EU Market Integration and Supervision Package

KEY PROPOSALS AND PARLIAMENTARY DEVELOPMENTS

Following its publication on December 4, 2025, market participants, supervisors and legislators have been analyzing the proposals under the EU Market Integration and Supervision Package (MISP). The package's amendments span 19 separate pieces of EU legislation:

MASTER REGULATION

- MiFIR (Regulation (EU) 600/2014)
- ESMA Regulation (Regulation (EU) 1095/2010)
- Cross-Border Distribution of Funds Regulation (CBDFR) (Regulation (EU) 2019/1156)
- CSDR (Regulation (EU) 909/2014)
- EMIR (Regulation (EU) 648/2012)
- CCP Recovery and Resolution Regulation (Regulation (EU) 2021/23)
- Distributed Ledger Technology Pilot Regime (DLTPR) (Regulation (EU) 2022/858)
- MICAR Regulation (Regulation (EU) 2023/1114)
- CRA Regulation (Regulation (EC) 1060/2009)
- Benchmarks Regulation (Regulation (EU) 2016/1011)
- EU Green Bond Regulation (Regulation (EU) 2023/2631)
- ESG Ratings Regulation (Regulation (EU) 2023/2631)
- Securities Financing Transactions Regulation (Regulation (EU) 2015/2365)
- Securitisation Regulation (Regulation (EU) 2017/2402)

MASTER DIRECTIVE

- MiFID II (Directive 2014/65/EU)
- UCITS (Directive 2009/65/EC)
- AIFMD (Directive 2011/61/EU)

SETTLEMENT FINALITY REGULATION

- New Settlement Finality Regulation (SFR)
- Financial Collateral Directive (Directive 2002/47/EC)

Some of the main issues in this package include the transfer of various supervisory powers and responsibilities from Member State regulators to the European Securities and Markets Authority (ESMA), a new Settlement Finality Regulation (SFR) and changes for the funds and asset management sector.

The MISP is a lengthy piece of legislation that can be impenetrable, presented as a long list of amending measures and is wide-ranging in both scope and topics. In this note, we aim to highlight the main measures and proposed impacts of the MISP in context and explore some of the most important proposals.

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MISP *in context*

The MISP is one of the main pieces of legislation for financial services emerging from the 2024 Draghi Report and 2025 Competitiveness Compass.

These reports highlighted the following themes:

- **Retail participation in financial markets**: The Draghi Report highlighted the lack of retail participation in European financial markets, which stands in marked contrast to the U.S. where consumers are more likely to engage in investment activities. One major obstacle for European investors is the absence of a real single capital market.
- **Fragmentation**: Both the Draghi Report and Competitiveness Compass expressed concerns that fragmentation remains an issue in Europe, with Member States taking different approaches to financial services regulation and making cross-border service provision less smooth than it could be.

The MISP is being introduced in furtherance of one of the horizontal enablers of the EU's Competitiveness Compass—enabling more efficient financing—and in particular, the Savings and Investments Union. A number of other Competitiveness Compass enablers are also advanced, including cutting red tape, removing barriers to the single market and ensuring better coordination.

WHERE ARE WE AND WHAT'S NEXT IN THE LEGISLATIVE PROCESS?

The European Commission initially proposed finalization of the package through 2027/2028 with full-scale operation in 2029. However, sticking points may emerge which delay implementation. The MISP is intended to be treated as one package and the Commission has stated its unwillingness to see the measure unpicked. However, there are differing views within industry and among Member States as to the desirability of some of the measures. Some aspects, such as the new SFR, have received a positive industry response (subject to technical comments). However, much of the rest of the package intersects with political issues around the powers and responsibilities of European Supervisory Authorities versus national regulators. There is a risk the broader package could be held up while a consensus is reached among the co-legislators on the EU political and organizational changes.

Notably, the European Parliament's Committee on Economic and Monetary Affairs (ECON) draft Parliamentary reports, published on June 12, 2026 (ECON Draft Reports), mark a significant departure from the original MISP proposal as published by the European Commission on December 4, 2025 (MISP Proposal) as regards the powers of the various authorities. The deadline for amendments to be tabled by Members of the European Parliament is July 16. The ECON vote is tentatively scheduled for December 2026.

The Economic and Financial Affairs Council (ECOFIN), the body responsible for reviewing the MISP Proposal within the Council of the European Union, had not adopted a general approach mandate by the end of the Cyprus Presidency, which finished on July 1, 2026. The Cyprus Presidency did, however, produce a progress report handing over the file to the Irish Presidency, which provides some clarity on its direction of travel.

Deep dive:
key aspects of the package

HARMONIZATION AND COMPETITIVENESS

The MISP aims to increase harmonization in European supervision and across regulatory frameworks. Key initiatives in this respect include:

- **Transfer of rules from directives to regulations**: examples include conversion of the Settlement Finality Directive (Directive 98/26/EC) (SFD) into the SFR, introduction of Title Ia into MiFIR (on authorization and operation of trading venues, formerly housed in the Markets in Financial Instruments Directive (MiFID II)), and the transfer of various provisions (including on marketing communications) from the Alternative Investment Fund Managers Directive (AIFMD)/Undertakings for Collective Investment in Transferable Securities Directive (UCITS Directive) to the Cross-Border Distribution of Funds Regulation (CBDFR).
- **Further harmonization of rules**: examples include Title Ia, MiFIR, which clarifies the type of activities that trading venues can carry out on a cross-border basis (expanded from MiFID II) and a mandate for ESMA and the European Banking Authority EBA to develop regulatory technical standards (RTS) on various areas to boost consistent application of rules.
- **Reduction of gold-plating**: examples include Title Ia, MiFIR provisions which remove the scope for gold-plating of requirements for trading venues and, in the asset management industry, a prohibition on gold-plating of marketing requirements under CBDFR to reduce diverging national practices (discussed further below).
- **Centralization of supervision**: examples include direct ESMA supervision of certain financial market infrastructures (discussed further below) and amendments to ESMA's supervisory enforcement framework currently applicable to trade repositories, credit rating agencies, benchmark administrators, securitisation repositories and external reviewers for European Green Bonds and ESG ratings providers.

Substantive changes to support competitiveness and remove barriers to market integration include:

- **Intra-group arrangements**: in some sectors (investment firms, central securities depositories (CSDs) and fund management), intra-group arrangements will no longer be considered as an outsourcing or delegation of functions.
- **Access of and to market infrastructure**: firms that operate more than one trading venue in more than one Member State (so-called "pan-European market operators") would be able to do so on the basis of a single license. There would be a streamlining of rules governing access to central counterparty (CCP) services and trade feeds of trading venues to enable open access, with the consequent deletion of similar rules from MiFID II.
- **Simplified rules**: smaller distributed ledger technology (DLT) infrastructures providing CSD services would be subject to a simplified DLT Pilot Regime and there would be a simplification of the conflicts of interest disclosure obligations for AIFMs and management companies that manage or intend to manage UCITS or AIFs at the initiative of a third-party.
- **Exemptions**: new exemptions from MiFID II, MiFIR and the Central Securities Depositories Regulation (CSDR) would be introduced for operators of DLT market infrastructure. There would be an exemption from MiFIR post-trade transparency requirements for over-the-counter derivatives that are executed on third-country trading venues.

ESMA SUPERVISION

Centralization of supervision is one of the key pillars of the MISP Proposal. The package proposes a fundamental change to ESMA's role, moving it from a primarily coordinating body to a substantially empowered EU-level direct supervisor. While the rationale is understandable—more consistent supervision, more accountable regulators and better coordination—it has received mixed responses from both Member States and industry. The ECON Draft Reports of June 12, 2026 have taken account of some of this feedback.

- **ESMA's objectives**: the original MISP Proposal included a new ESMA objective of supporting market integration and innovation in the financial sector. ESMA's existing objective on improving the functioning of the internal market would be expanded to cover enforcement (not only regulation), following logically from its new direct supervisory powers. The objective on international supervisory coordination would be expanded to include exchange of information between local regulators and ESMA.
- However, industry has called for an additional competitiveness objective for ESMA, similar to that of the UK financial services regulators. The ECON Draft Report describes the absence of such a mandate as "the most significant structural deficiency in the Commission's proposal". Its draft inserts a new secondary objective into Article 1 of the ESMA Regulation, requiring ESMA to have "particular regard to the competitiveness and international attractiveness of Union capital markets" and to the ability of Union firms to compete with third-country counterparts, subject to the primacy of investor protection, market integrity and financial stability. In ECON's Draft Report, this is operationalised through a structured competitiveness assessment in ESMA's RTS and implementing technical standards (ITS) processes (benchmarked against third-country requirements) and a dedicated "competitiveness chapter" in ESMA's annual report with quantitative indicators—expressly modelled on the UK FCA/PRA secondary competitiveness objective.
- **New direct supervisory powers**: ESMA currently has a limited direct supervisory role—it directly regulates a limited number of financial undertakings, such as rating agencies, benchmark administrators, third-country central counterparties (CCPs) and trade and securitisation repositories, and produces Level 2 and Level 3 measures if mandated in Level 1 legislation. Under the MISP Proposal, ESMA would directly supervise:
  - Pan-European Market Operators—firms that operate more than one trading venue in more than one Member State on the basis of a single license.
  - Significant EU trading venues—trading venues that are important for the economy of the EU and have a significant cross-border dimension.
  - Significant CCPs—CCPs under the European Market Infrastructure Regulation (EMIR) that meet European thresholds for clearing and default fund contributions or that belong to a group which includes another ESMA supervised entity.
  - Significant CSDs—entities with significant settlement activity and a material cross-border dimension or belong to a group which includes another ESMA supervised entity.
  - Crypto-Asset Service Providers (CASPs)—entities providing services with respect to crypto-assets under the Markets in Cryptoassets Regulation (MiCAR). There is no "significance" requirement here—all pure CASPs would be subject to direct ESMA supervision. This would not, however, extend to other regulated firms—such as credit institutions or investment firms—whose principal business is banking or investment services and which provide crypto-asset services under MiCAR as an ancillary or additional activity. The transfer to direct supervision by ESMA is a major change for entities that are currently subject to local supervision by their own regulators. A phased-in approach would be taken to ensure an orderly transition. Under the current proposal, ESMA would directly supervise approximately eight large CCPs, around 14 of the approximately 35 CSDs, approximately ten trading venue groups and up to 600 CASPs. ESMA currently employs around 300 full-time employees and will need to grow substantially to meet this responsibility.

The policy rationale for direct supervision was to avoid divergent supervision. However, industry has expressed scepticism, noting the example of the European Central Bank's (ECB's) direct supervision of banks under the Single Supervisory Mechanism, which has not led to significant improvement. The ECON Draft Report rejects the significance threshold model as "inadequate" for CCPs and CSDs, on the basis that thresholds "by design, preserve a bifurcated supervisory landscape". The ECON Draft Report instead proposed extending ESMA direct supervision to all EU CCPs and all 32 EU CSDs. Conversely, it proposed that only significant CASPs be directly supervised, on the basis that supervision of all CASPs is disproportionate and adds bureaucratic cost without supervisory gain. The ECON Draft Report considers that ESMA direct supervision should be reserved for providers whose scale and cross-border reach genuinely justify centralized oversight. This part of the MISP Proposal therefore likely will be subject to further proposals and counter-proposals as the legislative process progresses.

- **Supervisory and enforcement powers**: with ESMA's direct supervisory mandate growing to include newly supervised sectors, it also needs supervisory enforcement tools. New powers are prescribed across various of the amended pieces of legislation, to:
  - request information;
  - conduct investigations and on-site inspections;
  - take enforcement action if an authority does not cooperate;
  - impose fines on a directly supervised entity;
  - take measures in response to an infringement (e.g., withdrawing or suspending authorizations, issuing warnings, or removing certain senior managers); and
  - impose sanctions directly against natural persons that have exercised significant influence in the failure to comply with a certain rule, including fines, bans or other measures.
- **Cooperation with national competent authorities (NCAs)**: the MISP Proposal would require that ESMA and NCAs cooperate with one another in good faith and exchange information. They must establish practical arrangements for working together, and NCAs must provide ESMA with all information and assistance necessary for it to fulfil its role. In that context, ESMA may establish collaboration platforms to strengthen information exchange between the NCAs when it is needed with respect to a specific regulated entity. Where a disagreement arises between NCAs in such a platform, ESMA has the authority to enter into binding mediation to help resolve the dispute.
- **ESMA's intervention powers**: new Article 17aa of the ESMA Regulation relates to a failure in supervision by an NCA. Where a peer review reveals there may be a supervisory failure that could jeopardise market integrity, financial stability or investor protection, ESMA can require NCAs to seek its opinion before granting licensing approvals.

  Under the ECON Draft Report, the Article 17aa trigger would be narrowed: the threshold would be raised so that these steps could only be taken if there "is" a relevant supervisory failure, rather than "may be", and the failure poses a serious and demonstrable risk to market integrity, financial stability or investor protection, as opposed to only jeopardising them.

  Finally, Article 17aaa of the ESMA Regulation would grant ESMA the new power to suspend a firm's rights to provide cross-border services where it has reasonable grounds to believe that the firm has seriously infringed EU law in a way that could jeopardise market integrity, financial stability or investor protection.
- **No action letters**: ESMA currently has the power to issue no action letters—instructions for NCAs not to take action against regulated entities in specific circumstances. The MISP Proposal expands these powers to situations where: (i) applying legislation raises significant issues for market participants, including where interim provisions expire before a new framework creates a regulatory gap; and (ii) market developments make compliance disproportionate.

  Under the ECON Draft Report, ESMA's no-action tool would be broadened and loosened. The restrictive "urgent and unforeseen circumstances" threshold in Article 9a of the ESMA Regulation would be removed so that ESMA can act whenever applying an EU law is liable to raise significant issues. A new ground would be added permitting no-action relief where applying Union law "imposes a disproportionate implementation burden" or "creates a material competitive disadvantage for Union firms relative to firms established in third countries". It remains to be seen if these proposals would be accepted by the other bodies in the legislative process.

SETTLEMENT FINALITY

The new and revised SFR is one of the most significant proposed changes to substantive law in the MISP Proposal. SFD is one of the oldest pieces of EU financial services legislation. Broadly, it provides for the disapplication of possible insolvency law challenges that might be faced by market infrastructures, resulting in irrevocability and finality of transfer orders processed through certain designated systems. The new regulation aims to address four main objectives:

- **Expanded insolvency law carve-outs.** The protections against insolvency law challenge in the existing SFD will be bolstered and expanded.
- **Reduction of fragmentation to ensure rules are applied uniformly across the EU.** The centerpiece of the settlement finality reforms is that the SFD will be replaced with the directly applicable regulation designed to reduce the divergence that can occur through the implementation of a directive. In particular:
  - the proposed SFR will prescribe a direct application of conflicts of law rules in order to determine the applicability of system rules;
  - there will be an expanded list of system participants and a common definition of eligible securities;
  - harmonized requirements for EU designation of systems will be introduced along with a streamlined designation process; and
  - there will be a new concept of settlement finality moments. The existing SFD involves a structure based upon definitions of when a transfer order arises (or is made), when it becomes irrevocable and when it becomes final. Those concepts are carried forward into the new SFR but with greater prescription and harmonization of how they operate in practice, potentially including Level 2 measures in an RTS.

ECON's Draft Report includes an express mandate for ESMA and the EBA to develop binding RTS within 12 months after the SFR's entry into force specifying how these settlement finality moments must be determined. For interoperable systems, the obligation to apply standardized definitions across the Union will no longer be qualified by "to the extent possible", making it a firm requirement. The SFR also includes a new definition of "final settlement".

- **New process for registering third-country market infrastructure.** Harmonized requirements will be introduced for the registration of third-country systems, which will be able to benefit from settlement finality protections. Conditions include being authorised and supervised in their home state, clearly identifying the moments of entry, irrevocability and final settlement of transfer orders in a manner consistent with EU settlement finality moments, and ensuring the law governing the system upholds the principles of settlement finality and complies with global standards such as the Principles for Financial Market Infrastructure published by the CPMI and IOSCO. In future, third-country systems will need to be registered with the relevant authority in every jurisdiction in which it has a participant, with those authorities assessing applications independently. ESMA and the ECB (and the EBA for payment systems) will play a centralizing role to ensure a convergent approach. The assessment period is 80 working days following acceptance of an application, and final registration decisions will be published by ESMA.

Registering as a third-country system could materially reduce the uncertainty and disruption risks of an insolvency event as it applied to market infrastructure:

- Legal enforceability: although further work is needed on drafting inconsistencies within SFR, it seems intended that there would be EU-wide statutory recognition of transfer orders and netting arrangements within third-country system rules, including provision for transfer orders to be legally enforceable. This would apply on a pan-EU basis for the first time. To date, third-country systems face a myriad of different national regimes on settlement finality.
- Impact of insolvency: SFR would make mandatory provision for insolvency processes not to have retroactive effects on rights or obligations of participants, ensuring the finality of transfer orders within the system and thereby increasing legal certainty.
- Collateral protection: collateral security provided into the system by participants will be protected from the effects of an insolvency process and in terms of supervision. It seems intended that default funds and margin held by CCPs and CSDs will be within scope of these provisions, a point that would be clarified in the Parliament's amendments.
- Supervision: ESMA will play a much more significant role in the registration process and the ongoing supervision of the infrastructure going forward.

- **Technology neutrality and modernization of the settlement finality regime to reflect technological developments.** Amendments are proposed under the SFR to make the settlement finality regime DLT-compatible and give certainty for digital innovation. The SFR updates the existing SFD definition of collateral and specifically includes distributed ledger systems in its provisions on collateral security. The SFR also makes complementary changes to the Financial Collateral Directive (Directive 2002/47/EC) (FCD) so that the types of financial collateral that receive protections are updated to accommodate DLT and blockchain and equivalent technology. Other complementary changes are made, including to the definition of "account" which would be aligned with the new definition of account under the SFR, as well as a new overriding provision to confirm that all the references to "account", "registration" or "register" will include any form of electronic record, including DLT.

  Industry responses have identified a number of issues with the proposed SFR. In the scope of insolvency protections, there is not a truly level playing field between EU systems and non-EU systems that become registered, and the protections for non-EU systems are narrower than those for EU systems. There are also some inconsistencies in the MISP Proposal drafting as to whether the operator of a non-EU system benefits from the protections in addition to the participants in that system; protections for system operators arise under the operative provisions of the SFR and so seem intended, but the initial scoping provisions in the Commission's draft are unhelpful.

There are also internal inconsistencies in terms of participant protection for both EU and non-EU systems and within those definitions, which require further attention during the trilogue process.

Another potential issue is a lack of alignment with other EU legislation. Bank and financial institution insolvency and resolution processes are covered in multiple places, including the Bank Recovery and Resolution Directive (Directive 2014/59/EU) (BRRD), the Insurance Recovery and Resolution Directive (Directive (EU) 2025/1) (IRRD), the CCP Recovery and Resolution Regulation (Regulation (EU) No 2021/2023) (CCPRRR), the Credit Institutions (Reorganisation and Winding Up) Directive (Directive 2001/24/EC) (CIWUD) and EMIR. The SFR proposals do not include complementary changes to these instruments, and it may make sense to align them so that EU and non-EU systems receive equivalent treatment under a more coordinated insolvency framework.

FUNDS AND ASSET MANAGEMENT

As with other areas of the MISP, provisions have been transferred from directives to regulations in the funds and asset management sectoral legislation, with marketing provisions moved from AIFMD and the UCITS Directive into the CBDFR. Significant changes, among others, include:

- **ESMA supervision**: ESMA would have an enhanced role in the supervision of funds and asset managers (although, under the original MISP Proposal, would not directly supervise them). Among other things, ESMA would conduct annual reviews of the supervision of large EU asset management groups (with >EUR300 billion and multi-Member State presence or manage or market UCITS and AIFs in multiple Member States), have power to identify divergent, duplicative, redundant or deficient supervisory practices, and have new powers in relation to cross-border activities (including new arrangements for the supervision of cross-border distribution activities under CBDFR and an ability to suspend cross-border marketing and passporting rights as a last resort).

  ECON's Draft Report departs from the Commission's initial draft by proposing full direct ESMA supervision and authorization of "significant" EU asset management groups. For these purposes, "significant" means those with aggregate Union-wide net asset value above EUR100bn on the UCITS side and above EUR150bn on the AIFMD side; and operating across more than one Member State. ESMA would assume the tasks of the home NCAs and charge those groups supervisory fees proportionate to the fund's total assets under management and the complexity of its strategies covering the full cost of direct management, oversight, on-site inspections and enforcement. ESMA would retain the annual review mechanism described above but for mid-sized groups (groups between EUR50bn and EUR150bn in net asset value) that do not fall under ESMA's supervision. ECON's Draft Report also replaces ESMA's ability to recommend corrective actions with an ability to issue binding decisions to NCAs, triggered not only by the annual review findings but also "where other information reveals unaddressed supervisory risks, divergent or deficient supervisory practices or barriers to cross-border activities." ESMA may also directly address individual decisions to market participants to grant authorizations, enable cross-border business activities or require compliance with the law.

- **Pre-marketing**: a range of amendments have been made to the pre-marketing regime:
  - Under AIFMD, there is currently a requirement to explicitly state that pre-marketing materials do not constitute an offer or invitation to subscribe and that information is incomplete and subject to change. That would no longer be mandatory, although AIFMs would still need to keep pre-marketing generally preliminary and ensure that investors do not subscribe through pre-marketing but through marketing, if they have been contacted within the pre-marketing phase. They may therefore still need to state that materials are incomplete and subject to change, confirm that they are not an offer or invitation and evidence that the activity is pre-marketing and not marketing.
  - Perhaps most significantly for the industry, the 18-month subscription ban has been lifted. Under the current AIFMD, if an AIFM engages in pre-marketing and accepts subscriptions from investors within 18 months, it is presumed to constitute marketing. Market participants have criticised this rule because of its impact on accepting subscriptions by, notably, private placement regimes for the relevant AIF that was pre-marketed and any similar strategy product in the notified Member State. The ban is considered too broad because it potentially captures succession funds, parallel vehicles, feeders or co-investments, so the proposed change is a positive development.
  - The current requirement to notify, within two weeks, that pre-marketing has started has been removed with no apparent replacement in the revised CBDFR or in AIFMD.
  - A new provision would prevent Member States from gold-plating the pre-marketing requirements.
  - The existing three-year ban on pre-marketing after de-notification of marketing arrangements is removed.

One point of caution to note is that the removal of the non-exhaustive list of pre-marketing examples does not mean that more substantial materials can be shared. AIFMs may wish to continue maintaining an internal pre-marketing log covering, for example, the start date of communications.

- **Marketing**: the package fundamentally simplifies cross-border marketing by moving core provisions into the CBDFR from AIFMD and the UCITS Directive and making various harmonization-related changes:
  - The ability for host NCAs to impose extra marketing requirements is restricted, and to verify ex ante marketing communications is prohibited but they may ask the home NCA to take measures in case of breach to the CBDFR. ECON's Draft Report includes a firm cut-off to remove gold-plating by 31 December 2028.
  - ESMA would be empowered under the CBDFR to develop a data platform within 24 months of the revised regulation entering into force. That platform is intended to be a one-stop shop for cross-border marketing of funds, with automatic translation and a public portal. The platform will centralize cross-border marketing notifications, material changes notifications and de-notifications. The platform is mainly a regulator-to-regulator notification conduit for fund marketing; asset managers will file most of their notifications with their home NCA, which transmits to the platform. The host competent authority would have immediate electronic access to all information via this platform, which should simplify and speed up the passporting process by removing the current fragmentation in implementation and practices.
  - At the point of application for authorization, a UCITS or AIFMD would indicate the intended host Member States into which it intends to passport its services and describe the marketing arrangements and facilities. Once the authorization is granted, the home NCA would submit the file and authorization to the new ESMA data platform. This notification would then unlock the immediate market access without any further waiting period, which represents a significant improvement in time to market.
  - The notification processes are also faster. For marketing notifications made by a UCITS or AIFM already authorized, the ability to market is immediate upon notification. For marketing de-notifications, NCAs must verify the completeness of the file and then transmit it to the ESMA data platform within five working days compared to the current 15 working days. Material changes notification periods are also being reduced to 15 working days instead of the current one month for a UCITS or AIFM.

- **Intra-group operating models**: the treatment of intra-group delegation as equivalent to third-party delegation has led to a concentration of funds within a small number of EU countries which are supported by robust ecosystems of banks and service providers. As a result, the prevailing regulatory approach incentivized managers to base their operation in these countries. The MISP Proposal recognizes the group dimension in the context of delegation arrangements in the hope that it might develop the fund industry in other Member States.

  The MISP Proposal has introduced a new concept—the so-called EU group of management companies and AIFMs. This group includes all of the management companies but also credit institutions and investment firms that are established in the Union and are being duly licensed. The fundamental reform here is that where there is a sharing of human or technical resources and allocation of functions across authorized group entities, this will not be treated as a delegation under the UCITS Directive and the AIFMD, but this is of course subject to certain conditions.

  The licensed manager must not be reduced to a letterbox entity and should retain core functions and therefore substance. The UCITS provisions are aligned with the AIFMD, so that UCITS management companies must retain at least investment management or risk management functions.

  Notably, the ECON Draft Report deletes the provision under the MISP Proposal to grant a carve-out for intra-group reliance from the delegation regime.

- **Depositary passports**: the home Member State depositary constraint would be removed to establish an EU depositary passport, meaning that UCITS and AIFs would be allowed to appoint a depositary established in any Member State. Currently, UCITS are not allowed to appoint a depositary in a Member State other than the one in which they are established, while AIFs are only permitted to appoint a cross-border depositary if their home Member State lacks an offering of depositary services. The intention is that a passport could enhance competitiveness and mitigate systemic risk that comes from asset concentration and a small number of depositaries in certain jurisdictions.

  The passport applies only to depositaries that are authorized as credit institutions under the EU Capital Requirements Directive (Directive 2013/36/EU) or investment firms under MiFID II—in other words, entities that already benefit from an EU passport and are subject to prudential requirements and supervision, ensuring consistent safeguards across Member States.

  The concept is not new—in 2020, the Commission signaled support for a depositary passport, but it was not taken forward in AIFMD II (save for an option for certain Member States with limited local depositary capacity). At the time, there was an absence of harmonization in areas such as tax and insolvency which was a key obstacle to progressing the passport. With the MISP Proposal, conflict of laws and insolvency safeguards are being organized through the Settlement Finality Regulation in order to avoid some of those issues.

  Significantly, the ECON Draft Report proposes direct ESMA supervision of depositaries, covering enquiries, investigations, on-site inspections, warnings, orders to cease practices, temporarily ban managers and fines and periodic penalty payments, in coordination with their national supervisory authorities, and the depositaries made subject to new minimum organizational requirements.

Next *steps*

The legislation continues to move through the legislative process, with both the European Parliament and the Council currently submitting their respective amendments and working towards common positions. It is important to note that the ECON Draft Report reflects only one rapporteur's position and that substantial amendments from the centre-right majority are expected. The divergences set forth above should be read as the opening Parliamentary negotiating position. Once the Council's and Parliament's positions are formally adopted, they will enter into political negotiations to reach a compromise, which will then form the final law. Both the European Commission and the Irish Presidency of the EU have expressed hopes of concluding the process before the end of 2026, although this appears ambitious given the remaining open issues and political disagreements, particularly regarding enhanced ESMA supervision.

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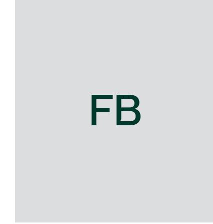

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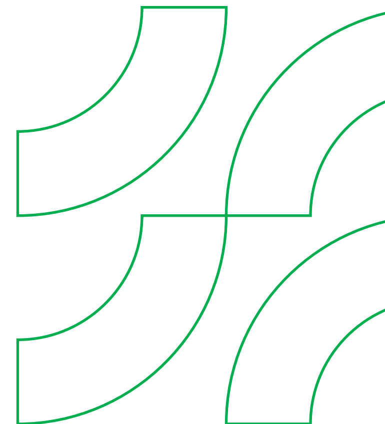

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