undermined core goals that MiFID II and MiFIR originally set out to achieve, such as strengthening transparency, supporting robust price formation, and moving OTC multilateral trading onto transparent regulated venues.

European equity turnover in EEA shares[7]



Note:
Trading in the EEA shares of the **Cboe Europe All Companies Index,** executed in EEA, UK and CH venues.
Some categories have been aggregated for simplicity; e.g., "auctions" includes opening, intraday, closing, as well as periodic auctions/FBAs and other auction types.
*Adjustments based on xyt's methodology to exclude certain technical and non-price-forming trades.
Source: xyt data provided by Euronext, FESE calculations

[7] Please note that the decrease in the proportion of OTC trading is largely attributable to the UK FCA's removal, from May 2024, of reporting requirements for a certain portion of non-addressable liquidity, rather than to an actual decline in trading activity.

These dynamics have far-reaching consequences. They impair the quality of price formation, reduce transparency, and limit investor access, particularly for retail investors who depend on visible multilateral liquidity. They also weigh on company valuations, raise the cost of capital, and jeopardise the EU's ambition to build deeper, more integrated capital markets. Sustaining an attractive and competitive marketplace requires ensuring that a meaningful share of liquidity remains visible and accessible.

Against this backdrop, lit **Regulated Markets (RMs) and Multilateral Trading Facilities (MTFs) offer a unique and irreplaceable value proposition. They combine transparent, multilateral price formation** accessible to all market participants on an open, non-discriminatory basis, **and their role as listing venues**, acting as central anchors for market integrity and investor trust. As more activity migrates off-book, it becomes important to reflect constructively on how to strengthen the conditions under which all execution mechanisms can coexist, while preserving the key role that trading venues play in the ecosystem and avoiding negative effects on the competitiveness and well-functioning of markets.

1.1. Contribution to primary markets

As developed in the accompanying paper, primary and secondary markets are intrinsically interconnected. Efficient secondary markets underpin capital formation, liquidity provision and risk management, all essential for an attractive listing environment. Strengthening the appeal of the EU listing ecosystem is critical for the success of the SIU, ensuring companies choose to list and remain listed in Europe.

Exchanges play a vital societal role as listing venues, a role that is not always profit-driven, especially when it comes to supporting SMEs. By contrast, other execution mechanisms operate solely in the secondary market, competing with trading venues under lighter regulatory frameworks. Ensuring that this asymmetry does not undermine the sustainability of primary markets is an important policy consideration.

As liquidity disperses across bilateral channels, secondary-market depth may weaken, which can affect IPO prospects. Academic research consistently shows that strong, transparent secondary markets encourage IPOs and support vibrant equity financing[8]. Strengthening liquidity in lit venues, where companies are listed, is therefore not only a trading-related objective but a strategic one for Europe's competitiveness.

1.2. Price formation

A well-functioning price-formation process is crucial for all market participants. While alternative execution mechanisms serve specific and valuable purposes, especially for managing large-in-scale transactions, the evidence consistently shows that price discovery continues to take place on lit multilateral venues.

- **Lit venues generate the reference price.** This mainly happens through the interaction of multiple competing bids and offers in the lit order book, where, in fact, the decline in trading share appears to be most pronounced (see Graph 1). Empirical studies show that most SI trades of comparable size to lit trades are not price-forming[9], and that exchange trades carry far more informational value than those executed on off-exchange venues, all of which tend to involve relatively uninformative transactions[10].

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[8] Demir, I., Ghofrani, E., and Liu, Y. (2025). "Attracting new listings: what shapes IPO activity across markets", *WFE research working paper*, No. 10, available here.

[9] Recent research showed that 85% of transactions executed on SIs, in sizes comparable to those executed on multilateral venues, are not price-forming. See Besson, P. & Gu, C. (2024). "When Do Systematic Internalisers Choose to Provide Passive Liquidity to Investors?", *Journal of Investing*, 34(1), pp. 94–123, available here.

[10] Hagströmer, B., & Menkveld, A. J. (2025). "Trades, Quotes, and (Unbiased) Information Shares", *SSRN Social Science Research Network*, available here.

- **Dark and bilateral venues rely on, rather than generate, imported prices.** Their executions are typically pegged to prices produced by lit multilateral venues, underscoring their dependence on transparent price formation and the importance of reinforcing the accuracy and representativeness of the price signals on which the broader market relies.

Extensive academic literature confirms that high levels of dark trading in sizes comparable to lit market sizes are detrimental to market quality and price formation[11]. Ensuring the long-term quality of price formation is therefore a shared objective[12]. A healthy level of visible liquidity will benefit all market participants, including those operating off-exchange. Priority must be given to reinforcing liquidity in lit venues, where price formation occurs.

1.3. Transparency and access

The continued shift towards bilateral execution also raises concerns around market integrity, fairness in access and trading, and transparency, which must remain central pillars of the European market structure. **Lit venues offer open, non-discriminatory access and provide the highest standards of pre- and post-trade transparency.** By contrast, the SI framework allows selective access, discretionary execution, and more limited transparency by design. These features can be appropriate for certain types of trading, such as large orders.

The challenge arises when these mechanisms increasingly handle smaller, often retail-sized transactions[13] for which they were not originally intended. In such cases, they compete directly with lit multilateral venues while operating under significantly lighter obligations. Addressing this imbalance would enhance fairness, strengthen investor protection, and help ensure that competition across execution mechanisms remains balanced and sustainable.

For retail investors in particular, it is legitimate to question whether they benefit more from execution in a fair, transparent, non-discriminatory environment under strict regulatory oversight, versus an environment characterised by greater information asymmetry, higher conflict-of-interest risk, and lower transparency.

The revised MiFIR text already acknowledged the very low level of pre-trade transparency among SIs and the need to ensure a level playing field between trading venues and SIs (Recital 13). However, **the revised MiFID II framework and ESMA's RTS 1 proposals fell short of delivering effective solutions**[14].

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[11] The papers listed below look at data from UK, Europe, Australia, and US in this respect: Degryse, H., de Jong, F. & van Kervel, V. (2015). "The impact of dark trading and visible fragmentation on market quality", *Review of Finance*, 19(4), pp. 1587–1622, available here; Comerton-Forde, C. & Putniņš T. J. (2015). "Dark trading and price discovery", *Journal of Financial Economics*, 118(1), pp. 70–92, available here; Aquilina, M., Diaz-Rainey, I., Ibikunle G., & Sun, Y. (2017). "Aggregate market quality implications of dark trading", *FCA Occasional Paper*, No. 29, available here; Hatheway, F., Kwan, A., & Zheng, H. (2017). "An empirical analysis of market segmentation on U.S. equity markets", *Journal of Financial and Quantitative Analysis*, 52(6), pp. 2399–2427, available here.

[12] The Spanish regulator (CNMV) published a study in December 2024, which concludes by suggesting that it may be appropriate to initiate a debate on whether the objectives of MiFID regulation are being achieved and whether additional objectives should be considered. The study highlights that there does not appear to be a significant shift from OTC trading to on-exchange trading and raises the question of whether lit trading should be prioritised due to its central role in the price formation process. [Riba, Q., & Cambón, M. I. (2024). "Fragmentation, price formation and liquidity of Spanish equities in a European Context", *CNMV Working Paper*, No.87, available here.]

[13] For instance, in 2024, 94% of total EEA SI trades in Stoxx600 components fell below the standard market size (SMS) with an average trade size of €1,500, while only 0.5% exceeded the LIS with an average trade size of €1,512,500. Based on own calculations on the basis of Xyt data.

[14] The recent Franco-German "FIVE" initiative explicitly acknowledged the need to explore further measures to restore an effective level playing field between on-exchange and off-exchange trading. The report also highlights that the shift in liquidity has raised concerns about reduced pre- and post-trade transparency, unequal access to market information, and the overall robustness of price formation. See Kukies, J., Noyer, C. (2026). "Financing Innovative Ventures in Europe (FIVE) report", pp-106-107, available here.

1.4. Comprehensive analysis

FESE welcomes the efforts of regulators, industry, and academia to develop a clearer and more complete picture of equity market fragmentation in European capital markets. In particular, FESE commends ESMA for its forthcoming work in this area and stresses the importance of ensuring that future analyses are grounded in robust data and capture the full complexity of European equity trading. In particular, two areas merit close attention:

- **A holistic examination of the equity-trading landscape**, including the role of non-EU actors, to properly assess the implications of current market trends.
- **Improved visibility in the bilateral and dark-trading space, addressing persistent data-quality issues in OTC and SI reporting**. This should include a review of current flagging practices before considering any further removal, to ensure that policy decisions are based on accurate and complete information.

In this context, FESE sees particular value in exploring a **data-sharing agreement between ESMA and UK authorities**, given the significant volume of UK-based bilateral execution in EEA shares. Such cooperation could help resolve post-Brexit reporting challenges and enable a more accurate assessment of all economically relevant activity, ultimately strengthening the evaluation of liquidity and market quality in EEA shares.

Conclusion

Since the introduction of MiFID, Europe's equity markets have become more diverse, innovative, and competitive. **The next step is to ensure that this dynamism is supported by deeper and more transparent liquidity pools through the concentration of liquidity**[15], which will reinforce price formation, enhance investor confidence, and support an attractive listing ecosystem in Europe[16].

The Market Integration and Supervision Package (MISP) creates a timely opportunity to refine Europe's market structure through a forward-looking and cohesive approach that serves as a strong foundation for investment, growth, and competitiveness. At this stage, this requires promoting fair competition and ensuring a level playing field across execution mechanisms, strengthening transparency, and supporting vibrant public markets.

The next section sets out concrete proposals on how the MiFIR/MiFID framework can be adjusted within the MISP to help achieve these objectives. These proposals below should be considered a non-exhaustive list, with additional contributions to be shared as work progresses.

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[15] See Burkl, M., Cailleteau, A., Dienerowitz, N., Martin, D., & Camiciola, E. (2025). "The Liquidity Matrix: Addressing fragmentation in European equity markets", *Oliver Wyman*, available here.

[16] Although this paper focuses on equity markets, some conceptual considerations may also be relevant to fixed income markets, where execution remains largely bilateral and retail participation is limited by weaker, less comparable pre-trade transparency and uneven data quality. That said, fixed income markets differ materially in terms of microstructure, liquidity formation and investor base, and no direct transposition of equity-oriented frameworks should be assumed without a thorough and market-specific impact assessment.

2. Proposals

2.1. Post-Trade Transparency & Reporting

2.1.1. Require Systematic Internalisers to be individually identified in post-trade feeds like trading venues

MiFIR Article 6 establishes post-trade disclosure requirements for trading venues for equity instruments, while MiFIR Article 20 sets out requirements for systematic internalisers. However, SIs currently do not face the same requirements to be identified in post-trade transparency feeds like other execution venues.

FESE Proposals

- Amend Article 20 MiFIR to require SIs to use a unique, venue-like identifier in all post-trade transparency reports. A Delegated Act should specify which identifier should be used (e.g., a dedicated MIC).
- Allow the publication of SI identifier in post-trade feeds to be deferred, following a system similar to that in place for bonds (Article 11 MiFIR), enriching the SI post-trade feeds to fill after a specific delay (e.g. one month) the field related to the SI identifier.
- Request that ESMA submits to the Commission an analysis assessing the contribution of various trading models to the price formation process and the impact of dark and semi-dark trading on price efficiency. ESMA should mandate independent academic research teams with the relevant analyses through the allocation of sufficient and appropriate research grants and draft a report based on the input received.

Venue-like SI identifiers (rather than generic labels such as “SINT” or “OTC”) would enhance market transparency by making SI activity visible to the market. This would also support better analysis of fragmentation and execution quality and allow more targeted and proportionate policy responses. Without clear identification, market participants cannot accurately measure how much volume individual SIs internalise or how this affects lit markets and retail execution and cannot perform granular transactions costs analysis.

To avoid hidden liquidity, deferral regimes must be strictly harmonised to prevent them from becoming loopholes. The proposed deferral regime for SIs, coupled with the extended liquid-market definition proposed in paragraph 2.3.1, would account for the fact that SIs trade against their own capital while allowing for meaningful post-trade transparency.

2.1.2. Enhance the consistency, completeness, and overall quality of SI data, including through the inclusion of appropriate trade flags

Ensuring adequate visibility in the bilateral/dark space is crucial for effective policymaking and for providing local and foreign investors with the most granular view possible of liquidity available in EU equities. Transaction flags should be extensively reviewed and, in particular, steps should be taken to enhance the consistency and completeness of SI data quality, as well as to improve visibility in this area. Importantly, such a review should precede any consideration of the further removal of transaction flags.

Currently, despite the RTS 1 review, it remains very difficult to distinguish how much SI volume is executed at midpoint, off tick or retail driven, which hampers evidence-based decisions on dark caps, tick sizes, and SI rules. Additional SI-specific flags could include, for instance, a midpoint flag (enabling regulators to monitor developments and prevent excessive trading at midpoint), an SI direction flag (allowing market participants to conduct transaction cost analysis and toxicity analysis, by having visibility over whether the SI was on the buying or selling side), a below/above SMS flag (enabling a distinction between retail and institutional order flow) and a CLSE flag (to better map volumes executed at the closing price across execution venues, similarly to the UK present regime).

FESE Proposal

- Reassess and redefine the scope of application of transaction flags, harmonising their application across the industry, particularly for off-exchange transactions. While supporting the introduction of specific SI flags (e.g., midpoint flag, SI direction flag, below/above SMS flag), we acknowledge the existence of technical limitations. For example, when SIs are connected to brokers or order flow providers, they do not have access to clients’ data. Nevertheless, appropriate flagging for SI trades should be further explored.

Improved SI flagging would shed light on the true extent of liquidity fragmentation and the displacement of retail size flow away from lit venues, directly informing future reforms. It would also enhance market participants’ visibility of liquidity in EU equities, by enabling greater reliance on public post-trade data. This is particularly important to support the use of the post-trade consolidated tape, although the CTP should not itself produce the flagging standards.

2.2. Regulatory Supervision & Enforcement

2.2.1. Reinforce the authorisation and supervision of Systematic Internalisers

Under the current framework, MiFID regulates the authorisation of investment firms, but does not include specific authorisation requirements for SIs as a category. This remains the case despite the fact that SIs have become a standard alternative to trading venues within the EU[17].

Regulated Markets (RMs), Multilateral Trading Facilities (MTFs), and Organised Trading Facilities (OTFs) are already subject to comprehensive authorisation and operational requirements, with proposals in the MISP to transfer these provisions from MiFID to MiFIR. Introducing a distinct authorisation and rulebook publication requirement for systematic internalisers would ensure that their regulatory obligations are effectively and consistently enforced and are easily comprehensible for the market stakeholders.

For instance, even though SIs are prohibited from entering into matching arrangements with entities outside their group when dealing on their own account, some investment firms appear to have developed models that allow third-party trading firms to provide liquidity to SI clients. Any hubs connecting SIs with counterparties should be closely monitored to ensure they operate strictly on a bilateral basis. Such activities require oversight, as there is a risk that trading occurs on a multilateral rather than bilateral basis, potentially breaching existing regulation.

FESE Proposals

- SIs should also publish their rulebook (including admission rules, matching logic, etc.).
- In addition, SIs should be subject to the same authorisation and supervision requirements as trading venues when they execute transactions in a similar manner to a regulated market or MTF, and they should provide their competent authority with a detailed description of the functioning of the SI. This could include, for instance:
  - Demonstration of the bilateral model, the execution process, and interactions with trading venues and other SIs;
  - Arrangements for the sound management of the technical operations of the system, including the establishment of effective contingency arrangements to cope with risks of systems disruption;
  - Details of compliance with best execution;

  This could be formalised either (i) by adding this requirement under Article 15(1) MiFIR and specifying that the requirement would not be under the scope of Article 14(2) MiFIR, or (ii) by adding the requirement under MiFID Title II "Authorisation and operating conditions for investment firms", to be applied to those investment firms seeking authorisation for SI activity.

[17] Based on Graph 1 (above), SIs account for 16% of total adjusted liquidity for EEA shares in CBOE's Europe All Company Index across European venues in 2025 (source: xyt, FESE calculations).

Many SIs operate functionally like trading venues (matching large volumes of client orders against their own capital on a large scale), yet they are not subject to the same regulatory obligations regarding surveillance and resilience, creating risks of regulatory arbitrage. The proposal above takes a more robust approach, similar to a trading venue authorisation process, requiring SIs to provide detailed information on their execution models and internal functioning, and to clearly demonstrate the bilateral nature of their activity and their interactions with trading venues.

2.3. Pre-Trade Transparency & Quoting Obligations

2.3.1. Expand the systematic internalisers' quoting scope, potentially via an extended liquid market definition

Following the recent MiFIR review, the liquid market definition and SI pre-trade transparency thresholds were amended through RTS 1 and the draft CDR 2017/567. Despite these updates, both European and foreign investors may be misled into perceiving European liquidity as disproportionately low compared to reality. The current thresholds for liquidity determination are too low: only a small percentage of stocks admitted to EU markets is classified as liquid[18].

Moreover, the SI pre-trade transparency requirements should be aligned more closely with those applicable to trading venues, given their established importance in the EU liquidity landscape. The revised requirements fail to address the core issue: transparency is asymmetrically enforced, and fragmentation is deepening as market participants route orders to venues that offer cost or speed advantages at the expense of market integrity.

As argued in the introduction to this section, the unlevel playing field with multilateral trading venues encourages regulatory arbitrage, leading trading activity to move to venues with lighter oversight, undermining the very transparency the EU seeks to promote. Sufficient transparency is crucial for the price formation process and, therefore, the well-functioning of capital markets.

FESE Proposals

- One option is to mandate ESMA to amend the liquid market definition, with the objective of ensuring that [percentage to be defined by ESMA in L2, with a minimum of at least 70%] of the total number of shares admitted to trading on regulated markets and MTFs in the Union are classified as having liquid markets (e.g., through dynamic thresholds or other calibrations).
- Another option is to amend Article 14 MiFIR to ensure that all investment firm quotes are made public and are firm for all instruments, not only for those for which there is a liquid market.

[18] Based on ESMA's liquidity assessment for the year 2023 under the new methodology proposed in CDR 2017/567, only 8.2% of shares admitted to EU markets were classified as liquid. Calculation based on Table 17 (pp. 349-350) of ESMA's third consultation package on the MiFIR review, available here.

This proposal would increase pre-trade transparency for trades executed on SIs, enhancing market participants' visibility on the available liquidity and thereby attracting more investment. It would also ensure a more balanced and unified approach for all trading venues to contribute fairly to a transparent and efficient equity market, improving price discovery on exchanges and overall execution quality.

Further reflection on the SI quoting threshold would be useful as a complementary step, particularly to consider whether it should be extended to larger sizes to better align incentives and promote meaningful transparency.

2.3.2. Strengthen systematic internalisers' quote-update obligations for price improvement

To ensure true visibility on available prices, SIs should update their quotes prior to execution when they intend to offer a price improvement on their public quotes. The possibility for price improvement is established by Article 15(2) MiFIR. To this, the MISP proposal introduces limited adjustments, such as requiring SIs to update quotes immediately (and in any case before execution) when offering retail price improvement. While this is welcome to ensure that public and firm SI quotes reflect price improvements, these changes remain insufficient. For instance, they do not guarantee that the price improvement is significant and there is little justification for restricting these requirements only to retail orders.

The AMF[19] found that around 90% of SI transactions are executed at prices that are equal to, worse than, or only marginally better than those available on the primary market. A further study[20] confirmed these trends, showing that 85% of immediate transactions do not benefit from price improvement compared to the EBBO.

FESE Proposals

- While supporting the proposed SI quote-update obligations, FESE sees potential for further enhancement. FESE proposes removing the reference to retail orders in Article 15(2)(b): the requirement to update the quote before execution in the case of price improvement should apply to all orders subject to SI quoting obligation.
- Furthermore, Article 15(2) must be strengthened to ensure that the price improvement offered by SIs is meaningful. FESE proposes a mandatory improvement of at least one tick compared to the Primary Best Bid and Offer (PBBO).

Any loopholes that allow SIs to offer price improvement without updating their public quotes should be corrected. Ensuring public and firm quotes for all orders subject to the quoting obligation, including when SIs offer price improvement, will enhance market participants' visibility on the liquidity available on SIs and enable wider interactions with this liquidity.

[19] Lucas, I. (2020). "Quantifying systematic internalisers' activity: their share in the equity market structure and role in the price discovery process", *Autorité des marchés financiers (AMF)*, available here.

[20] Besson, P. & Gu, C. (2024), "When Do Systematic Internalisers Choose to Provide Passive Liquidity to Investors?", *Journal of Investing*, 34(1), pp. 94–123, available here.

Additionally, SIs must provide meaningful price improvement to justify the bilateral nature of their execution and enhance the quality of best execution for clients.

2.3.3. Enhance market integrity through multilateral execution for below-SMS orders or a broader volume cap coverage

FESE welcomes the growing recognition across policymakers and regulators of the need to enhance transparency in EU markets, as an essential prerequisite for advancing the Savings and Investment Union. The MISP presents a timely opportunity to take a more holistic look at Europe's market structure and consider additional measures that can strengthen transparency, reinforce robust price formation, and support the efficient functioning of EU equity markets. Current trends risk weakening the quality and resilience of public price formation, a core public good that underpins market integrity, investor confidence, and the EU's overall competitiveness.

Systematic internalisers play an important role in the market ecosystem by offering large, bespoke, risk-facilitating quotes that enable institutional investors to execute sizeable orders with reduced market impact. However, current trading patterns show a structural drift away from the intended role of SIs in executing larger orders, as they are internalising a high proportion of very small trades, including those characteristic of retail order flow[21].

This migration of small trades to bilateral venues comes at a cost. It fragments liquidity across opaque execution channels, weakens the overall price formation process, and limits the visibility retail investors have over true market conditions. Multilateral trading venues, by contrast, operate on a fair, transparent, and non-discriminatory basis, offering open access to the order book and strong regulatory oversight, conditions that are particularly important for execution quality and investor protection, especially for retail investors.

FESE Proposals

- Preferred option: specify in Article 23 MiFIR (trading obligation for investment firms) that trades in shares below the standard market size (SMS) shall be executed exclusively on a regulated market (RM) or a multilateral trading facility (MTF).

  Alternative option: expand the volume-cap mechanism beyond the Negotiated Trade Waiver and the Reference Price Waiver to cover additional forms of bilateral and dark trading not currently captured by the existing framework.

Ensuring that below SMS trades, i.e. the trades carrying the strongest informational content, occur on multilateral venues would enhance investor protection for retail participants and strengthen overall market integrity and price formation.

Regarding the alternative proposal, it should be noted that the current volume cap only captures a portion of the dark flow. Broadening its scope could address several issues observed in the current EU market structure, enhance transparency across the board, and strengthen the quality of price formation, helping to mitigate risks associated with the overuse of non-transparent markets in the EU.

[21] Based on FESE calculations using xyt data, 94% of all EEA SI trades in STOXX600 components were below the standard market size (SMS), with an average trade size of €1,500. By contrast, just 0.5% of SI trades exceeded the large-in-scale (LIS) threshold, with an average trade size of €1,512,500.

Other trading-related aspects

Introduction

FESE supports the European Commission's ambition to further integrate the EU's capital markets. In this context, FESE considers several of the trading-related measures proposed under the MISP to remove long-standing cross-border barriers as a useful step towards a more integrated and efficient European capital market. These harmonisation efforts have the potential to improve market access, drive economies of scale, and facilitate cross-border activities, thereby contributing to the better functioning of EU financial markets.

At the same time, we consider that some elements of the proposal merit particular attention due to potential challenges that may arise, for example, when shifting from divergent national frameworks to a harmonised EU-wide approach. It is therefore important to ensure that the design and implementation of the proposed measures avoid unintended adverse effects.

1. Harmonisation of provisions on regulated markets

Regarding the requirements for the authorisation and operation of an RM, MTF and OTF, FESE appreciates the move to MiFIR with the objective to ensure more harmonisation and to level the playing field in general. However, we would like to recall that the playing field remains uneven when compared with the authorisation requirements for SIs. FESE has made several suggestions to address this issue in the previous section.

On a different note, FESE would like to draw attention to one specific aspect of the harmonisation of provisions on regulated markets. In particular, the MISP proposal has modified the definition of market operator in Article 4(1)(18) MiFID II so that the regulated market itself can no longer be a market operator; the amendment means that the market operator is the sole bearer of rights and obligations and excludes the possibility that the regulated market itself can be a market operator. Since these regulations would be directly applicable as part of MiFIR, the basis for a public stock exchange as an independent entity would no longer apply as it is currently the case for example in Germany which has a dual structure of a private market operator and a public stock exchange. Such a change would entail a considerable implementation effort, as it would lead to the demise of the stock exchange as a legal entity. This would directly affect the legal relationships with the stock exchange participants and issuers that currently exist with the stock exchange as an institution under public law. The dual form of organisation would mean a competitive disadvantage for stock exchange operators, as competitors abroad would be spared such implementation costs.

FESE Proposal

- Ensure a smooth and legally certain transition to a more harmonised framework, FESE suggests that the final legal text include a grandfathering clause for existing organisational models of regulated markets.

The grandfathering clause would preserve structures that are already fully compliant with MiFID II and have proven effective under national law, while ensuring that new market entrants or future restructurings align with the harmonised model introduced under MiFIR.

This transitional safeguard would avoid disproportionate disruption to well-functioning market arrangements — such as dual-entity or public-law exchange models — without undermining the objective of greater EU-wide convergence. It would also allow Member States and market operators to adapt their frameworks gradually, in line with supervisory expectations, thereby supporting legal certainty, operational continuity, and financial stability during the implementation phase.

FESE therefore recommends that MiFIR explicitly permit existing structures to continue operating under their current legal form, while applying the harmonised requirements prospectively.

2. Authorisation of regulated markets

The Commission's proposal under Article 2a of the amended MiFIR would allow market operators to seek authorisation in a different Member State without establishing a separate legal entity, thereby enabling them to operate more easily across various jurisdictions. FESE supports this proposal, recognising its potential advantages, especially for those market operators operating RMs in multiple countries.

Nonetheless, it remains essential to promote greater harmonisation and convergence among Member States, in order to ensure a consistent regulatory framework and maintain a level playing field across jurisdictions. The Commission should ensure that no disproportionate advantages exist due to regulatory gaps in different Member States where market operators decide to locate.

If these elements are duly taken into account, the proposal could facilitate cross-border operations for such market operators and contribute to the development of a more integrated European market.

3. Enhanced passporting arrangements

The MISP proposal introduces an enhanced passporting regime for the cross-border activities of regulated markets in Article 2o. Among other elements, it allows regulated markets to operate across the Union either through the freedom to provide services or by establishing a branch.

FESE welcomes the proposals regarding the cross-border activity of regulated markets and the setting up of branches, as it aligns well with the objectives of removing barriers to the single market and could enhance cross-border activity. The simplification and harmonisation of rules is essential to deepen liquidity and encourage participation in EU markets.

Regarding the prohibition for Member States to impose additional requirements in relation to cross-border activity on their territory, we view it favourably as it avoids the creation of national barriers, removes the possibility for gold-plating and prevents the existence of different requirements in different Member States. At the same time, it may be appropriate to preserve a limited capacity for host Member States and local authorities to act in clearly defined, exceptional scenarios, to address market specific events and ensure effective crisis management and market integrity. Any host involvement should be narrowly framed, proportionate, and triggered only under clearly defined conditions, so simplification is achieved without compromising investor protection and stability.

In order to ensure a smooth transition, it is very important to ensure the framework allows for both the establishment of new branches, and the re-structuring of existing legal entities into branches.

4. Membership authorisation

FESE welcomes the Commission's proposal to facilitate and streamline membership authorisation under the new MiFIR Articles 2l(3a) and 2x(2). We consider it a positive step to support cross-border participation, reduce unnecessary administrative barriers, and further promote market integration within the Union. The approach also strikes an appropriate balance between facilitating access and preserving the integrity of trading venues' admission procedures, including the assessment of whether the applicant member has sufficient resources to perform the intended role (Art. 2l(3)(d)).

At the same time, to better frame the enhanced membership authorisation, it would be important to introduce further specification:

FESE Proposal

- Clarify that trading venues are not exposed to legal or supervisory liability if a member admitted under the proposed mechanism is subsequently found to be in breach of Anti-Money Laundering (AML) requirements, particularly in cases where the member has been deemed compliant under Article 2l(3)(a).

5. Activities performed by a market operator – Ancillary activities

The introduction of the concept of "ancillary activities" in MiFIR Article 2a(3) could result in a strict and problematic approach that stifles innovation and creates unnecessary regulatory burden. FESE does not see a clear regulatory rationale for introducing a new category of "ancillary activities" applicable to market operators. Existing licensing and supervisory frameworks already comprehensively cover the activities required for operating a regulated market, and the current arrangements function effectively under MiFID II and national law.

FESE Proposal

- FESE proposes that the ancillary-activities provision, including the ESMA mandate, be deleted in its entirety in order to maintain clarity, avoid duplicative regulatory layers, and ensure that the MiFIR framework remains focused, proportionate, and aligned with established market-operator licensing regimes.

Introducing an additional, undefined category of permitted activities risks adding unnecessary regulatory complexity without addressing a concrete problem. It may also create uncertainty regarding scope, supervisory interpretation, and future application, despite the absence of evidence that current rules are insufficient.

6. Outsourcing/internal allocation arrangements

FESE supports the proposed approach to intra-group arrangements for resource or function allocation from the amended MiFIR Article 2f. This proposal would simplify the current arrangements for groups and recognise that intra-group outsourcing entails lower risk.

The proposal however contains a reference to arrangements regarding the national surveillance authorities which could be problematic. If this implies the maintenance of an obligation of ex ante notification and reporting mechanisms towards the local NSA so as to ensure visibility on the operations of the operator, the proposed simplification would be nullified.

7. Right to designate a CSD

FESE strongly supports the goal of allowing market participants to choose their settlement location, as it could facilitate the integration of capital markets and provide additional possibilities and better outcomes for investors if correctly framed. Such an expansion of choice should not be opposed, but must follow a secure, regulatory-driven process. This is the only way to ensure that Financial Market Infrastructures (FMIs) can continue to fulfil their central role of safeguarding financial stability.

At the same time, FESE would like to draw attention to the risks linked with the proposed unconditional right to designate a settlement location in Article 34c MiFIR. Far from strengthening the European market structure, the current proposal could create new risks by prioritizing the unrestricted choice of settlement location over market safety and stability.

It should also be noted that Article 37(2) of MiFID II—which previously provided for a choice of settlement location—was repealed by the legislator. This right, however, was subject to clear conditions, including functioning links between systems and the approval of the competent supervisory authority to ensure orderly market functioning. These requirements were not transferred to the new MiFIR structure and, in particular, were not harmonised in Article 34c MiFIR. The current proposal for an unconditional right of choice therefore, contradicts the previous, risk-based logic of the repealed Article 37(2) of MiFID II.

Primarily, in the absence of further specifications, the requirement would create immense operational complexity. Dozens of new technical, legal, and operational links would need to be established and maintained between numerous trading venues and CSDs. The resulting fragmentation of the system landscape would not only be costly and inefficient but would also significantly increase operational risks for the entire market infrastructure.

In addition to the operational complexity already mentioned, an unconditional right to choose a settlement location would have further profound disadvantages:

- **Undermining the Stability Mandate of FMIs:** An obligation for trading venues to connect with any CSD overrides their own critical risk management and due diligence processes. This directly undermines the core mission of FMIs to ensure financial stability.
- **Endangering Settlement Finality:** The forced connection across multiple jurisdictions and regulatory frameworks creates legal uncertainty and thus weakens settlement finality—the point at which a transaction is considered complete and irreversible.
- **Significant Cost Increases for Investors:** The establishment and maintenance of numerous new technical and legal connections lead to enormous operational complexity and inefficiency. The resulting cost increases for clients and end-investors would make regulated markets unnecessarily expensive.
- **Harming Investor Protection and Increasing Systemic Risk:** A shift towards bilateral trading would lead to less transparency and higher rates of settlement fails.
- **Misguided Incentive to Shift to Less Transparent Markets**: Since the proposed Article 34c MiFIR only applies to trading venues and not to bilateral execution channels, it

creates an unlevel playing field. This could steer trading activity away from transparent, regulated trading venues into less regulated bilateral arrangements, which would be a direct contradiction to the goals of MiFIR.

In summary, Article 34c MiFIR in its current form would seriously impair the global competitiveness of the EU financial markets.

FESE Proposals

- Amend Article 34c MiFIR to establish a clear, transparent, and risk-based process for designation. The amendment would require that any designated CSD must have already been granted access to the trading venue under the orderly framework of Article 53 of Regulation (EU) No 909/2014 (CSDR). Consequently, the right of a trading venue participant to choose a CSD would be conditional on the trading venue having already granted access to that specific CSD.
- Additionally, FESE proposes to explain the introduction of the legal amendment on the right of free choice in a new recital, clarifying the manner of implementation so that the purpose of the rule—to ensure a secure freedom of choice—is unambiguous.
- Lastly, certain clarifications are needed for the provision in Article 34c to be operationally clear: for instance, by specifying who actually holds the right to designate the CSD between the trading member, clearing member and settlement agent. Further clarity is also needed on whether the trading venue or the clearing house is responsible for technically providing the settlement location.

This approach unambiguously ensures that the right of choice is exercised exclusively based on a list of CSDs that have been validated through a secure, transparent, and thorough review process. Stakeholders approach trading venues to be designated as a settlement location.

At the same time, the approach strengthens financial stability by utilizing the established risk management gateway of CSDR Article 53. It creates a reliable environment in which settlement options can be expanded safely and gradually, thereby opening up real choice for market participants.

By implementing this amendment, we enable a secure exercise of the right of choice, which we strongly support in principle, and strengthen the integrity and competitiveness of the European financial market infrastructure. In conjunction with future developments, such as the proposed hub-and-spokes model for connecting EU CSDs, this framework offers a viable path to achieve more integration and choice without jeopardizing the stability of the system.

8. Other trading aspects transferred from MiFID to MiFIR

As a general remark, FESE supports the proposal to replace Directives with Regulations, as it reduces the ability for differing approaches to be taken in different Member States, which fundamentally conflicts with the aim of an integrated Single Market. Directives, national divergent implementation, and gold-plating create significant obstacles, such as regulatory

divergence or arbitrage, that must be removed. Application of the regulation should never result in an uneven playing field between Member States.

Nevertheless, in certain instances the transfer of provisions from MiFID to MiFIR creates additional complexities. While we have already covered a few examples above, we would like to highlight the specific cases of the provisions governing trading suspensions and the monitoring of compliance.

8.1. Trading suspensions

The proposal under the transposed MiFIR Article 2k requires other trading venues to suspend an instrument if the primary trading venue does so, unless the competent authority considers that it could cause significant harm. There is a significant risk that waiting for feedback from the competent authority – which often relies on the expertise of the trading venue – could lead to dangerous delays in time-sensitive situations.

FESE Proposal

- The technical standards should clarify that trading venues may first carry out a necessary suspension and obtain formal approval from the competent authority immediately thereafter.

8.2. Monitoring obligations

The proposed new text under MiFIR Article 2n on monitoring obligations for regulated markets deviates from the existing, directly applicable requirements in Article 16 of the Market Abuse Regulation (MAR). This creates a potential risk of divergent or incorrect interpretations by Member States. In our view, references to MAR obligations in MiFIR are unnecessary as MAR is directly applicable.

FESE Proposal

- The references to MAR in the new MiFIR Article 2n should be deleted. If they are maintained, any risk of legal uncertainty and conflicting requirements must be eliminated by delegated acts.

The proposals above would provide the necessary clarification to ensure that provisions on trading suspensions and monitoring of obligations are streamlined, effective and result in simplification in practice.

Conclusion

Efforts to remove cross-border barriers and further integrate EU capital markets are a key component of the Union's competitiveness. We welcome the Commission's proposal to that end; however, we would like to call for certain targeted adjustments which, in our view, would advance this goal while avoiding unintended challenges in implementation. Among other aspects, we recommend the inclusion of a grandfathering clause for existing organisational models of regulated markets; additional clarifications regarding membership authorisation, trading suspensions, and monitoring obligations; the deletion of the ancillary activity provision; and the introduction of certain conditions on the right to designate a CSD, in order to avoid operational complexity while strengthening financial stability.

By striking the right balance between harmonisation and effective market functioning, the EU can achieve a more robust, efficient, and attractive financial environment for investors, businesses, and the public.

As a final remark, we would like to reiterate that a key challenge to further capital market integration remains the persistence of diverging rules, gold-plating of EU legislation, and often inconsistent supervisory practices. Greater alignment, including more harmonised tax treatment and legal frameworks, will be essential to unlock the full potential of EU capital markets, and the support of Member States will be crucial in this regard.

Position on digital aspects (DLT & innovation)

Introduction

FESE welcomes the Commission's focus on innovation and the importance of technological developments in the financial sector. As Financial Markets Infrastructures (FMIs), we have a strong track record of leading the digital transformation within established regulatory frameworks. By pioneering, for example, digital issuance and integrating DLT-based instruments into collateral management processes, we have shown that we actively strive to be engines of innovation. We believe Europe should fully seize the opportunities offered by new technologies in the financial sector. Given the rapid pace of developments in other jurisdictions, which includes granting FMIs the legal protection to tokenise securities and use stablecoins as collateral/settlement assets, maintaining speed and ambition in Europe's approach is essential.

The Market Integration and Supervision Package (MISP) introduces important changes to support these innovation efforts. FESE views the proposed inclusion of distributed ledger technology (DLT) concepts and MiCAR e-money tokens in the Central Securities Depositories Regulation (CSDR) and the Settlement Finality Directive (SFD), as well as the review of the DLT Pilot Regime (DLTPR) aimed at increasing its uptake and proportionality, as positive steps in the right direction.

Nonetheless, for the EU to fully benefit from DLT and the tokenisation of financial instruments, the priority must be the modernisation of the standard regulatory frameworks. Without adapting CSDR, MiFID/R, and EMIR to the technological realities of DLT, there is a risk of circumvention of lit regulated markets and a shift of tokenised business toward the Over-the-Counter (OTC) space, which lacks investor protection and transparency. By enabling all regulated entities, not just DLTPR participants, to develop DLT-based services within a harmonised and future-proof regulatory environment, Europe can foster innovation and build a more competitive financial ecosystem without fragmenting liquidity.

This position paper outlines the main changes introduced through the MISP related to digitalisation and innovation and provides FESE's views and recommendations across two primary objectives:

- **Modernise the standard regulatory frameworks:** Core regulations, such as CSDR, MiFID II/R, and EMIR, should be adapted to DLT's specific features to fully harness the potential of DLT and tokenised financial instruments. This would ensure that innovation develops within regulated markets, rather than shifting into the less transparent OTC space.
- **Ensure a coherent update of the DLT Pilot Regime:** Improve the scalability of the DLT Pilot Regime, while ensuring that investor protection as well as a level playing field regarding market participants outside the Pilot are maintained. Clear transitional pathways into the standard regulatory frameworks should be provided, contributing to predictability for DLTPR participants and supporting the overall experimental purpose of the regime.

1. Modernisation of standard (non-DLTPR) frameworks

FESE welcomes targeted changes to broader regulatory frameworks (e.g. CSDR, SFD) aimed at ensuring technology neutrality and enabling market infrastructures to use tokenised and MiCAR-compliant instruments for settlement or collateral purposes. We strongly believe the EU should build on these developments and continue modernising its standard regulatory frameworks (i.e., CSDR, EMIR, MiFID II) to enable innovation within the financial sector.

For over a decade, these core frameworks have successfully ensured financial stability and market integrity. The goal now is to maintain this balance while enabling innovation and allowing FMI providers to innovate within their existing, robust regulatory frameworks.

Moreover, for established FMIs, onboarding/migrating trillions of euros in assets and numerous clients and member networks onto a separate Pilot Regime platform does not only incur operational and development costs but is also commercially unviable to develop a scalable service. Furthermore, it would create a complex legal relationship between platforms operated under two different regulatory frameworks, hindering larger participation in the PR.

FESE Proposals

- As an immediate first step, grant CSDs and other FMIs a no-action letter enabling them to tokenise the nearly EUR 75 trillion in assets held in Europe, in close alignment and coordination with ESMA and their respective NCAs.
- Enable FMIs to operate DLT Trading and Settlement System (TSS) within the CSDR and MiFID frameworks and under the same exemptions from regulatory requirements as under the DLT Pilot Regime.
- Transpose the permissions and technical framework from the Pontes Project into CSDR to enable DLT-based settlement in central bank money.
- Expand the pool of eligible assets in CSDR and EMIR to include all MiCAR-compliant instruments, including asset-referenced tokens, as well as tokenised commercial bank money, money market funds, and wholesale CBDC.

1.1. Critical Regulatory Gap for Central Counterparties (CCPs)

The current omission of CCPs from DLT reforms creates a critical regulatory gap, putting the EU's clearing infrastructure at a significant international disadvantage. To close this gap and ensure a level playing field, we propose that targeted amendments must be introduced to EMIR:

FESE Proposal

- Introduce amendments to EMIR that empower CCPs to clear and accept tokenised instruments as collateral on an equal footing with other financial market infrastructures.

1.2. Amendments to the Settlement Finality Directive (SFD)

The Commission proposes to introduce a new Settlement Finality Regulation which replaces and modernises the Settlement Finality Directive (SFD) by including the DLT concepts. In this context, we welcome the proposed amendments to SFD, which are critical for providing legal certainty to operators of DLT-based systems.

We particularly support clarifications that the provision of core CSD services through a distributed network does not constitute outsourcing and that settlement can occur in a decentralised manner. The designation of a single, legally accountable entity for DLT-based securities settlement systems, combined with the mandate for deterministic and legally enforceable finality, provides a robust foundation for liability and operational integrity. Furthermore, granting ESMA the responsibility to define the moments of finality at a technical level will ensure a harmonised and predictable application across the Union.

2. DLT Pilot Regime Review

FESE's experience with the DLT Pilot Regime shows that one of the factors limiting the regime's full potential is its focus on operating as a parallel, standalone framework, separate from the core regulatory environment where much of today's innovation by established market participants already occurs. To maximise the benefits of DLT, the objective should be to integrate the Pilot's successful elements into existing, well-functioning regulations. This would help reinforce market liquidity and reduce the risk of further fragmentation.

Nonetheless, should the immediate, full integration of DLT functionalities not be achieved, we suggest the following adaptations to the framework that would help it serve as a truly viable sandbox:

FESE Proposals

- First, rather than undergo a duplicative and burdensome licensing process, the fully-licensed CSDR & MiFID II entities, which already adhere to the EU's highest standards, should be able to participate and onboard their assets/clients via a simple notification procedure. This approach would align with the Commission's simplification agenda and mirror the efficient notification process established for certain financial entities under Article 60 of MiCAR.
- Second, the fully-licensed CSDR & MiFID II entities need to be permitted to operate a DLT market infrastructure under the DLTPR without being subject to aggregate value thresholds, to unlock the potential of bringing trillions of euros of assets onto the chain.
- Third, the Commission, in close cooperation with ESMA, should be empowered to adjust the thresholds based on the market developments. This approach could prove more effective and flexible for adjusting the thresholds than specifying them directly in the Level 1 text.
- Last, FESE believes that any obligation in the DLTPR to settle in EU-denominated EMT should be removed. EMT usage for settlement should remain currency-neutral (as CSDR is) and

driven by market demand, provided that the EMT is fully MiCAR-compliant and subject to appropriate prudential safeguards.[22]

The remainder of this paper sets out our additional recommendations regarding the proposed design of the DLTPR.

2.1. Scope and scale of the DLT Pilot Regime & Transitional rules

2.1.1. Scope of eligible financial instruments

According to MISP, the Commission proposes to extend the scope of eligible assets under DLTPR to all financial instruments.[23] Previously, the DLTPR was limited to shares, bonds and units in collective investment undertakings (UCITS). FESE welcomes the extension to all financial instruments, as it would enable broader experimentation and enhance the commercial viability of the DLT Pilot Regime.

2.1.2. Scope of entities under DLT Pilot Regime

Following the proposed amendments, crypto-asset service providers (CASPs) will be allowed to apply for a license under the DLT Pilot Regime, expanding the participation beyond MiFID II trading venues and CSDs.[24]

We would like to emphasise the importance of ensuring a level playing field between CASPs and regulated financial institutions, such as FMIs. CASPs should be subject to the same level of regulatory requirements and standards, in particular those set out in CSDR and MiFID II/MiFIR, if they are to operate DLTPR platforms. This would promote consistency, prevent regulatory arbitrage, and safeguard market integrity and investor protection.

FESE Proposals

- Ensure a level playing field between CASPs and regulated financial institutions, such as FMIs. In particular, Article 4 and 4a of the DLTPR, should clarify from which concrete provisions of legacy financial markets regulation DLT Pilot participants can be exempt due to technological incompatibility with blockchain technology, rather than leaving the issue at the full discretion of NCAs.
- Clarify the NCA licensing process for CASPs under the DLTPR, in light of the proposal to establish centralised supervision of CASPs under ESMA's mandate.

The Commission's proposal also changes the definition of DLT MTF to a DLT trading venue (DLT TV) to reflect that it would be possible to operate both a multilateral trading facility

[22] Recital 80 MISP, Article 8(6) MISP, amending Art 5 paragraph 8d DLTPR

[23] Recital 75 Market Integration and Supervision Package (MISP).

[24] Recital 77 MISP, Article 4 (c) MISP, amending Article 4 paragraphs 1a and 1b DLTPR.

(MTF) and an organised trading facility (OTF) under the Pilot. We welcome this change as it aligns more closely with the MiFID II framework and could contribute to a smoother transition from the DLTPR into the existing regulatory frameworks. We stress however that the Pilot should not serve as a preferential "gliding" path to full licensing. Full licensing after exiting the Pilot needs to follow existing regulatory requirements.

2.1.3. Aggregate threshold & Scale of DLT Pilot Regime

The Commission proposes to remove the asset-specific thresholds and increase the aggregate threshold from EUR 6 billion to EUR 100 billion.[25]

A higher aggregate threshold and the removal of asset-specific thresholds in the DLTPR are positive developments as they support innovation, allow experimentation with DLT technology, and enhance scalability. However, targeted adjustments to the standard frameworks, such as CSDR, EMIR and MiFID II, as well as DLTPR, should ensure that the Pilot Regime supports a holistic regulatory framework fully adapted to DLT technology.

FESE underlines that extending the scope and significantly raising thresholds without an appropriate transition into a modernised traditional regulatory framework could potentially increase fragmentation in the EU market, and shift volumes to DLTPR from entities under the full regulation of MiFID II/R, CSDR, EMIR, contrary to the core objectives of the MISP.

Clear transitional pathways from DLTPR to core frameworks should be developed to avoid market fragmentation and the penalisation of regulated entities that adopt innovative technologies. All frameworks should be aligned in their approach to technological innovation, so as to ensure a level playing field and prevent regulatory arbitrage.

FESE Proposal

- While higher aggregate thresholds and the removal of asset-specific thresholds under the DLTPR are welcome, they must be accompanied by the modernisation of CSDR, EMIR and MiFID II, along with clear transitional pathways to integrate these changes into the broader EU regulatory framework and avoid market fragmentation.

2.1.4. Transition from DLTPR into standard regulatory frameworks

Once Pilot regime entities reach the proposed aggregate threshold in market size or volumes, they must transition into standard regulatory frameworks within a reasonable and predefined timeframes. This approach would provide a clear and predictable future for DLTPR market operators. While Recital 48 of the DLTPR envisions this progression, the Commission's draft currently lacks a practical pathway for MiFID II/CSDR authorisation. At the same time, transposing the DLTPR functionalities (i.e., DLT TSS & SS) into the existing core frameworks would ensure the legal certainty and predictability that DLT market operators need to plan for their continued operations, rather than face a wind-down of operations.

[25] Recital 76 MISP, Article 8(3) MISP amending Article 3 of the DLTPR.

For instance, the current proposal specifies that once the entities under the regular regime have reached EUR 150 billion, the operators of DLT market infrastructures shall activate the transition strategy referred to in Article 7(7) DLTPR and notify their NCA of the activation as well as of the timescale for the transition.[26] However, the current provisions leave significant uncertainties regarding the timing and practical execution of the transition from the DLTPR to the standard regulatory framework, which could be addressed through targeted regulatory refinements.

We believe that the Level 1 text should already provide a general indication of the key transitional elements, going beyond a simple notification requirement with NCAs. To ensure clarity and consistency across the EU, we would encourage co-legislators to give ESMA a mandate to further specify these elements through Level 2 measures. In particular, we encourage policymakers to consider the following measures:

FESE Proposals

- Define a clear regulatory transition procedure for DLTPR financial instruments, ensuring that during the transition period, continuity of investors' rights and obligations is protected, settlement finality remains legally recognised, and the continuity of the DLT-based register is maintained.
- Introduce an intermediate threshold to allow early initiation of the transition process. For instance, at EUR 100 billion, the operator may start implementing its transition plan; at EUR 150 billion, the transition becomes mandatory.
- Introduce ESMA RTS or Guidelines which will set a proportionate and harmonised framework for transition strategies, covering in particular:
    - Predefined activation scenarios;
    - Permitted transition models;
    - Principles governing the treatment of DLT financial instruments within the scope of DLT Pilot Regime;
    - Governance and accountability arrangements;
    - Structured and proportionate transition timelines, including a precise transition calendar; and
    - Clearly defined execution milestones.

It would also be important to ensure a harmonised and predictable implementation of the transitional strategies across the Member States, through providing greater clarity on the regulatory treatment of DLTPR financial instruments during the transitional period, while reinforcing EU-level supervisory coordination in order to reduce the risk of divergent national supervisory approaches and setting out specific transition rules through Level 2 measures.

[26] Article 8(3) MISP, amending Article 3 paragraph 2a DLTPR.

2.2. New Simplified Regime under DLTPR & Additional ad-hoc exemptions

2.2.1. Simplified Regime

The proposal introduces a simplified regime that will be available to DLT operators whose aggregate market value of all DLT financial instruments does not exceed EUR 10 billion.[27] FESE understands the Commission's rationale for introducing the simplified regime with a lower threshold as a way to support smaller businesses. At the same time, it also remains important to preserve a level playing field for entities performing functions equivalent to those of CSDs or trading venues.

FESE Proposal

- Notwithstanding the introduction of the simplified regime, a level playing field should be ensured for entities performing functions equivalent to those of CSDs or trading venues. These entities should be subject to CSDR- and MiFID II/R-equivalent safeguards to prevent regulatory arbitrage.

We also question the added complexity of creating a simplified "Pilot within the Pilot," which risks complicating the existing framework.

2.2.2. Ad-hoc exemptions

Under the proposal, NCAs would also be able to grant additional exemptions from certain sectoral provisions where DLT operators provide clear justification that requirements are incompatible or disproportionate. ESMA would be involved in the process by issuing non-binding opinions on exemption requests to ensure supervisory convergence.

Given the speed of change in the digital finance space, FESE recognises the need for a certain degree of flexibility. In principle, we support the possibility of requesting additional exemptions where existing sectoral provisions are demonstrably incompatible with DLT-based models or clearly disproportionate. However, several additional considerations must be taken into account.

For instance, the procedure of requesting and approving exemptions from NCAs, as well as the undetermined nature of 'compensatory measures' according to Articles 4a and 5a, leave significant discretion to NCAs. This creates a significant risk of further fragmenting the EU regulatory landscape, and creating a chaotic patchwork of rules that could encourage jurisdiction shopping and regulatory 'competition' between NCAs. Furthermore, the implications of bespoke exemptions from MiFID II/R and CSDR for the respective transition strategies remain unclear. There is currently no concrete guidance on how to transpose an operating model and regulatory status with numerous exemptions into MiFID/R and CSDR, given that no such system exists under the current system.

Ultimately, it must be remembered that these provisions exist for critical reasons. They are the bedrock that has successfully ensured financial stability, market integrity, transparency, orderly trading conditions, and robust investor protection across the Union. These standards must be upheld for all participants, without exception. To strengthen supervisory convergence and ensure that the new system of ad hoc exemptions supports a level playing

[27] Recital 76 MISP, Article 8(10) MISP, adding a new Article 7a DLTPR.

field, avoiding further fragmentation or divergent national practices in EU capital markets, we strongly suggest the following additional measures:

FESE Proposals

- ESMA should be granted stronger binding powers to introduce mandatory requirements for NCAs when assessing requests for ad hoc exemptions, in order to prevent regulatory fragmentation and significant divergences between NCAs. This would support supervisory convergence, establish clear eligibility criteria, and ensure predictable transitions to the CSDR and MiFID II/R frameworks.
- The Level 1 text should set out more precise guiding principles for the granting of exemptions and the corresponding compensatory measures. Any additional exemptions should be granted only in clearly justified cases where specific MiFID II/R or CSDR requirements are genuinely incompatible with DLT technology.
- To ensure a level playing field, regulatory continuity, and a smooth transition into the standard frameworks, the same system of ad hoc exemptions related to DLT technology should be introduced in both CSDR and MiFID II.

2.3. Removal of time limits & ESMA report on the functioning of the DLTPR

The MISP proposal removes the time limits of the DLTPR. Following this change, we would like to emphasise the importance of establishing clear rules for transitioning from the DLTPR to the standard regulatory frameworks, in order to ensure legal certainty and predictability for market participants operating under the DLTPR. This transition should be accompanied by a modernisation of the CSDR and MiFID II frameworks.

Furthermore, ESMA is mandated to present a report to the Commission on the functioning of the DLTPR by 24 March 2028. In FESE's view, this deadline may be overly optimistic, as there is a possibility that the DLTPR will not even have entered into application by 2028, assuming two years of negotiations and an additional year between entry into force and application.

Regarding the content of the report, we would like to highlight that the previous ESMA report listed DLT market infrastructure providers by name and disclosed details of their business models. Given the sensitivity of developing innovative infrastructure and the proprietary nature of such information, future reports should avoid including this type of sensitive information.

FESE Proposals

- The deadline for ESMA's report on the functioning of the DLTPR by 24 March 2028 may need to be extended, given the possibility that the regime will not yet be in application due to the expected duration of negotiations and implementation timelines.

- Future ESMA reports should avoid disclosing sensitive information related to providers' business models and other proprietary aspects.

2.4. Preserving the integrity of core CSD functions

Importantly, we strongly caution against proposals that would permit the unbundling of core CSD functions into "single services" provided by different entities. Splitting CSD services would transform the existing seamless internal reconciliation process into a complex, costly, and error-prone external one between multiple providers. This would create ambiguous liability chains and introduce operational risks that undermine the foundational role of the CSD, posing a direct threat to the market stability we are mandated to protect.

3. MiCA Regulation – Centralised supervision of CASPs

The amendments to the MiCA Regulation transfer the authorisation, monitoring, and supervision of all CASPs from NCAs to ESMA. FESE maintains a neutral stance regarding supervisory practices of CASPs, as this decision lies with other relevant bodies. Given that MiCA licenses have only recently been granted to a limited number of CASPs by NCAs, FESE does not see a compelling reason to overhaul the current supervisory framework.

Conclusion

The MISP represents an important opportunity to modernise the EU's regulatory landscape and ensure that digital innovation develops within a robust, transparent, and well supervised framework. FESE welcomes the Commission's proposals and aims to contribute additional suggestions through this position paper.

As outlined in this paper, FESE believes that adapting core regulations, such as CSDR, EMIR, and MiFID II, to the specific features of DLT, alongside a coherent and scalable update of the DLT Pilot Regime, will be essential to unlocking the benefits of tokenised financial instruments while safeguarding market integrity and investor protection.

Position on supervision

Introduction

FESE stands with the Commission's ambition to tackle fragmented supervisory outcomes under the single rulebook. While National Competent Authorities (NCAs) remain vital for local ecosystems, some pan-European trading venues face challenges from divergent interpretations and fragmented oversight, and therefore would benefit from further integration of supervision.

Regulatory simplification is pivotal to improving supervision for exchanges regardless of their activities, helping to deepen liquidity and reduce operational frictions across the Single Market. As part of this broader effort to streamline supervisory processes, FESE appreciates how the proposal for a passporting regime could reduce the risk of gold-plating and curb fragmentation, thereby supporting more consistent market access.

At the same time, the new supervisory framework should be clear and agile, leveraging local expertise where necessary or most appropriate. It should also ensure harmonised practices across the EU and avoid costly, overlapping layers of supervision that risk undermining the reform's objective. To counter these risks, FESE proposes targeted measures that streamline supervisory processes, reduce complexity and avoid additional cost burdens.

1. Supervisory calibration across diverse exchanges

Policymakers should recognise that the landscape of European exchanges is diverse. Given the varying corporate structures, activities, instruments and levels of economic and cross-border significance, the Commission's proposals have an asymmetrical impact on market operators. For some exchanges, the Commission's proposal could improve the status quo, while for others it could add complexity. In this context, striking the right supervisory balance is vital.

For some large exchanges operating multiple trading venues across several Member States, the MISP proposals could enable operational synergies. They often face inconsistent oversight from several NCAs, a lack of harmonisation, and high administrative burdens due to a fragmented approach in their relationship with relevant supervisors. For these exchanges, ensuring a level playing field remains important, so that trading venues of a similar size and scope are subject to the same supervisory framework.

Other exchanges operate under one license and one local supervisor without facing major supervisory obstacles. Thus, they fear the MISP could bring new supervisory burdens.

Therefore, FESE encourages policymakers to assess these differences and optimise the framework to deliver consistent and efficient supervisory outcomes. In the next sections, we highlight some areas of the proposal that would merit further consideration.

2. Risk of duplicative supervisory layers

Regardless of the supervisory model that would be finally adopted, to build a globally competitive Savings and Investments Union, supervision must prioritise simplicity, efficiency and a level playing field over layered complexity. Ensuring harmonised practices across the EU and avoiding costly, overlapping levels of supervision should be the guiding principle for the upcoming reform, particularly for pan-European trading venues.

Under the Commission's proposals, entities overseen by ESMA, either as significant trading venues or under the PEMO framework, could face the risk of dual supervision by ESMA and NCAs. For instance, NCAs appear to retain responsibility for market surveillance, while ESMA would oversee the significant trading venue's entity and its governance arrangements, IT resilience, algorithmic trading controls, and design of surveillance systems.

Overlapping responsibilities could create uncertainty among market participants, undermine institutional know-how, and result in additional financial, administrative, and operational burdens.

Besides, in practice, supervisory cases often involve both market conduct issues and vulnerabilities in systems and controls. This would demand close coordination between ESMA, NCAs and the trading venue concerned. For example, under the proposed package, ESMA would set position limits and oversee trading venues' compliance with position management controls, yet these are two tools aimed at preventing a type of abusive behaviour closely tied to market surveillance, which remains a national responsibility. This illustrates the difficulty of disentangling intrinsically connected supervisory processes.

The proposal would benefit from enhanced clarity and a cleaner methodological approach to ensure a coherent and effective supervisory framework. As hybrid models can inherently introduce complexity, any ambiguity in the allocation of responsibilities between ESMA, as supervisor of FMIs, and NCAs, in their market-surveillance role, may give rise to risks such as diluted accountability, gaps in oversight, or inconsistent information flows.

In addition, it remains uncertain whether frameworks like DORA will remain under national supervision or shift to a centralised model. If they remain national, market operators could face multiple authorities across different supervisory domains, which raises the likelihood of a dual supervisory focus. A clear and workable approach is essential.

FESE Recommendations

- Clear boundaries and responsibility: FESE advocates for a clear allocation of responsibilities to ensure the effective functioning of financial markets. While some issues will inevitably require cooperation across supervisory layers, the responsibility should be assigned to a single level to avoid confusion and duplication, especially where duties cannot be easily disentangled. This level of clarity should also apply to the decision-making level to prevent unnecessary delays, overlapping mandates, or inconsistent supervisory outcomes.
- In addition, regulators should ensure that their interactions with businesses follow the 'report once, use many times' principle, so that undertakings are not subject to overlapping or repetitive information requests.

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3. Risk of increased costs

Alongside duplicated interactions with both NCAs and ESMA, likely leading to higher operational costs for exchanges, trading venues could also face a dual fee regime. FESE cautions against introducing additional costs that could undermine the competitiveness of EU trading venues in global markets. It must be ensured that the resulting set-up does not subject trading venues to pay twice for the same regulatory obligation. Besides, several entities within significant venue operators' groups are, in fact, small market operators, for whom additional supervisory fees could be disproportionate given already existing cost burdens.

We therefore consider that these risks and added costs should be carefully assessed by the co-legislators, regardless of the outcome. Duplication and fragmentation of supervision,

combined with disproportionate increased costs, run counter to the principles of effective, risk-based supervision and could weaken Europe's ability to compete effectively in global capital markets if not properly addressed.

FESE Recommendations

- Link fees to supervisory needs and ensure public accountability: Building on the need for tangible benefits from any reform, FESE recommends that any fee adjustments be closely tied to clear and specific supervisory needs. Cost structures based on broad, principle-driven approaches should be avoided. Fees should reflect a clear operational need and should not be charged at different levels by different supervisors (i.e. NCAs and ESMA).
- As the reform seeks to streamline supervision, the new architecture should translate into reduced financial pressure on supervised entities. Alternatively, efficiencies gained in one area may be offset elsewhere down the chain. Supervisors should avoid double-charging for the same regulatory obligation or significantly increasing supervisory fees collected from the industry, ensuring a new framework that is both financially light and operationally agile.

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4. Central Supervisory Database

The proposal for a central supervisory database for NCAs may, in principle, facilitate coordination and streamline information flows. However, the proposal would benefit from further clarification to ensure it works effectively in practice. In particular, it should be clear that trading venues submit information once to ESMA, after which NCAs access the relevant material directly, avoiding duplicate requests. Additional detail on the scope of information to be included and on the operational setup would help ensure that the mechanism supports efficiency without introducing new complexity.

5. Amendments required to ensure legal protection for supervised entities

To support any potential transfer of direct supervisory powers to ESMA, the framework should fully preserve existing legal protection standards, ensuring: (i) sufficiently clear and proportionate intervention powers, (ii) legally robust arrangements for multi-stage supervisory procedures, and (iii) effective appeal mechanisms. Addressing these elements would ensure a high level of protection of supervised entities.

- **Lack of specificity in intervention powers**: Effective legal protection requires that supervisory intervention powers are clearly defined, both in terms of their conditions and legal consequences, and remain subject to the proportionality principle. Provisions referring to unspecified "appropriate measures" (e.g. MiFIR Art. 2d(7), 2e(4), 2n(2)-(3)) create uncertainty regarding the scope and legal consequences of supervisory actions. Likewise, there seems to be low thresholds for intervention for certain powers that can be triggered based on mere suspicion (e.g. ESMA Regulation Art. 39h(3); MiFIR Art. 2d(7), 2e(4)).

- **Legal protection deficits in multi-stage procedures**: The proposed multi-stage interactions between ESMA and NCAs may complicate legal protection if it is unclear which act is challengeable and before which court (e.g. MiFIR Art. 2q(5), 2r(2)–(3), 2s(1)–(2)). The design of these procedures should therefore ensure clarity of responsibility on the right procedural act and responsible court and enable effective judicial review. To ensure comprehensive judicial review, ESMA's decisions in such procedures should be designed merely as non-binding opinions.
- **Appeal procedure**: The appeal mechanism in Article 60 of the ESMA Regulation could be better aligned with fundamental standards of legal protection. For example, introducing a statutory suspensive effect would help ensure that supervisory measures do not apply before judicial review, strengthening effective rights of defence. In addition, defining key procedural safeguards directly in the Regulation, rather than delegating them to the Board of Appeal, would improve transparency, predictability and legal certainty for all actors involved.

Conclusion

FESE supports the Commission’s aim to promote EU integration by addressing fragmented supervision. Any changes should deliver coherence and consistent supervisory outcomes across trading venues while avoiding new complications through dual supervisory layers.

In this context, FESE encourages policymakers to assess the risks of dual supervisory layers and increased costs of oversight and also underscores the importance of legal safeguards for supervised entities.

FESE will continue supporting the negotiations with co-legislators and reaffirms its commitment to promoting measures that enhance the ability of capital markets to serve the European economy and be competitive globally.

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