067615/EU XXVIII. GP
Eingelangt am 15/04/26

Council of the European Union

**Brussels, 15 April 2026**
**(OR. en)**

**8216/26**

**Interinstitutional Files:**
**2025/0381 (COD)**
**2025/0382 (COD)**
**2025/0383 (COD)**

**EF 111**
**ECOFIN 474**
**CODEC 672**
***ECB***

**COVER NOTE**

| | |
|---|---|
| From: | The President of the ECB, Christine LAGARDE |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| Subject: | OPINION OF THE EUROPEAN CENTRAL BANK of 9 April 2026 on proposals as regards the further development of capital market integration and supervision within the Union (CON/2026/13) |



www.parlament.gv.at

EUROPEAN CENTRAL BANK

EUROSYSTEM

EN

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 9 April 2026**

**on proposals as regards the further development of capital market integration and supervision within the Union**

**(CON/2026/13)**

## Introduction and legal basis

On 17 December 2025, 12 January 2026 and 3 March 2026, the European Central Bank (ECB) received requests from the European Parliament and from the Council of the European Union, respectively, for an opinion on the following proposals: (1) a proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 as regards the further development of capital market integration and supervision within the Union[1] (hereinafter the 'proposed master regulation')[2]; (2) a proposal for a Directive of the European Parliament and of the Council amending Directives 2009/65/EC, 2011/61/EU and 2014/65/EU as regards the further development of capital market integration and supervision within the Union[3] (hereinafter the 'proposed master directive'[4]); and (3) a proposal for a Regulation of the European Parliament and of the Council on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements[5] (hereinafter the 'proposed settlement finality regulation', and together the 'Commission proposals').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the Commission proposals contain provisions falling within the ECB's fields of competence, including, in particular, the implementation of monetary policy pursuant to Article 127(2), first indent, and Article 282(1) of the Treaty, the smooth operation of payment systems pursuant to Article 127(2), fourth indent, and Article 282(1) of the Treaty, the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty, and the contribution to the smooth conduct of policies pursued by competent authorities relating to the stability of the financial system pursuant to Article 127(5) of the Treaty. In accordance with Article 17.5, first sentence, of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

---

1 COM/2025/943 final.
2 The request from the Council of the European Union relates to Articles 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12 of the proposed master regulation.
3 COM/2025/942 final.
4 The request from the Council of the European Union relates to Article 3 of the proposed master directive.
5 COM/2025/941 final.

www.parlament.gv.at

## 1. General observations

1.1 The ECB fully supports the Commission proposals, which constitute an ambitious step towards deeper integration of capital markets and financial market supervision within the Union. As noted in the ECB's 2024 Governing Council statement[6], progress towards more integrated capital markets would strengthen private risk-sharing across the euro area, helping to stabilise growth when Member States face local shocks to which monetary policy cannot fully respond. A more integrated financial system would also help mitigate financial fragmentation and support the effective transmission of monetary policy across the euro area. Additionally, a more integrated financial system with broader, deeper and more liquid markets may increase diversification possibilities. Deep, diversified, and well-developed capital markets, supported by a harmonised regulatory and supervisory framework, are essential to enhance domestic and cross-border investments across Member States, improve businesses' access to finance, boost competitiveness and, ultimately, support sustainable economic growth throughout the Union[7].

1.2 First, the ECB welcomes the move towards integrated supervision of Union capital markets, in particular, the direct supervision of certain large and cross-border capital market players at the European level. The ECB fully supports efforts to ensure that the European Securities and Markets Authority (ESMA) has European and independent governance, sufficient resources and comprehensive oversight powers, and that it directly supervises the most systemic cross-border capital market actors, in cooperation with their national supervisors[8]. National competent authorities should continue to play a meaningful and substantial role in the new supervisory framework, to leverage their extensive expertise.

1.3 Second, the ECB welcomes that the Commission proposals will enhance supervisory convergence. These include, among others, the new provision regarding the duty of cooperation[9], the proposed new power for ESMA to require a competent authority to seek ESMA's opinion in cases where a peer review or investigation has identified serious supervisory failures[10], and the introduction of collaboration platforms, to enhance cooperation and supervision of cross-border activities[11].

1.4 Third, the ECB welcomes that the Commission proposals will remove barriers to cross-border integration across trading, post-trading, and the asset management and funds sectors. These efforts are essential to improve the depth and liquidity of European capital markets, to support an efficient allocation of capital across borders, to channel funding towards productive investments, and ultimately to support Europe's competitiveness and the international role of the euro.

---

6 See the Statement by the ECB Governing Council on advancing the Capital Markets Union, 7 March 2024, available on the ECB's website at www.ecb.europa.eu.

7 See the reply by the European System of Central Banks (ESCB) to the European Commission's targeted consultation on integration of EU capital markets, June 2025, available on the ECB's website at www.ecb.europa.eu.

8 See the Statement by the ECB Governing Council on advancing the Capital Markets Union, 7 March 2024, available on the ECB's website at www.ecb.europa.eu.

9 See Article 1, point (7), of the proposed master regulation, which inserts a new Article 8a into Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84, ELI: http://data.europa.eu/eli/reg/2010/1095/oj) (hereinafter the 'ESMA Regulation').

10 See Article 1, point (13), of the proposed master regulation, which inserts a new Article 17aa into the ESMA Regulation.

11 See Article 1, point (16), of the proposed master regulation, which inserts a new Article 19a into the ESMA Regulation.



www.parlament.gv.at

1.5 Finally, the ECB supports that the Commission proposals will further facilitate the adoption of new technologies such as distributed ledger technology (DLT), especially in the post-trade sector, and the corresponding adaptation of the regulatory framework. These steps should contribute to preventing and mitigating market fragmentation, ensuring sound risk management proportionate to the risks posed by market activities, and promoting a level playing field for market players.

1.6 In the remainder of this Opinion, the ECB offers some specific, technical observations and suggestions on the Commission proposals, in full support of the objectives of the proposals.

## 2. European Securities and Markets Authority (ESMA)

2.1 *Governance, funding and direct supervisory powers*

2.1.1 The ECB fully supports the amendments to ESMA's governance and funding framework. These amendments are essential to enable ESMA to carry out its new responsibilities, and to promote transparent, accountable, effective and efficient decision-making at Union level. In particular, the ECB welcomes the establishment, design and functions of the proposed ESMA Executive Board, which is responsible for decisions related to the direct supervision of financial market participants. The ECB notes that it will be indispensable to ensure that ESMA has sufficient staffing and funding to enable it to carry out its extensive new direct supervisory powers. To that end, where national competent authorities (NCAs) are involved in the exercise of ESMA's direct supervisory powers, it will be critical to provide clarity on the respective resource commitments from ESMA and the NCAs, and to ensure that such commitments are met. Finally, based on the ECB's own experience in its role as banking supervisor, the ECB fully supports the comprehensive investigation, sanctioning and enforcement powers conferred on ESMA[12], which are essential to foster the effective enforcement of regulatory requirements within the Union[13].

2.1.2 To ensure a smooth and orderly transition of competences and duties from the national competent authorities to ESMA, and to enable adequate time for capacity-building, the ECB supports a carefully sequenced implementation of this transition. This can be achieved through a combination of measures, including transitional solutions in cooperation arrangements[14], the preparation of supervisory transition plans[15], the prioritisation of the transfer of specific critical responsibilities to ESMA, and, where appropriate, through staggered transitional arrangements with flexible timelines.

2.2 *ECB participation in the ESMA Executive Board and Board of Supervisors*

2.2.1 The ECB welcomes that the Commission proposals provide that the ECB will be a non-voting member of the ESMA Executive Board where supervisory matters in relation to a central counterparty

12 See Article 1, point (27), of the proposed master regulation, which inserts a new Chapter IIa into the ESMA Regulation.

13 See paragraph 7 of Opinion CON/2022/16 of the European Central Bank of 27 April 2022 on a proposal for a directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, environmental, social and governance risk (OJ C 248, 30.6.2022, p. 87). All ECB opinions are published on EUR-Lex.

14 See, for example, Article 1, point (7), of the proposed master regulation, which inserts a new Article 8a(5), point (b), into the ESMA Regulation.

15 See, for example, Article 3, point (13), of the proposed master regulation, which inserts a new Article 38fb(6) into Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84, ELI: http://data.europa.eu/eli/reg/2014/600/oj) (hereinafter 'MiFIR').



www.parlament.gv.at

(CCP) or central securities depository (CSD) are discussed[16]. In addition, the ECB should also be a non-voting member for discussions concerning crypto-asset service providers (CASPs), in view of the services CASPs offer in relation to the custody and exchange of e-money tokens (EMTs) and asset-referenced tokens. These services have implications for the ECB's tasks relating to the smooth operation of payment systems and the transmission of monetary policy. The ECB's non-voting membership of the ESMA Executive Board will facilitate effective cooperation and coordination between the ECB and ESMA. To that end, the ECB's involvement should encompass not only discussions on supervisory matters, but all matters concerning CCPs, CSDs and CASPs[17]. This will ensure that the ECB's perspective and expertise can be taken into account in relation not only to individual supervisory decisions, but also to technical standards, guidelines, recommendations and other convergence tools, as relevant, in respect of CCPs, CSDs and CASPs.

2.2.2 As noted in previous opinions, the ECB also recommends that it should become a non-voting member of the ESMA Board of Supervisors[18]. This would further enhance the effectiveness of cooperation, coordination and exchange of information between the ECB, ESMA and the other authorities represented in the ESMA Board of Supervisors, and thereby reinforce cross-sectoral coordination in respect of the stability of the financial system. This would also ensure that the supervisory convergence tools adopted by the ESMA Board of Supervisors take into account and benefit from the ECB's perspective and expertise[19].

2.3 *ECB participation in ESMA internal committees*

2.3.1 The ECB welcomes that the Commission proposals provide that the ECB, from the central bank of issue perspective, will have the right to be a non-voting member of internal committees established by the ESMA Board of Supervisors[20] or the ESMA Executive Board[21], where such committees discuss supervisory matters in relation to CCPs and CSDs. As noted in paragraph 2.2.1, this membership should encompass not only discussions on supervisory matters, but all matters concerning CCPs, CSDs and also CASPs.

2.3.2 In addition, the ECB, in its role as banking supervisor, should also have the right to be a non-voting member of internal committees, where any matters with potential implications for credit institutions are discussed. This is relevant not only in relation to CCPs or CSDs but also in relation to other financial market participants under ESMA's supervision, including where the matters in question

16 See Article 1, point (33), of the proposed master regulation, which inserts a new Article 44a(2) into the ESMA Regulation.

17 See Article 1, point (39), of the proposed master regulation, which adds a new Article 46a to the ESMA Regulation. The proposed Article 46a(2) and (5) provide that the ESMA Executive Board may give opinions and make proposals on all matters to be decided by the Board of Supervisors and must adopt decisions in respect of other specified supervisory convergence tools. See Article 1, point (39), of the proposed master regulation.

18 See, for example, paragraph 7 of Opinion CON/2017/39 of the European Central Bank of 4 October 2017 on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (OJ C 385, 15.11.2017, p. 3). See also Opinion CON/2010/5 of the European Central Bank of 8 January 2010 on three proposals for regulations of the European Parliament and of the Council establishing a European Banking Authority, a European Insurance and Occupational Pensions Authority and a European Securities and Markets Authority (OJ C 13, 20.1.2010, p. 1).

19 These include opinions, guidelines, recommendations, decisions and regulatory and implementing technical standards adopted by the ESMA Board of Supervisors.

20 See Article 1, point (29), of the proposed master regulation, which replaces Article 41 of the ESMA Regulation.

21 See Article 1, point (37), of the proposed master regulation, which inserts a new Article 45c into the ESMA Regulation.



www.parlament.gv.at

relate to crypto-asset services or to activities provided by entities belonging to the consolidated group of a credit institution (see also paragraph 7.1.1). For instance, the risk profile of a CCP can have an impact on the risk profile of undertakings acting as clearing members of that CCP, which are primarily credit institutions and investment firms. As noted previously, it is thus crucial for the ECB, in its role as banking supervisor, to be fully informed and in a timely manner about the risks managed by CCPs and to be in a position to offer its supervisory expertise and perspectives concerning the soundness of clearing members and the stability of the banking sector[22].

2.4 *Representation of national central banks in ESMA's governance*

The ECB notes that, in some Member States, national central banks (NCBs) that are not represented on the ESMA Board of Supervisors[23] have supervisory responsibilities, most notably in respect of CCPs[24] or CSDs[25]. Those NCBs should be involved when internal committees or the ESMA Board of Supervisors discuss such matters and should have the possibility to vote in the ESMA Board of Supervisors[26]. Additionally, when the ESMA Executive Board deliberates on decisions in relation to a directly supervised entity falling within the competence of the NCB of the relevant Member State where the entity is established, that NCB should also be invited to those discussions. This corresponds to the fact that participation in such discussions is already envisaged for the member of the ESMA Board of Supervisors of the relevant Member State[27].

2.5 *Cooperation arrangements for the supervision of significant CCPs and CSDs*

The ECB fully supports entrusting ESMA with the supervision of significant CCPs and CSDs, and empowering ESMA to establish cooperation arrangements for that purpose. The ECB welcomes that ESMA will develop those cooperation arrangements with the close involvement of competent and relevant authorities. This will help ensure the effective functioning of supervision, in view of the important role national authorities will continue to play in the framework. Cooperation arrangements will enable ESMA to draw on the experience and expertise of competent and relevant authorities and will ensure the appropriate involvement of and exchange of information with authorities with an interest in the smooth operation and resilience of significant CCPs and CSDs. The ECB stands ready to support ESMA on the basis of the envisaged cooperation arrangements, in line with its mandate. The provisions in the Commission proposals framing the cooperation arrangements for CCPs and CSDs should be sufficiently prescriptive. In particular, the provisions should clarify the involvement

22 See paragraph 1.3.2 of Opinion CON/2023/11 of the European Central Bank of 26 April 2023 on a proposal for a regulation amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards excessive exposures to third-country central counterparties and improve the efficiency of union clearing markets and a proposal for a Directive amending directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions (OJ C 204, 12.6.2023, p. 3).

23 See Article 40(1), point (b), of the ESMA Regulation, which provides that the ESMA Board of Supervisors is composed of the head of the national public authority competent for the supervision of financial market participants in each Member State. Thus, currently six NCBs are members of the ESMA Board of Supervisors.

24 In practice this concerns three NCBs: the Banca d'Italia, the Banque de France and De Nederlandsche Bank.

25 In practice this concerns six NCBs: the Nationale Bank van België/Banque Nationale de Belgique, the Banque de France, the Banca d'Italia, De Nederlandsche Bank, Národná banka Slovenska and Banka Slovenije. The Banca d'Italia also has supervisory responsibilities in the area of trading venues.

26 From a practical perspective, for the purposes of voting in the ESMA Board of Supervisors, the representatives of the authorities of any one Member State shall, together, be considered as one member.

27 See Article 1, point (33), of the proposed master regulation, which inserts a new Article 44a(2) into the ESMA Regulation.



www.parlament.gv.at

of competent and relevant authorities in supervisory activities, to ensure close cooperation with NCAs and other authorities, in a meaningful and substantial way, on a long-term basis. The provisions should also ensure a consistent approach across significant CCPs and CSDs. For CSDs, the cooperation arrangements should also ensure appropriate information sharing with host authorities of the Member State where the CSD provides services, and, where CSDs provide banking-type ancillary services, the coordination of supervisory activities with the banking supervisor of the significant CSD.

## 3. Central counterparties (CCPs)

3.1 *Conditions for the identification of significant CCPs by ESMA*

The ECB fully supports the conditions established by the Commission proposals for considering a CCP to be significant, and thus subject to direct supervision by ESMA[28]. These conditions are sound and relevant. The ECB would recommend adding one further condition, namely that where the CCP has established an interoperability arrangement with another CCP, this should also be a condition for considering a CCP to be significant. There are three reasons for this recommendation. First, this suggested condition reflects the fact that interoperability links are a source of cross-border systemic relevance for interoperable CCPs which would justify their direct supervision by ESMA. Second, this condition would be more efficient from a supervisory perspective since the Commission proposals grant ESMA the competence to approve interoperability arrangements[29]. Third, this condition could foster the wider use of interoperability arrangements and integration by providing reassurance to CCPs willing to establish such arrangements that they will be subject to harmonised supervision by ESMA.

3.2 *Open access and interoperability*

The ECB welcomes the provisions in the Commission proposals that support open access and interoperability, which are deemed important to support integration[30]. In particular, the ECB welcomes the new role of ESMA to arbitrate requests for access to a CCP and requests for access to a trading venue. Likewise, the ECB welcomes that competence is conferred on ESMA to approve interoperability arrangements, in view of the relevance of such arrangements in terms of interconnectedness.

3.3 *Involvement of central banks of issue in the supervision of CCPs*

3.3.1 The ECB fully supports the level of involvement of central banks of issue in the supervision of significant CCPs[31]. In particular, the ECB welcomes the provisions in the Commission proposals

28 See Article 2, point (15), of the proposed master regulation, which inserts a new Article 22a(2) in Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/648/oj) (hereinafter 'EMIR').

29 See Article 2, point (26), of the proposed master regulation, which amends Article 54 of EMIR.

30 See Article 2, points (4), (5) and (26), of the proposed master regulation, which, respectively, amend Article 7, replace Article 8, and amend Article 54 of EMIR.

31 The role of central bank of issue for the euro is exercised in a decentralised and coordinated manner within the Eurosystem. Thus, the reference in the Commission proposals to the ECB's role as central bank of issue for the euro is without prejudice to Article 12.1 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), which states that 'to the extent deemed possible and appropriate and without prejudice to the provisions of this Article, the ECB shall have recourse to the national central banks (NCBs) to carry out operations which form part of the tasks of the ESCB'.



www.parlament.gv.at

which ensure that central banks of issue will be consulted by the ESMA Executive Board with regard to supervisory assessments and decisions pertaining to six key areas of relevance from a central bank of issue perspective: margin requirements, liquidity risk controls, collateral, review of models, stress testing and back testing, settlement, and interoperability arrangements[32]. Central banks of issue thereby benefit from a robust, dedicated consultation role under the Commission proposals, covering a wide scope of supervisory decisions. This strengthens the involvement of central banks of issue in CCP supervision compared to existing college procedures. The consultation of central banks of issue has also been provided for in respect of third country CCPs[33]. Some further clarifications and alignment in respect of these provisions should be introduced, including in respect of the documentation central banks of issue would need to receive to fulfil their consultation role and, to ensure the involvement of central banks of issue of Union currencies other than the euro, of the financial and non-financial instruments cleared or to be cleared by the CCP.

3.3.2 The involvement of central banks of issue in the supervision of CCPs was already strengthened by the amendments to EMIR introduced by Regulation (EU) 2019/2099 of the European Parliament and of the Council[34] and Regulation (EU) 2024/2987 of the European Parliament and of the Council[35], in particular for assessments in respect of the active account requirement[36], and consultations in respect of systemic third-country CCPs[37]. With the benefit of that experience, the ECB has identified certain limitations to the Eurosystem's access to data, which poses an obstacle to the effective performance of the role of central bank of issue for the euro. The Eurosystem currently only has access to position data for derivatives in euro, which is of low quality and not usable in practice[38]. Thus, the ECB and Eurosystem NCBs should be granted better access to data, in particular all transaction data for derivatives denominated in euro reported under Article 9 of EMIR. This can be achieved through the revision of the relevant Commission delegated act[39] adopted under EMIR. Moreover, where relevant or necessary for the performance of their financial stability and macroprudential mandates, members of the ESCB and the European Systemic Risk Board (ESRB) should have access to the information shared via the central database established under Article 17c of EMIR. Such information, in particular concerning margin requirement and waterfall resources, can

32 See Article 2, point (15), of the proposed master regulation, which inserts a new Article 22e into EMIR. See Articles 41, 44, 46, 49, 50 and 54 of EMIR.

33 See Article 2, point (21), of the proposed master regulation, which replaces Article 24b(2) and (3) of EMIR.

34 Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (OJ L 322, 12.12.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/2099/oj).

35 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (OJ L, 2024/2987, 4.12.2024, ELI: http://data.europa.eu/eli/reg/2024/2987/oj).

36 See Article 7a of EMIR.

37 See Article 24b of EMIR.

38 See the ECB's response to the European Commission's consultation on the review of the European Market Infrastructure Regulation (EMIR), 2 September 2015, available on the ECB's website at www.ecb.europa.eu.

39 Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data (OJ L 52, 23.2.2013, p. 33, ELI: http://data.europa.eu/eli/reg_del/2013/151/oj); see, in particular, Article 2(10).



www.parlament.gv.at

be relevant to assess interlinkages between the banking system and the wider financial system and to assess potential contagion dynamics.

3.3.3 Finally, NCBs should be included within the definition of 'relevant authorities for significant CCPs', where the NCB has oversight responsibilities for CCPs under national law[40].

## 4. Central securities depositories (CSDs)

4.1 *Authorisation procedures for CSDs*

4.1.1 The ECB supports the introduction, in the relevant provisions of Regulation (EU) No 909/2014 of the European Parliament and of the Council[41] (hereinafter the 'CSDR'), of an assessment to be conducted by the competent authority, and communicated to the relevant authorities, to ensure coordination in the preparation of their reasoned opinions. Such an assessment would also be helpful to support (a) authorisation procedures for banking-type ancillary services and (b) review and evaluation procedures under the relevant provisions of the CSDR[42].

4.1.2 The proposed amendments to the CSDR[43] no longer allow the competent authority to assess the completeness of applications for authorisation prior to the process of the examination of an application for authorisation. Furthermore, in some cases, the proposed amendments considerably shorten the period within which the relevant authorities are to provide their reasoned opinions. The ECB is concerned that this may place an undue burden on the competent and relevant authorities to assess applications, including those that may be supported by incomplete documentation. The ECB suggests maintaining the existing process for the assessment of completeness, adjusting the timeline of the procedure to give the relevant authorities the opportunity to consider the competent authority's assessment, and aligning the timelines for the procedures set out in the relevant provisions.

4.1.3 The ECB welcomes the proposed amendments[44] that establish a more streamlined procedure for intragroup outsourcing, as these can facilitate and enhance integration and efficiency, respectively, within CSD groups.

4.1.4 The provision of core CSD services through the use of DLT[45] may have significant implications for a CSD's operations and for its compliance with several requirements under the CSDR. For that reason, the ECB suggests that when a CSD intends to provide its core CSD services through the use of DLT, this should be subject to authorisation as an extension of the CSD's activities under the relevant provisions of the CSDR. This would apply when a CSD intends to perform the initial recording of

40 Article 2, point (15), of the proposed master regulation, which inserts a new Article 22d into EMIR.

41 See Article 4, point (16)(c) of the proposed master regulation, which amends Article 17(4) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/909/oj).

42 See Articles 22 (review and evaluation), 55 (authorisation procedure) and 60 (supervision) of the CSDR.

43 See Article 4, points (16) and (51), of the proposed master regulation, which, respectively, amend Articles 17 and 55 of the CSDR.

44 See Article 4, points (19) and (33), of the proposed master regulation, which, respectively, amend Articles 19 and 30 of the CSDR.

45 See Article 4, points (2) and (33), of the proposed master regulation, which, respectively, insert a new Article 2(1), point (4b), and a new Article 30(6) and (7) into the CSDR.



www.parlament.gv.at

securities on a distributed ledger, to provide and maintain accounts at the top-tier level using DLT, or to settle securities transactions through a securities settlement system it operates using DLT.

4.2 *Single market for CSD services*

The ECB welcomes the fact that the Commission proposals facilitate passporting and support the freedom of issuance of securities[46]. Those measures can help reduce barriers to cross-border operations by removing the requirement for approval by the host authorities. Granting CSDs and issuers more freedom to provide cross-border services and choose their CSD, respectively, can support competition and market integration. To remove remaining obstacles to integration, the ECB emphasises the need for further harmonisation of national rules, notably corporate and securities laws, and for further harmonisation and standardisation of market practices. In that regard, the ECB suggests that the co-legislators establish regulatory incentives to adopt international and European market standards for post-trade services[47].

4.3 *Participation of private individuals in CSDs*

Financial market infrastructures (FMIs) establish legal, financial and operational requirements for their participants to fulfil in a timely manner. This particularly involves having in place adequate information and communication technology systems and sufficient staff. The legal soundness and financial and operational capacity of direct participants are key safeguards for the stability of FMIs and, in the specific case of CSDs, for settlement efficiency, justifying the restriction of CSD participation to legal entities (preferably, regulated financial institutions). CSDs should not be enabled to allow private individuals to become participants in a CSD[48].

4.4 *CSDs' use of DLTs for the provision of CSD services*

The ECB welcomes the proposed adaptations to the CSDR[49] in order to facilitate the use of DLT by CSDs and welcomes that strong risk management standards for CSDs are maintained, regardless of the technological solutions they use. The ECB welcomes, in particular the adaptations to set out requirements for the management of DLT-specific risks outside of an outsourcing arrangement. That said, the ECB suggests further specifying these adaptations to cover the assessment, by the CSD, of the suitability of network node operators, the relevant operational and governance risks, and the certainty and irreversibility of settlement.

4.5 *Cash settlement*

4.5.1 The ECB fully supports the introduction of a requirement for CSDs that settle in currencies available for settlement in TARGET2-Securities (T2S) to connect to T2S and to offer central bank money (CeBM) settlement services to their participants. This requirement will further enhance the integration of the market for settlement services and promote safety through the use of CeBM settlement[50].

---

46 See Article 4, points (24) and (44), of the proposed master regulation, which amend, respectively, Articles 23 and 49 of the CSDR.

47 Such as the market standards sponsored by the Eurosystem's Advisory Group on Market Infrastructure for Securities and Collateral (AMI-SeCo), i.e. the SCoRE standards on corporate events, tri-party collateral management and billing, the T2S Harmonisation Standards on settlement and corporate events on flow and the Joint Corporate Action Market Standards and the Industry Shareholder Identification standards, available on the ECB's website at www.ecb.europa.eu or on the website of the European Banking Federation at https://www.ebf.eu.

48 See Article 4, point (34), of the proposed master regulation, which adds a new Article 33(7) to the CSDR.

49 See Article 4, point (40), of the proposed master regulation, which inserts a new Article 45a into the CSDR.

50 See Article 4, point (39), of the proposed master regulation, which replaces Article 40(2) of the CSDR.



www.parlament.gv.at

4.5.2 CeBM should remain the primary settlement asset for wholesale financial markets and, in particular, for the settlement of securities transactions, including in tokenised form. The ECB welcomes the introduction of an explicit reference to settlement in tokenised central bank money, which the ECB will enable for euro-denominated transactions through the development of Pontes[51]. The Commission proposals also allow CSDs to settle cash payments for their securities settlement systems in EMTs. Settlement in EMTs carries additional risks compared to settlement in CeBM or commercial bank money (CoBM), including the credit risk of the issuers, the risk associated with potential fluctuations in the price of the EMT, as well as the liquidity risk associated with the underlying reserve assets[52]. Moreover, the scalability of EMTs is limited compared with CeBM or CoBM. The use of EMTs as settlement assets should therefore be carefully regulated, through restrictions as to when they can be used and risk management safeguards where their use is allowed. To minimise risks from settlement assets in wholesale financial markets, and to ensure that CeBM remains the primary settlement asset in those markets, CSDs should only be permitted to offer settlement in EMTs where settlement is in a currency for which settlement in tokenised CeBM is not practical and available. Settlement in EMTs should only be permitted if it is subject to sound risk management safeguards to minimise the risks associated with their use, in line with international standards. Furthermore, settlement in EMTs should only be permitted if the EMT is issued by a Union entity in compliance with Title IV of Regulation (EU) 2023/1114 of the European Parliament and of the Council[53] and is not fungible with any crypto-asset(s) issued outside the Union, including those that are part of any third-country multi-issuer scheme. Finally, where CeBM is not available or where its use is not practical, tokenised deposits have the potential to play a more prominent role as settlement assets in tokenised transactions. In order to provide a Union legal framework for all tokenised settlement assets, the co-legislators should consider introducing a common definition of tokenised deposits in Union banking legislation.

4.6 *CSD links*

4.6.1 The ECB fully supports the proposals aimed at expanding the current network of links between CSD hubs and other Union CSDs, with the objective of ensuring that a participant in any CSD can reach securities issued in any other Union CSDs[54]. Those links should be established in T2S, wherever possible, to help reap the benefits of a common settlement infrastructure. The requirement for links to be established in T2S should be adapted to the specificities of central bank-operated CSDs, considering that those only record specific financial instruments and do not provide their participants with access to other securities, as all Member States with a central bank-operated CSD also have privately operated CSD(s) to provide commercial services. This requirement should in any event only

---

51 See the ECB's Pontes project, available on the ECB's website at www.ecb.europa.eu. Pontes is a Eurosystem DLT solution that links market DLT platforms and TARGET Services to settle transactions in central bank money.

52 See Committee on Payments and Market Infrastructures, Board of the International Organization of Securities Commissions, 'Application of the Principles for Financial Market Infrastructures to stablecoin arrangements', July 2022, available on the website of the Bank for International Settlements at www.bis.org.

53 Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40, ELI: http://data.europa.eu/eli/reg/2023/1114/oj) (hereinafter 'MiCAR').

54 Article 4, points (43) and (46), of the proposed master regulation, which insert new Articles 48a, 48b and 51a into the CSDR.



www.parlament.gv.at

apply to the establishment of a one-directional link between a CSD hub, as investor CSD, and the central bank-operated CSD, as issuer CSD.

4.6.2 The settlement finality moments in T2S are harmonised, and ESMA has previously found the relevant legal provisions in the T2S Collective Agreement and T2S Framework Agreement[55] to be adequate. The ECB would welcome clarification as regards the potential gap that the regulatory technical standards (RTS) provided for in the proposed amendments to the CSDR[56] would aim to address. For instance, it would be difficult for such RTS to address the cross-jurisdictional application of settlement finality rules, without further harmonisation of corporate and securities laws. The ECB thus suggests removing this particular provision from the mandate given to ESMA.

## 5. Pilot regime for market infrastructures based on distributed ledger technology (DLT)

5.1 *Expansion of the DLT pilot regime (DLTPR)*

5.1.1 The ECB welcomes the proposed expansion of the DLTPR, which would significantly enhance the opportunities for both established actors and new entrants to develop post-trade solutions based on innovative technologies in a more flexible and proportionate regulatory environment, fostering competition, innovation and resilience. The proposed expansion may also contribute to the creation of a single European framework, mitigating the risk of regulatory fragmentation stemming from a proliferation of national legal frameworks, in line with the objectives of the Savings and Investment Union (SIU). To prevent further fragmentation in the Union post-trading landscape, it will be essential to promote and, where necessary, enforce interoperability and standardisation across DLT market infrastructures. The Eurosystem stands ready to play its part in this, both as an operator and as catalyst in the context of its single work programme on new technologies for central bank money settlement, Pontes and Appia[57].

5.1.2 The ECB supports the proposed adjustment of activity limits, which strikes the right balance between facilitating market initiatives and limiting the systemic importance of, and the risks associated with, activities conducted under the DLTPR, which do not meet all of the regulatory requirements applicable to financial market infrastructures. This is especially true as the adaptations to the CSDR to facilitate the use of DLT by CSDs operating only under a CSD authorisation also ensure that CSDs operating above the activity limit can still use DLT, while complying with the same requirements as CSDs using traditional technologies. However, to prevent any circumvention of the limits, the ECB supports the group-level application of activity limits. The ECB considers that a group-level approach should also apply more generally to the prudential supervision of entities authorised under the DLTPR, to ensure that own funds and risk management are commensurate with the combined activities of multi-function groups[58].

---

55 Both Agreements are available on the ECB's website at www.ecb.europa.eu.

56 See Article 4, point (42)(f), of the proposed master regulation, which amends Article 48(10) and replaces Article 48(10), point (f), of the CSDR.

57 See the ECB's Appia initiative, available on the ECB's website at www.ecb.europa.eu. Appia's objective is to explore concepts like a European shared ledger and a network of interconnected ledgers: infrastructures that could serve as a utility for issuing, recording, trading and settling tokenised assets while enabling programmability.

58 See also ESRB, 'Crypto-assets and decentralised finance: Report on stablecoins, crypto-investment products and multifunction groups', October 2025, available on the ESRB's website at www.esrb.europa.eu.



www.parlament.gv.at

5.1.3 The ECB also supports the introduction of a simplified regime for smaller DLT market infrastructures. This simplified regime would allow for more proportionate regulation and supervision of non-systemically important firms. However, the ECB suggests that the approach taken in the simplified regime to disapply certain requirements applicable to CSDs under the CSDR should be more narrowly circumscribed, to ensure compliance with certain critical requirements[59]. Finally, as DLT market infrastructures grow under the DLTPR, it is essential to ensure their compliance with the robust prudential safeguards established in Union legislation[60], so as to maintain adequate risk management and avoid gaps in investor protection and operational resilience. In particular, all regulated entities providing core CSD services should comply with the relevant requirements of the CSDR.

5.2 *Eligibility of new types of entities and of a wider range of financial instruments*

5.2.1 The ECB supports making credit institutions eligible to seek permission to operate under the DLTPR, as that would open up the framework to a new range of regulated entities. This would help to foster innovation via broader participation, while at the same time supporting the safety of DLT market infrastructures, given that credit institutions are well regulated and supervised.

5.2.2 By contrast, the ECB has some concern about the proposed inclusion of CASPs in the DLTPR. CASPs currently operate under a lighter supervisory framework and lower, non-risk-sensitive own funds requirements. This is not consistent with allowing them to provide services relating to financial instruments, which are outside the scope of MiCAR and reserved for entities holding licences granted under more stringent and risk-sensitive requirements. This concern could be addressed by amending the requirements for CASPs as suggested in paragraph 7.

5.2.3 The ECB also welcomes the broadening of the eligibility criteria for financial instruments, noting that where a DLT market infrastructure offers services in relation to tokenised derivatives, any requirements relating to derivatives clearing under existing Union legislation should apply in the same way.

5.3 *Additional exemptions for DLT market infrastructures*

The ECB sees merit in allowing DLT market infrastructures to request additional exemptions beyond those defined in the DLTPR. However, the power to grant such exemptions should be exercised in a way that ensures the harmonised application of Union law. The ECB thus recommends that, instead of providing a non-binding opinion on such requests, ESMA should be granted the power to address binding decisions to the competent authority handling the request[61].

---

59 See Articles 27(8) to (10), 33(4), 38(7), 39(6) and (7), 45(5) and 46(1) to (3) of the CSDR.

60 Notably MiFIR, Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349, ELI: http://data.europa.eu/eli/dir/2014/65/oj) (hereinafter 'MiFID'), the CSDR, and, where relevant, Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1, ELI: http://data.europa.eu/eli/reg/2013/575/oj) and MiCAR.

61 See Article 8, point (7), of the proposed master regulation, which inserts Article 5a into Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/858/oj) (hereinafter the 'DLTPR').



www.parlament.gv.at

5.4 *Requirements for cash settlement for DLT market infrastructures*

The ECB welcomes the clarifications proposed by the Commission regarding the requirements on cash settlement for DLT settlement systems (DLT SSs) and trading and settlement systems (DLT TSSs) through the proposal for an exemption from the proposed requirements relating to cash and EMT settlement under Article 40 of the CSDR[62]. The ECB also advocates for a level playing field in the regulatory approach between DLT market infrastructures settling in CoBM and those settling in EMTs. In particular, the lighter treatment proposed for EMTs is not, in the ECB's view, justified, given the additional risks that EMTs pose as a settlement asset (see paragraph 4.5.2). In that regard, the ECB proposes that the requirements relating to the provision of banking-type ancillary services for CSD participants under Title IV of the CSDR should apply in all cases for DLT SSs and TSSs operating under the regular regime, and that the further flexibility provided for in the Commission proposal be restricted to the simplified regime[63]. Finally, the ECB strongly agrees that banking-type ancillary services other than the provision of cash accounts and payment processing should be provided exclusively by entities holding a banking licence.

5.5 *Provision of individual CSD services and operation of settlement schemes*

5.5.1 The ECB supports the creation of a specific permission for the provision of individual CSD services to allow firms operating under national laws regulating digital or DLT-based securities to obtain a Union licence, also covering securities admitted to trading on a trading venue. The activity limits could be further aligned with those for DLT market infrastructures, by setting an overall limit at EUR 100 billion for the total value of securities recorded on a DLT market infrastructure. In arrangements involving DLT notaries, DLT account keepers and DLT SSs or TSSs, clear allocation of responsibilities will be critical. In that regard, the ECB welcomes that the relevant provision of the DLTPR would require the DLT notary, DLT account keeper and the DLT SS, TSS or relevant CSD that provide CSD core services jointly specify their roles and responsibilities in providing those services in a legally binding written agreement to be notified to their respective competent authorities, together with clear information on which entity provides CSD core services for which DLT financial instruments or categories of DLT financial instruments[64]. The complexity that such arrangements could introduce in the post-trading landscape reinforces the need for interoperability between entities licenced under the DLTPR. The development of these arrangements should therefore be accompanied by the introduction of regulatory requirements to ensure open access and interoperability between the services each entity provides, and the implementation of common standards to enable links between these services (see paragraph 5.6). In view of the interest of members of the ESCB, as relevant authorities under the CSDR, the ECB suggests that the ESMA draft RTSs specifying the provisions applicable to each of these specific licences should be prepared in close cooperation with the ESCB.

5.5.2 The proposal to establish a licence for settlement schemes may also allow for the development of innovative setups. The lack of a single legal entity operating the settlement scheme is a legal

62 See Article 8, point (6)(a), of the proposed master regulation, which amends Article 5(8) of the DLTPR.

63 See paragraph 3.3.11 of Opinion CON/2021/15 of the European Central Bank of 28 April 2021 on a proposal for a regulation of the European Parliament and of the Council on a pilot regime for market infrastructures based on distributed ledger technology (OJ C 244, 22.6.2021, p. 4).

64 See Article 8, point (14), of the proposed master regulation, which inserts a new Article 10b(8) into the DLTPR.



www.parlament.gv.at

innovation that requires strong safeguards to clearly establish the allocation of responsibilities, as outlined in the proposal. Given the innovative nature of this setup, the ECB supports the Commission proposal to apply the same activity limit to settlement schemes as in the case of DLT market infrastructures authorised under the simplified regime. It is, in any event, essential that those schemes are not used to circumvent the Union regulatory framework, which implements international standards for financial market infrastructures and provides for strong risk management requirements. The DLTPR should therefore ensure a level playing field between settlement schemes and DLT market infrastructures operating under the simplified regime. Finally, the ECB supports the proposed requirement for transactions within a settlement scheme to be settled in central bank money. However, this requirement, which is imposed on DLT account keepers operating settlement schemes, should not be construed as expanding the range of entities eligible to hold a central bank account, nor as imposing an obligation on central banks to provide such an account for the purpose of running a settlement scheme.

5.6 *Industry group to facilitate interoperable settlement between DLT market infrastructures*

The ECB welcomes the proposal for operators of DLT market infrastructures and DLT account keepers to form an industry group to develop standards to facilitate settlement that is also open to other eligible participants[65]. The ECB proposes that the ECB and ESMA should be invited as permanent observers in the industry group, rather than being periodically consulted. This would foster close consultation in the establishment of regulatory and market standards and promote consistency with the work carried out by the Eurosystem as provider of settlement services in CeBM for tokenised transactions.

## 6. Settlement finality

6.1 *Directly applicable regulation*

The ECB welcomes the proposed settlement finality regulation (hereinafter the 'proposed SFR') to replace Directive 98/26/EC of the European Parliament and of the Council[66] (hereinafter the 'SFD'), and the proposed harmonisation of procedures, achieving full uniformity of designation for Union systems, and introducing a harmonised Union-level framework for the registration of third-country systems. The Member States would, upon adoption of the proposed SFR, need to take all necessary measures to adjust their national laws, in a timely manner, to repeal the provisions implementing the SFD and to comply with the directly applicable proposed SFR. Such actions are necessary to ensure legal certainty and compatibility between the proposed SFR and relevant national law, including insolvency and banking legislation. To accommodate such adjustments, the date of application of the proposed SFR and the date of repeal of the SFD should be one year after the date of publication of the proposed SFR in the Official Journal of the European Union.

65 See Article 8, point (14), of the proposed master regulation, which inserts a new Article 10g into the DLTPR.

66 Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45, ELI: http://data.europa.eu/eli/dir/1998/26/oj).



www.parlament.gv.at

6.2 *Procedure and conditions for the designation of Union systems*

6.2.1 The proposed SFR outlines a broad set of conditions to be fulfilled for the designation of a system[67]. The ECB notes that many of these conditions fully or partially overlap with existing organisational, prudential, and oversight requirements already established under EMIR, the CSDR, Regulation (EU) 2025/1355 of the European Central Bank (ECB/2025/22)[68] (hereinafter the 'SIPS Regulation'), national laws regulating the oversight of payment systems by central banks, and under the Eurosystem oversight frameworks.

6.2.2 The ECB sees room for simplifying and improving the design of the procedure and conditions for designation under the proposed SFR[69], particularly to avoid duplication of existing organisational, prudential, and oversight requirements. The avoidance of such duplication is important for several reasons. First, it would avoid administrative and regulatory burdens on the relevant system operators assessed under different regimes against identical or similar requirements. Second, it would limit the duplication of work for the involved authorities. Third, it would exclude divergent outcomes between designating and competent authorities. Fourth, it is important to avoid such duplication in order to ensure the independent exercise of the Eurosystem's basic task under Article 127(2), fourth indent, of the Treaty and Article 3(1) of the Statute of the ESCB to promote the smooth operation of payment systems. Finally, avoiding such duplication is in line with the focus of the Commission to simplify Union policies and laws, and to achieve their better implementation, including by working with and supporting Member States as well as cooperating with other Union institutions[70].

6.2.3 Accordingly, the designating authority[71] should consistently be the authority responsible for the supervision or oversight of the system operator. When assessing the system against the conditions for designation, that authority could thus draw on its supervisory or oversight assessment of the system operator's compliance with applicable regulatory or oversight requirements. This approach would leverage the supervisor's or overseer's experience with the system operator and avoid any duplication of rules and conflict of competences between authorities. This would also support the Commission's objective of achieving harmonisation by introducing a uniform set of conditions. For central bank-operated systems, to ensure compliance with the principle of central bank independence, the designating authority should in any case be the central bank overseeing it.

6.3 *Development of RTS by ESMA and the European Banking Authority (EBA)*

The proposed SFR includes provisions under which ESMA and the EBA may, in close collaboration with the ESCB, develop draft RTS that further define the designation conditions[72]. As noted above, the designation conditions fully or partially overlap with existing requirements already established under EMIR, the CSDR and, for payment systems, the SIPS Regulation and other applicable oversight frameworks. Adding further detail to these conditions would only increase the complexity

67 See Article 5(1) of the proposed SFR.

68 Regulation (EU) 2025/1355 of the European Central Bank of 2 July 2025 on oversight requirements for systemically important payment systems (ECB/2025/22) (OJ L, 2025/1355, 14.7.2025, ELI: http://data.europa.eu/eli/reg/2025/1355/oj).

69 See Articles 4 and 5 of the proposed SFR.

70 Communication from the Commission, 'A simpler and faster Europe: Communication on implementation and simplification', COM/2025/47 final.

71 See Article 2(1), point (33), of the proposed SFR.

72 See Article 5(2) and (3) of the proposed SFR.



www.parlament.gv.at

of this regime. Moreover, the draft RTS that may be developed by the EBA in respect of payment systems would significantly overlap with the ECB's regulatory powers under Article 22 of the Statute of the ESCB in respect of euro area payment systems, including central bank-operated systems. Thus, this empowerment for ESMA and the EBA should be removed from the proposed SFR.

6.4 *Coordinated procedure for the registration of third-country systems*

6.4.1 The ECB would also recommend enhancements to the procedure for the registration of third country systems, in order to avoid multiple parallel registration procedures at national level[73]. To that end, the ECB would suggest that a single coordinating authority should take charge of the coordination of interactions with the third-country system operator and of the assessment of its compliance with the conditions for registration under the proposed SFR. The coordinating authority should be ESMA for third-country securities settlement and clearing systems and the ECB for third-country payment systems. National registering authorities would remain involved throughout the process and take the final decision as regards registration in their Member State.

6.4.2 Moreover, the ECB understands that the purpose of this registration regime is to extend SFR protections to EU participants in such third-country systems. The ECB suggests clarifying the purpose and exact legal effects of such extension, and that this extension proportionately limits the application of EU substantive rules on netting, transfer orders, the use of funds and financial instruments to fulfil participants' obligations to designated systems only.

6.5 *Clarification of several definitions*

6.5.1 The proposed SFR's definition of a 'system'[74] does not mention a minimum number of participants, unlike the existing definition in the SFD[75]. This could have the unintended consequence of extending the definition to a broad range of arrangements that should not be covered by the proposed SFR. The ECB suggests maintaining the same minimum number of participants in the definition of a 'system' in the proposed SFR as currently specified in the corresponding definition in the SFD.

6.5.2 The proposed definition of 'settlement'[76] by reference to the CSDR is intended to refer to the settlement of securities transfer orders only. Similarly, the proposed SFR's definition of 'clearing'[77] by reference to EMIR is intended to refer to CCPs only. However, as per international best practice, settlement has a broader meaning, which could refer to the discharge of any obligation, not only of those pertaining to securities.

6.5.3 The proposed definition of a 'securities settlement system'[78] (SSS) refers to the settlement of any transfer orders, which include payment settlement, and should thus be further specified. Additionally, the recitals of the proposed SFR[79] state that it should be possible to designate systems operated by DLT market infrastructures in accordance with the DLTPR under the proposed SFR, subject to their compliance with the conditions set out in both the DLTPR and the proposed SFR. The ECB thus

---

73 See Articles 12 to 16 of the proposed SFR.
74 See Article 2(1), point (1), of the proposed SFR.
75 See Article 2, point (a), of the SFD.
76 See Article 2(1), point (3), of the proposed SFR.
77 See Article 2(1), point (4), of the proposed SFR.
78 See Article 2(1), point (5), of the proposed SFR.
79 See recital 7 of the proposed SFR.



www.parlament.gv.at

understands that the definition of SSS under the proposed SFR is therefore intended to encompass systems operated by DLT market infrastructures in accordance with the DLTPR, whether DLT SSs or TSSs. The ECB suggests ensuring a sound articulation with the definition of SSS under the CSDR[80] and the requirement in the CSDR that SSSs may be operated only by authorised CSDs, to avoid any legal uncertainty regarding the possibility to designate as an SSS a DLT trading and settlement system operated by an investment firm. Finally, it could also be clarified whether the definition of an SSS under the proposed SFR is intended to encompass settlement schemes established in accordance with DLTPR (see paragraph 5.5.2), in order to allow for their potential designation under the proposed SFR. If that is the legislative intention, its legal implications should be analysed and addressed in the proposed SFR.

6.5.4 The proposed definition of a 'participant' in a designated system includes, in addition to an enumeration of certain regulated financial institutions[81], any entity other than these listed entities[82]. The term 'system member' is in turn defined as such an entity[83]. The conditions provided for in the proposed SFR for a system member to be accepted as system participant[84] do not further clarify the definition, as any participant should a priori meet these conditions. The term 'entity' could be clarified in these provisions as a legal person, in order to avoid any ambiguity that this term is intended to also cover natural persons. Any future inclusion of natural persons in the definition of 'participant' or 'system member' should be subject to a thorough impact assessment, also in the light of the considerations set out in paragraph 4.3.

6.5.5 The proposed definition of 'transfer order'[85] seems to imply that recording 'by means of a book-entry or electronic recording on a register having a similar function or otherwise' would apply only to securities transfer orders, without explaining the necessity for such legislative intent. As DLT can also be used to transfer funds, this definition should be broadened.

6.5.6 The proposed definition of 'business day'[86], and its applications in the relevant provisions of the proposed SFR[87], may be difficult to apply to systems that operate continuously on a '24/7' basis, including instant payment systems and potentially DLT-based systems. The definition could therefore be reviewed with this consideration in mind.

6.6 *Interplay between DLT systems and settlement finality*

Pursuant to the proposed SFR, designated systems using DLT are required to implement 'mechanisms guaranteeing deterministic ... finality moments'[88]. The implications of this provision for the legal arrangements in the system rules and the compatibility of technological solutions for DLT-based settlement with this requirement would need to be further clarified to avoid unintended consequences, by better distinguishing between legal and technological requirements.

---

80 See Article 2(1), point (10), of the CSDR.
81 See Article 2(1), point (15)(a)(i) to (vi), of the proposed SFR.
82 See Article 2(1), point (16), of the proposed SFR.
83 See Article 2(1), point (16), of the proposed SFR.
84 See Article 7(2) of the proposed SFR.
85 See Article 2(1), point (20), of the proposed SFR.
86 See Article 2(1), point (28), of the proposed SFR.
87 See Articles 17 and 19 of the proposed SFR.
88 See Article 21(1) of the proposed SFR.



www.parlament.gv.at

6.7 *Interplay with the protections for designated system under the BRRD*

Directive 2014/59/EU of the European Parliament and of the Council[89] (hereinafter the 'BRRD') provides a number of specific protections for systems designated in accordance with the SFD[90]. The ECB suggests that the co-legislators consider extending these protections to third-country systems registered pursuant to the proposed SFR, where relevant, particularly for the benefit of Union participants in such systems.

6.8 *Interplay with national laws on final settlement of cash and securities transfer orders*

The proposed SFR states that the moment of final settlement is to be 'determined by the common rules and standardised procedures of each designated system, in accordance with the applicable law for transfer of ownership and other rights'[91]. Operators of interoperable systems are required to ensure, to the extent possible, that the rules of all interoperable systems concerned are coordinated[92]. Moreover, ESMA may develop draft regulatory technical standards to specify the rules for determining the moment of final settlement[93]. Given that laws governing transfer of ownership and other rights are not harmonised across the Union (and the Commission is not proposing to harmonise them), the ECB understands that the obligations imposed upon system operators can only be construed as an obligation to faithfully record the applicable national law provisions, and that ESMA's RTS can only facilitate compliance with this obligation, not define the moment of final settlement under the proposed SFR[94].

## 7. Markets in crypto-assets

7.1 *Enhancement of supervision framework for CASPs - ESMA supervision of CASPs*

7.1.1 The ECB welcomes the Commission proposal to strengthen the supervisory framework for crypto-asset service providers (CASPs) by transferring authorisation, monitoring and enforcement powers for all CASPs from the NCAs to ESMA[95]. This measure will ensure supervisory convergence, reduce fragmentation and mitigate cross-border risks in crypto-asset markets, thereby supporting financial stability and the integrity of the single market. To that end, when designing and implementing the new framework, ESMA should benefit from the technical input and expertise of national authorities. Banks increasingly engage in crypto-asset services, thereby developing operational and financial interlinkages with CASPs, particularly those organised as multi-function groups that bundle custody, trading, settlement and other core services within cross-border corporate structures. As highlighted by the ESRB, such groups operate largely outside consolidated supervision, amplifying intra-group contagion channels, and can transmit governance failures, operational disruptions or liquidity shocks

89 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2024, p. 190, ELI: http://data.europa.eu/eli/dir/2014/59/oj).

90 For example, Articles 44(2), 69(4), 70(2) and 71(3) of the BRRD.

91 See Article 21(1) of the proposed SFR.

92 See Article 21(2) of the proposed SFR.

93 See Article 21(3) of the proposed SFR.

94 See Article 21(1) of the proposed SFR.

95 See Article 9, point (22), of the proposed master regulation, which inserts a new Chapter 6 into Title VII of MiCAR.



www.parlament.gv.at

into the financial system. This is especially the case where such groups act as critical third-party service providers to banks[96]. Further indirect or direct exposures stem from banks offering banking services to CASPs, which deposit their client funds with banks, because shocks can be transmitted to banks that receive material amounts of deposits from CASPs. Those structural vulnerabilities underscore the need for a centralised Union supervisory regime for CASPs, capable of addressing the systemic risks posed by CASPs with significant activities, preventing risk migration into the banking system and safeguarding financial stability. To support those objectives, the ECB proposes that technical clarifications should be made to the Commission proposals on prudential requirements for CASPs, including those concerning statutory audit requirements and the introduction of risk sensitive own funds.

7.1.2 Moreover, the ECB suggests maintaining, in MiCAR, the category of significant CASPs and expanding the existing criteria to include objective metrics of significance (e.g. size, cross-border activity, systemic relevance, volume of trades for platforms, volume exchanged against funds, and consideration of group-wide activities). A regular review of the criteria for significant CASPs should be provided for, drawing on lessons from experience with their application. To address risks and regulatory arbitrage opportunities stemming from complex, unconsolidated group structures and parties with close links, significant CASPs should be requested to establish an intermediate parent undertaking in the Union[97] and to ensure that they have group-level recovery plans in place. The requirement to establish an intermediate parent undertaking in the Union should also be applicable in all cases where a third-country firm controls, in the Union, both a credit institution and a CASP and/or an electronic money institution issuing electronic money tokens or asset-referenced tokens.

7.1.3 Significant CASPs should also be expected to (a) apply enhanced internal controls and risk-management arrangements, including for the management of conflicts of interests; (b) adopt sound remuneration frameworks; (c) require prior supervisory approval for directors and senior management appointments; and (d) make enhanced disclosure and reporting at both entity and group level.

7.1.4 The ECB also recommends reviewing Annex VII to MiCAR to ensure comprehensive coverage of the activities of all CASPs, including custody, trading and settlement, and to clarify ESMA's powers to impose fines, periodic penalty payments and suspension of services.

7.1.5 The ECB has two final remarks. First, the ECB recalls that two of MiCAR's goals are to protect investors and to ensure fair competition. Against this background, MiCAR prohibits the offer to the public, in the Union, of non-MiCAR compliant stablecoins. Despite this prohibition, there is evidence of the provision, in the Union, of MiCAR services with respect to non-MiCAR authorised stablecoins, including stablecoins whose stabilisation mechanism is not based on the holding of reserve assets but on algorithmic models. This undermines investor protection and may also pose threats to the smooth operation of payment systems, monetary policy transmission and monetary sovereignty.

---

96 See also ESRB, 'Crypto-assets and decentralised finance: Report on stablecoins, crypto-investment products and multifunction groups', October 2025, available on the ESRB's website at www.esrb.europa.eu.

97 Comparable to Article 21b of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338, ELI: http://data.europa.eu/eli/dir/2013/36/oj) (hereinafter the 'CRD').



www.parlament.gv.at

Accordingly, the ECB recommends clarity on the services falling in the perimeter of an 'offer' of stablecoins, to avoid fragmentation and avert the risk that some CASPs could straddle the borderline between the provision of non-offer related services and making an offer to the public. Second, the ECB recalls that the Commission must present an interim report to the European Parliament and the Council on the application of MiCAR accompanied, where appropriate, by a legislative proposal[98]. The ECB welcomes this important opportunity to conduct a comprehensive review of MiCAR taking into account relevant market developments and stands ready to contribute its expertise to such review. For example, it is essential to amend the framework to enhance the reporting obligations on CASPs, and to ensure that the regulatory framework enables the adoption of additional measures to address financial stability concerns arising from the issuance and circulation of asset-referenced tokens and EMTs, in particular by third-country entities.

7.2 *Transfer of the supervision of entities whose main activity is crypto-asset services to ESMA*

The ECB supports the proposal to transfer the supervision of entities authorised under another licence than a CASP licence to ESMA, once the provision of crypto-asset services becomes their main activity. In a dual supervision scenario, well-structured cooperation between ESMA and the relevant competent authority will be essential, based on a clearly defined allocation of responsibilities, documented in jointly elaborated cooperation agreements and duly operationalised, for instance through joint supervisory teams. In addition, the definition of thresholds triggering such transfer could be clarified. First, in order to ensure that it also applies to firms combining financial and non-financial activities, the thresholds definition could take into account the total financial services activities of such entities in the Union. Moreover, reliance on a single metric, such as 50 % turnover, may not adequately capture business models where the key risk driver is the volume of operations rather than revenues (e.g. custody, trading venue). Consideration could also be given to proprietary trading in crypto-assets and derivatives as well as to borrowing and lending of crypto-assets, since these activities are apt to give rise to material risks not captured by a turnover-based approach. Cooperation agreements between ESMA and other competent authorities should ensure a smooth transition and effective oversight of residual activities. Finally, the ECB suggests clarifying that, for credit institutions, the enforcement of anti-market abuse monitoring requirements for CASP activities and related enforcement could also be assigned to ESMA, as those activities are not covered by Council Regulation (EU) No 1024/2013[99]. At the same time, ESMA should inform the competent authority under the CRD before adopting any supervisory measure or initiating any enforcement actions, in view of their potential implications for the institution's soundness and to coordinate actions under the respective mandates.

## 8. Asset management

8.1 The ECB fully supports the elements of the Commission proposals that seek to remove barriers that limit the cross-border integration of the European asset management sector by further harmonising

98 See Article 140 of MiCAR.

99 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63, ELI: http://data.europa.eu/eli/reg/2013/1024/oj).



www.parlament.gv.at

the regulatory framework. These efforts should ultimately lead to a single rulebook and to increased supervisory convergence within the sector. An integrated and less fragmented sector would support the objectives and tasks of the ECB and the Eurosystem. First, an integrated asset management sector can facilitate the transmission of monetary policy throughout the euro area[100] and foster private cross-border risk-sharing, thereby reducing the burden on the Eurosystem to provide counter-cyclical stabilisation in response to idiosyncratic shocks[101]. Second, the removal of barriers that currently hinder the flow of capital across borders can help mitigate financial fragmentation in the euro area. Third, a more integrated supervisory framework, which ensures a supervisory level playing field, and is equipped with robust macroprudential tools, can enhance the resilience of the non-bank financial intermediation sector[102], thereby safeguarding financial stability. This would also support the tasks of the ECB as banking supervisor, given the growing interlinkages between banks and non-banks[103].

8.2 For these reasons, the ECB supports, in particular, the following elements of the Commission proposals: (a) the empowerment of ESMA to act as a central hub for the cross-border marketing of undertakings for the collective investment in transferable securities (UCITS) and alternative investment funds (AIFs)[104] and to establish collaboration platforms to ensure compliance with Union law and to address diverging or deficient supervisory practices[105]; (b) the introduction of a Union-wide depositary passport, allowing UCITS and alternative investment fund managers (AIFMs) to appoint a depositary located anywhere within the Union and allowing depositaries to offer their services on a cross-border basis[106], which includes the safeguards in the Commission proposals that the depositary passport should be applicable only to depositaries that are authorised as credit institutions or as investment firms and which are subject to prudential requirements and supervision and to more uniform supervision of depositary tasks as regulated in the UCITS and AIFM directives;

---

100 See the ECB's monetary policy strategy assessment, 2025, which highlighted the need to take into account possible changes in transmission of monetary policy related, for example, to structural factors, such as the rise in non-bank financial intermediation or impairments in transmission, owing, for example, to fragmentation or market stress. See also ECB (2021), 'Non-bank financial intermediation in the euro area: implications for monetary policy transmission and key vulnerabilities', ECB Occasional Paper Series, No 270. Available on the ECB's website at www.ecb.europa.eu.

101 See ECB (2018), 'Risk sharing in the euro area', Economic Bulletin, Issue 3, which highlighted the role of efficient and integrated financial markets as a core prerequisite for effective private risk sharing in the euro area. Available on the ECB's website at www.ecb.europa.eu.

102 See Opinion CON/2022/26 of the European Central Bank of 9 August 2022 on a proposal for a directive as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds (OJ C 379, 3.10.2022, p. 1).

103 See ECB (2025), Financial Stability Review, Chapter 4, which examines the systemic risk arising from linkages between banks and non-bank financial intermediaries, available on the ECB's website at www.ecb.europa.eu.

104 See Article 6, point (10), of the proposed master regulation, which replaces Article 12 of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (OJ L 188, 12.7.2019, p. 55, ELI: http://data.europa.eu/eli/reg/2019/1156/oj).

105 See Article 1, point (16), of the proposed master regulation, which inserts a new Article 19a into the ESMA Regulation.

106 See Articles 1, point (16), and 2, point (11), of the proposed master directive, which amend, respectively, Article 23(1) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32, ELI: http://data.europa.eu/eli/dir/2009/65/oj) (hereinafter the 'UCITS Directive') and Article 21(5) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1, ELI: http://data.europa.eu/eli/dir/2011/61/oj) (hereinafter the 'AIFM Directive').



www.parlament.gv.at

and (c) the introduction of the concept of a Union group of management companies and AIFMs[107], including clarification that certain intra-group arrangements do not constitute delegation[108]. At the same time, it will also be important to strengthen supervisory convergence and cooperation in respect of Union groups, to ensure that the centralisation of functions in a group does not lead to supervisory blind spots or create a single point of failure where the critical functions are located.

8.3 The ECB welcomes the Commission proposal to increase the limit for UCITS investing in securitisations issued in accordance with Regulation (EU) 2017/2402 of the European Parliament and of the Council[109] (i.e. simple, transparent and standardised (STS) securitisation, by a single issuing body) from the current limit of 10 % to a higher limit of 15 %[110]. This amendment is consistent with the Commission's recent proposals to improve the functioning of the securitisation framework[111]. The ECB is of the view that the proposed increased limit could support investor participation in the securitisation market, and recommends that the limit could be further increased, for example, to 20 %. That said, the ECB emphasises that this limit should not be entirely removed, or increased excessively, as it serves important policy goals, such as maintaining appropriate safeguards for adequate risk management and investor protection, especially for retail investors. In addition, in order to further support investments in the securitisation market, the due diligence requirements for AIFs set out under Commission Delegated Regulation (EU) No 231/2013[112] should be aligned with the simpler and more proportionate due diligence requirements for investors proposed in the context of the Commission's proposals to improve the functioning of the securitisation framework.

8.4 The ECB welcomes that the Commission proposals will increase ESMA's supervisory convergence role for the asset management sector. In particular, the ECB welcomes that ESMA will be conferred the power to conduct annual reviews of large Union groups of management companies and AIFMs[113]. These annual reviews will be a step towards assessing and addressing barriers to the cross-border functioning of the sector and ensuring that potential risks are appropriately considered and addressed. Focusing on the largest groups based on size and cross-border activity is

---

107 See Articles 1, point (2), and 2, point (1), of the proposed master directive, which add, respectively, a new Article 2(1), point (v), to the UCITS Directive and a new Article 4(1), point (av), to the AIFM Directive. The concept of a Union group of management companies and AIFMs is introduced specifically for the purposes set out in the Commission proposals, and is distinct from, and without prejudice to, the concept of a group under the prudential frameworks for banks and investment firms.

108 See Articles 1, point (8), and 2, point (10), of the proposed master directive, which amend, respectively, Article 13(3) of the UCITS Directive and Article 20(6a) of the AIFM Directive.

109 Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35, ELI: http://data.europa.eu/eli/reg/2017/2402/oj).

110 See Article 1, point (27), of the proposed master directive, which amends Article 56(2) of the UCITS Directive.

111 COM(2025) 826 final, COM(2025) 825 final and Ares(2025)4808223. See Opinion CON/2025/35 of the European Central Bank of 11 November 2025 on (a) a proposal for a regulation amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating specific framework for simple, transparent and standardised securitisation, (b) a proposal for a regulation amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions as regards requirements for securitisation exposures, and (c) a draft proposal for a delegated regulation amending Delegated Regulation (EU) 2015/61 as regards the eligibility conditions for securitisations in the liquidity buffer of credit institutions (OJ C, C/2026/503, 23.1.2026, ELI: http://data.europa.eu/eli/C/2026/503/oj).

112 Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1, ELI: http://data.europa.eu/eli/reg_del/2013/231/oj).

113 See Articles 1, point (47), and 2, point (21), of the proposed master directive, which insert, respectively, new Articles 110b and 110c into the UCITS Directive and new Articles 47a and 47b into the AIFM Directive.



www.parlament.gv.at

proportionate and captures the most relevant entities. The ECB suggests some technical clarifications regarding the scope and frequency of the reviews to ensure their effectiveness, in line with ESMA's objective and competences under the ESMA Regulation.

8.5 The ECB emphasises that further integration of the asset management industry also entails higher cross-border contagion risks to financial stability. To obtain the benefits of the SIU, capital markets should be a resilient and sustainable source of financing, especially in times of stress. This requires a prudential framework that can detect and address emerging systemic risks across the entire financial system. Thus, the more integrated supervision of funds and managers that is proposed should be accompanied by a review of the Union macroprudential framework through targeted amendments to the UCITS and AIFM Directives, aimed at developing a macroprudential approach alongside microprudential oversight. As outlined in the Eurosystem response to the European Commission's consultation on macroprudential policies for non-bank financial intermediation (NBFI), such targeted amendments are needed to better enable sector-wide monitoring, forward-looking risk assessments and, where necessary, the activation of preventive measures to safeguard financial stability[114].

8.6 Finally, the ECB suggests targeted amendments to the exchange of information provisions under the UCITS and AIFM Directives to clarify and improve access for the ECB and other relevant members of the ESCB to data on UCITS and AIFMs. This is needed to ensure more informed monetary policy decisions, improve the consistency, timeliness and quality of financial stability assessments, support the design and evaluation of macroprudential policies, and enhance the monitoring of potential cross-border leakages[115]. Moreover, such access would remove the need for duplicative reporting requirements and thus contribute to simplification and a reduction in reporting burdens for market participants.

## 9. Trading venues

The ECB supports the Commission proposals to confer ESMA with direct supervisory powers for significant trading venues with an important cross-border dimension. Direct supervision at European level will help ensure consistent supervisory standards, which can in turn help to ensure a level playing field and address the current high degree of fragmentation of trading venues in the Union. In addition, the ECB supports the creation of a framework for Pan-European Market Operators under the Commission proposals[116]. Finally, the ECB supports the transfer of regulatory requirements from MiFID into MiFIR, which will limit national divergences in the application of Union law and reduce legal and operational barriers that currently hinder the provision of services by trading venues across borders. Taken together, these aspects of the Commission proposals will support consolidation and cross-border integration in the sector, ultimately contributing to increased market depth, liquidity and transparency of Union capital markets.

---

114 See Eurosystem response to European Commission's consultation on macroprudential policies for non-bank financial intermediation (NBFI), November 2024, and ESCB reply to the European Commission's targeted consultation on integration of EU capital markets, June 2025, available on the ECB's website at www.ecb.europa.eu.

115 See paragraph 4 of Opinion CON/2022/26.

116 See Article 3, point (3), of the proposed master regulation, which inserts a new Title Ia into MiFIR.



www.parlament.gv.at

Where the ECB recommends that the proposals are amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 9 April 2026.



*The President of the ECB*

Christine LAGARDE



www.parlament.gv.at

**Technical working document (1/3)**

**produced in connection with ECB Opinion [CON/2026/13][1]**

**Drafting proposals in relation the proposed Regulation of the European Parliament and of the Council amending Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 as regards the further development of capital market integration and supervision within the Union (the proposed master regulation)**

**Recitals of the proposed master regulation**

| Text proposed by the Commission | Amendments proposed by the ECB[2] |
|---|---|
| Amendment 1<br>Recital 9 of the proposed master regulation | |
| '(9) […] Such arrangements may range from close structural cooperation, including the establishment of joint supervisory teams or the conduct of joint inspections, to looser forms of operational coordination and, progressively, to more autonomous supervisory action by the Authority as its capacity develops. Those cooperation arrangements should also allow for their gradual adjustments over time and, where appropriate, the establishment of local presences of the Authority in Member States. Those cooperation arrangements should also promote effective and resource-efficient supervision, ensure the continuity and consistency of supervisory outcomes, and take due account of the statutory responsibilities and resources of other authorities. Cooperation should be guided by the principles of efficiency, proportionality, mutual trust and good faith, and should promote the effective use of resources while safeguarding ESMA's independence and accountability for the performance of its tasks. To reflect the | '(9) […] Such arrangements may range from close structural cooperation, including the establishment of joint supervisory teams or the conduct of joint inspections, to looser forms of operational coordination, and, progressively, to more autonomous supervisory action by the Authority as its capacity develops. **Without prejudice to relevant provisions of the Treaties and of Union law, the Authority should have the right to give instructions to the national competent authorities and other relevant national authorities when giving support and performing tasks under these cooperation arrangements**. Those cooperation arrangements should also allow for their gradual adjustments over time and, where appropriate, the establishment of local presences of the Authority in Member States. Those cooperation arrangements should also promote effective and resource-efficient supervision, ensure the continuity and consistency of supervisory outcomes, and take due account of the statutory |

1 This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published on EUR-Lex alongside the opinion itself.

2 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

| Text proposed by the Commission | Amendments proposed by the ECB[2] |
|---|---|
| progressive build-up of ESMA's supervisory capacity and to ensure the full and effective assumption of its supervisory tasks, the cooperation arrangements should be subject to regular review by ESMA.' | responsibilities and resources of other authorities. Cooperation should be guided by the principles of efficiency, proportionality, mutual trust and good faith, and should promote the effective use of resources while safeguarding ESMA's independence and accountability for the performance of its tasks. **In this regard, cooperation arrangements should ensure that the Authority and the authorities devote the necessary financial and human resources to the exercise of the tasks under these cooperation arrangements.** To reflect the progressive build-up of ESMA's supervisory capacity and to ensure the full and effective assumption of its supervisory tasks, the cooperation arrangements should be subject to regular review by ESMA.' |
| *Explanation*<br>*Clarifications should be introduced concerning the cooperation arrangements to be established by ESMA for the exercise of its direct supervisory responsibilities. First, it is important to emphasise ESMA's right to address instructions to the relevant national competent authorities, in order to ensure proper governance of such arrangements, particularly with respect to joint supervisory teams. Furthermore, with a view to promote the effective use of resources, such cooperation arrangements should ensure that ESMA is adequately staffed and has visibility over its financial and human resources within all cooperation arrangements.*<br>*See paragraphs 2.1 and 2.5 of the ECB opinion, and Amendments 6, 8 and 9.* | |
| Amendment 2<br>Recital 20 of the proposed master regulation | |
| '(20) To ensure a clear division of responsibilities and effective checks and balances, the Board of Supervisors should remain ESMA's main body for regulatory decisions and supervisory convergence. To enhance the Union dimension in the decision-making process within the Board of Supervisors its composition should be adjusted to | '(20) To ensure a clear division of responsibilities and effective checks and balances, the Board of Supervisors should remain ESMA's main body for regulatory decisions and supervisory convergence. To enhance the Union dimension in the decision-making process within the Board of Supervisors its composition should be adjusted to |

| Text proposed by the Commission | Amendments proposed by the ECB[2] |
|---|---|
| include the full-time members of the Executive Board as voting members for supervisory decisions. To ensure a balanced approach and the consideration of national perspectives the Board of Supervisors should have the power to object to major supervisory decisions taken by the Executive Board within 10 days (or 48 hours in urgent cases), while the Executive Board should be required to report to the Board of Supervisors twice a year on its supervisory activities and should be able to request opinions on supervisory matters.' | include the full-time members of the Executive Board as voting members for supervisory decisions. **The European Central Bank (ECB) should also be represented, as a non-voting member.** To ensure a balanced approach and the consideration of national perspectives the Board of Supervisors should have the power to object to major supervisory decisions taken by the Executive Board within 10 days (or 48 hours in urgent cases), while the Executive Board should be required to report to the Board of Supervisors twice a year on its supervisory activities and should be able to request opinions on supervisory matters.' |
| *Explanation*<br>*The ECB should be a non-voting member of the ESMA Board of Supervisors. This would further enhance the effectiveness of cooperation, coordination and exchange of information between the ECB, ESMA and the other authorities represented in the ESMA Board of Supervisors, and thereby reinforce cross-sectoral coordination in respect of the stability of the financial system. In particular, this would ensure that the supervisory convergence tools adopted by the ESMA Board of Supervisors take into account and benefit from the ECB's perspective and expertise. This is relevant not only with regard to CCPs and CSDs, but also with regard to other financial market participants, in particular entities active in capital markets which are part of banking groups, in view of the ECB's expertise both from the central bank of issue perspective, and in the framework of the tasks concerning the prudential supervision of credit institutions within the Single Supervisory Mechanism (SSM) conferred upon it in accordance with Regulation (EU) No 1024/2013.*<br>*See paragraphs 2.2 and 2.4 of the ECB Opinion and Amendment 12.* | |
| Amendment 3<br>Recital 80 of the proposed master regulation | |
| '(80) Since e-money tokens have emerged as one of the most widely used means of DLT-based settlement, further legal clarity should be provided for the use of e-money tokens in the Pilot. To recognise that Regulation (EU) 2023/1114, adopted after Regulation (EU) 2022/858, governs | '(80) Since e-money tokens have emerged as one of the most widely used means of DLT-based settlement, further legal clarity should be provided for the use of e-money tokens in the Pilot. To recognise that Regulation (EU) 2023/1114, adopted after Regulation (EU) 2022/858, governs |

| Text proposed by the Commission | Amendments proposed by the ECB[2] |
|---|---|
| the services of custody of e-money tokens, it should be specified that e-money tokens cash accounts for the purpose settlement may be provided by a set of appropriately regulated financial institutions, including CASPs. However, it should be laid down that most banking type ancillary services with regards to e-money tokens, other than providing cash accounts and processing payments, may be provided only by credit institutions. Furthermore, to promote the use of e-money tokens denominated in Union currencies and to protect the market from foreign exchange risk, settlement of payments for assets denominated in Union currencies should be carried out in e-money tokens referencing EU currencies. To support the development of euro denominated stablecoins, DLT market infrastructures should be encouraged to offer settlement in e-money tokens denominated in euro, even if the financial instrument that is settled is denominated in a non-EU currency.' | the services of custody of e-money tokens, it should be specified that e-money tokens cash accounts for the purpose settlement may be provided by a set of appropriately regulated financial institutions, including CASPs. However, it should be laid down that most banking type ancillary services with regards to e-money tokens, other than providing cash accounts and processing payments, may be provided only by credit institutions. Furthermore, to promote the use of e-money tokens denominated in Union currencies and to protect the market from foreign exchange risk, settlement of payments for assets denominated in Union currencies should be carried out in e-money tokens referencing EU currencies. ~~To support the development of euro denominated stablecoins, DLT market infrastructures should be encouraged to offer settlement in e-money tokens denominated in euro, even if the financial instrument that is settled is denominated in a non-EU currency~~.' |

*Explanation*

*It is generally preferable for financial market infrastructures to settle payments relating to securities transactions in the currency in which the securities are denominated to avoid foreign exchange risk. The sentence regarding settlement in euro-denominated e-money tokens in this recital, which is not supported by any binding provision, should therefore be deleted to avoid advocating for currency mismatches between the cash and securities legs of securities transactions. Additionally, payment settlement in wholesale financial markets, and especially in financial market infrastructures, should be conducted primarily in central bank money, including in tokenised central bank money when available. This suggested use of DLT market infrastructures should therefore not be considered a pathway to develop euro-denominated e-money tokens.*

*See paragraphs 4.5.2 and 5.4 of the ECB Opinion.*

| Text proposed by the Commission | Amendments proposed by the ECB[2] |
|---|---|
| Amendment 4<br>Recital 96 of the proposed master regulation | |
| '(96) As there is already a centralized system of banking supervision in the Union in the form of the Single Supervisory Mechanism, ensuring integration and consistency in the supervision of the activities of credit institutions, there should be no transfer of supervisory powers where the entity providing crypto-asset services is a credit institution.' | '(96) As there is already a centralized system of banking supervision in the Union in the form of the Single Supervisory Mechanism, which ensures integration and consistency in the supervision of the activities of credit institutions, there should be no transfer of supervisory powers where the entity providing crypto-asset services is a credit institution**, with the exception of investor protection and conduct requirements which should be transferred from the entity's home Member State competent authority, under Regulation (EU) 1114/2023, to ESMA**.' |
| *Explanation*<br>*The compliance with investor protection and conduct requirements falls currently within the competences of national authorities under MiCAR. The Commission proposal would render ESMA responsible for the authorisation, monitoring and supervision of crypto-asset service providers, including the provisions that relate to market abuse for the crypto-asset sector and amends the definitions in Article 3 and the provisions of Titles V and VI (Articles 59 to 92) of MiCAR, accordingly. In view of this transfer of competences, and since investor protection and conduct requirements are not prudential supervisory tasks as defined in Article 127(6) of the Treaty and Article 4 of Regulation (EU) No 1024/2013, it would be consistent to transfer these responsibilities to ESMA.*<br>*See paragraph 7 of the ECB Opinion.* | |

**Article 1 of the proposed master regulation**

**Proposed amendments to Regulation (EU) No 1095/2010 (the ESMA Regulation)**

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| Amendment 5<br>Article 1, point (6), of the proposed master regulation<br>(Article 8 of the ESMA Regulation) | |
| ‘(6) Article 8 is amended as follows:<br>(a) paragraph 1 is amended as follows:<br>[…]<br>(m) to carry out the prudential supervision of central counterparties and central securities depositories when exercising its powers under Regulation (EU) No 648/2012 and Regulation (EU) No 909/2014*, and in relation thereto, to cooperate with the European Central Bank and the other relevant central banks of issue of the Union currencies;<br>[…]”;’ | ‘(6) Article 8 is amended as follows:<br>(a) paragraph 1 is amended as follows:<br>[…]<br>(m) to carry out the prudential supervision of central counterparties and central securities depositories when exercising its powers under Regulation (EU) No 648/2012 and Regulation (EU) No 909/2014*, and in relation thereto, to cooperate with the European Central Bank and the ~~other relevant~~ central banks of issue of ~~the~~ Union currencies **other than the euro**;<br>[…]”;’ |
| *Explanation*<br>*The ECB welcomes the fact that, when carrying out the prudential supervision of central counterparties (CCPs) and central securities depositories (CSDs), ESMA will cooperate with the central banks of issue of Union currencies and suggests further clarifications to ensure the involvement of all central banks of issue, especially of Union currencies other than the euro. This clarification is necessary, in particular, to avoid an overly restrictive interpretation of the term ‘relevant’.*<br>*See paragraph 3.3 of the ECB Opinion.* | |
| Amendment 6<br>Article 1, point (7), of the proposed master regulation<br>(Article 8a(2) of the ESMA Regulation) | |
| ‘(7) the following Article 8a is inserted:<br>“*Article 8a*<br>[…]<br>2. Both the Authority and the authorities shall be subject to a duty of cooperation in good faith and | ‘(7) the following Article 8a is inserted:<br>“*Article 8a*<br>[…]<br>2. Both the Authority and the authorities shall be subject to a duty of cooperation in good faith and |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| an obligation to exchange information to effectively exercise their tasks. When exercising its tasks, the Authority may draw from the expertise and knowledge of the authorities, including their supervisory experience and understanding of economic, organisational and cultural specificities. Where appropriate and without prejudice to the responsibility and accountability of the Authority for the tasks conferred on it by this Regulation and the legislation referred to in Article 1(2), the authorities shall be responsible for assisting the Authority, under the conditions set out in the arrangements set out in this Article. This may include support with the preparation and implementation of acts relating to the tasks referred to in Article 8(1) point (l), including assistance in verification activities or performance of specific operational tasks. The authorities shall follow the instructions given by the Authority when giving support and performing tasks under these arrangements.<br>[…]";' | an obligation to exchange information to effectively exercise their tasks. When exercising its tasks, the Authority may draw from the expertise and knowledge of the authorities, including their supervisory experience and understanding of economic, organisational and cultural specificities. Where appropriate and without prejudice to the responsibility and accountability of the Authority for the tasks conferred on it by this Regulation and the legislation referred to in Article 1(2), ~~the~~ **relevant national competent authorities and other national** authorities shall be responsible for assisting the Authority, under the conditions set out in the arrangements set out in this Article. This may include support with the preparation and implementation of acts relating to the tasks referred to in Article 8(1) point (l), including assistance in verification activities or performance of specific operational tasks. ~~The~~ **Without prejudice to relevant provisions of the Treaties and of Union law, relevant national competent authorities and other national** authorities shall follow the instructions given by the Authority when giving support and performing tasks under these arrangements.<br>[…]";' |
| *Explanation*<br>*A clarification to the drafting should be introduced concerning instructions given by ESMA in the context of the duty of cooperation outlined in the proposed Article 8a of the ESMA Regulation. This clarification is necessary to ensure that those provisions are without prejudice to the principle of independence applicable to the ECB and NCBs under the Treaty, to the ECB and national competent authorities acting within the SSM under Regulation (EU) No 1024/2013, and to other Union bodies such as the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) under their founding regulations.*<br>*As regards the ECB and the NCBs, Article 130 of the Treaty and Article 7 of the Statute of the ESCB state that when exercising the powers and carrying out the tasks and duties conferred upon them by* | |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| *the Treaties and the Statute of the ESCB and of the ECB, neither the ECB, nor an NCB, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. In addition, the Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the NCBs in the performance of their tasks.*<br>*Similar provisions on independence apply to the ECB and national competent authorities acting within the SSM under Article 19 of Regulation (EU) No 1024/2013, and to the EBA and EIOPA under Articles 42, 46, 49 and 52 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[3] and (EU) Regulation (EU) No 1094/2010 of the European Parliament and of the Council[4] respectively.*<br>*See paragraphs 2.5 of the ECB Opinion.* | |
| Amendment 7<br>Article 1, point (7), of the proposed master regulation<br>(Article 8a(3) of the ESMA Regulation) | |
| ‘(7) the following Article 8a is inserted:<br>“*Article 8a*<br>[…]<br>3. For the purpose of carrying out tasks according to Article 8(1), point (l), and without prejudice to specific arrangements envisaged in other Union acts, the Authority shall establish, under its overall responsibility, and after consulting with the authorities the practical arrangements for cooperation.<br>[…]”;’ | ‘(7) the following Article 8a is inserted:<br>“*Article 8a*<br>[…]<br>3. For the purpose of carrying out tasks according to Article 8(1), point (l), and without prejudice to specific arrangements envisaged in other Union acts, the Authority shall establish, under its overall responsibility, and ~~after consulting~~ with the **close involvement of the** authorities**,** the practical arrangements for cooperation.<br>**The Authority shall ensure the close involvement of the authorities throughout the drafting and revision process for the practical arrangements for cooperation, thereby guaranteeing an inclusive process that** |

3 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12, ELI: http://data.europa.eu/eli/reg/2010/1093/oj).

4 Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48, ELI: http://data.europa.eu/eli/reg/2010/1094/oj).

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| | **adequately reflects the legitimate concerns of the authorities in day-to-day cooperation.**<br>[…]";' |
| *Explanation*<br>*Competent authorities and relevant authorities should be closely involved by ESMA throughout the drafting and revision process of cooperation arrangements, thereby guaranteeing an inclusive process that adequately reflects their legitimate concerns in day-to-day cooperation.* | |
| Amendment 8<br>Article 1, point (7), of the proposed master regulation<br>(Article 8a(5) of the ESMA Regulation) | |
| '(7) the following Article 8a is inserted:<br>"*Article 8a*<br>[…]<br>5. The practical arrangements for cooperation shall define the modalities of support, the procedures and processes, including time-limits, for the cooperation between the Authority and the authorities and shall be guided by the following principles:<br>[…]<br>(g) they shall set out operational or organisational modalities in relation to the Authority's direct supervisory tasks, including arrangements such as joint teams, cooperation in investigations, on-site inspections or implementation activities;<br>(h) where appropriate, they may envisage the establishment of local presences of the Authority in Member States;<br>(i) they may determine the modalities for the calculation and reimbursement of any costs incurred by the authorities, taking into account differences across sectors, the nature of the activity supervised or of the tasks performed.<br>[…]";' | '(7) the following Article 8a is inserted:<br>"*Article 8a*<br>[…]<br>5. The practical arrangements for cooperation shall define the modalities of support, the procedures and processes, including time-limits, for the cooperation between the Authority and the authorities and shall **clearly define the allocation of responsibilities and governance and** be guided by the following principles:<br>[…]<br>(g) they shall set out operational or organisational modalities in relation to the Authority's direct supervisory tasks, including arrangements such as joint teams, cooperation in investigations, on-site inspections or implementation activities, **ensuring close cooperation with the national competent authorities and, where relevant, the other authorities referred to in paragraph 1**;<br>(h) where appropriate, they may envisage the establishment of local presences of the Authority in Member States;<br>**(i) they shall ensure that the Authority and the authorities devote the necessary financial and** |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| | **human resources to the exercise of the tasks referred to in Article 8(1), point (l);**<br>(**j** ~~i~~) they may determine the modalities for the calculation and reimbursement of any costs incurred by the authorities, taking into account differences across sectors, the nature of the activity supervised or of the tasks performed.<br>[…]";' |
| *Explanation*<br>*The practical arrangements for cooperation to be established by ESMA should ensure close cooperation between ESMA and the national competent authorities and, where applicable, the other relevant authorities involved in these arrangements. They should also ensure that ESMA is provided with sufficient staffing and funding, to enable it to carry out its extensive new direct supervisory powers.*<br>*See paragraph 2.1 of the ECB Opinion and Amendment 1.* | |
| Amendment 9<br>Article 1, point (7), of the proposed master regulation<br>(Article 8a(6) of the ESMA Regulation) | |
| '(7) the following Article 8a is inserted:<br>"*Article 8a*<br>[…]<br>6. The practical arrangements for cooperation shall be approved by the Executive Board. The Executive Board shall also ensure their implementation and the authorities shall, in cases where ESMA is exercising direct supervisory tasks, follow the instructions given by the Executive Board when performing the tasks set out in the arrangements.<br>[…]";' | '(7) the following Article 8a is inserted:<br>"*Article 8a*<br>[…]<br>6. The practical arrangements for cooperation shall be approved by the Executive Board. The Executive Board shall also ensure their implementation and**, without prejudice to relevant provisions of the Treaties and of Union law,** the **relevant national competent authorities and other national** authorities shall, in cases where ESMA is exercising direct supervisory tasks, follow the instructions given by the Executive Board when performing the tasks set out in the arrangements.<br>[…]";' |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| *Explanation*<br>*See explanation under Amendment 6.* | |
| Amendment 10<br>Article 1, point (20), of the proposed master regulation<br>(Article 28b(2) of the ESMA Regulation) | |
| ‘(20) the following Articles 28a and 28b are inserted:<br>“[…]<br>*Article 28b*<br>[…]<br>2. The amount recovered from enforcing the decision to impose the administrative fine shall accrue to the Member State of the applicant authority in its own currency, unless otherwise agreed between the Member State of the applicant authority and the Member State of the requested authority. The requested authority shall, if necessary for the recovery, convert the administrative fine into the currency of its Member State at the euro foreign exchange reference rate published by the European Central Bank applying on the date when the administrative fine was imposed.<br>[…]”;’ | ‘(20) the following Articles 28a and 28b are inserted:<br>“[…]<br>*Article 28b*<br>[…]<br>2. The amount recovered from enforcing the decision to impose the administrative fine shall accrue to the Member State of the applicant authority in its own currency, unless otherwise agreed between the Member State of the applicant authority and the Member State of the requested authority. The requested authority shall, if necessary for the recovery, convert the administrative fine into the currency of its Member State at ~~the euro foreign exchange reference rate published by the European Central Bank~~ **a foreign exchange benchmark rate, which complies with Regulation (EU) 2016/1011 of the European Parliament and of the Council (*),** applying on the date when the administrative fine was imposed.<br>[…]<br>**(*) Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/1011/oj).”;’** |
| *Explanation*<br>*Since 1998, the ECB has published euro foreign exchange reference rates (ECBRRs) on the basis of a framework approved by the ECB Governing Council in 1998 and subsequently amended in 2015* | |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| *(hereinafter the 'ECBRR Framework')*[5]*. The ECB has previously noted in ECB Opinions CON/2021/3*[6] *and CON/2024/13*[7] *that the ECBRRs are provided as a public good for individual citizens and institutions and are used by a wide range of institutions. The aim of the ECBRR Framework is to preserve the integrity of the ECBRRs by: (1) discouraging their use for transaction purposes; and (2) limiting their use to reference purposes. Therefore, the reference in the proposed regulation to the ECBRRs or a foreign exchange reference rate issued by the relevant central bank should be removed and replaced by a reference to an appropriate foreign exchange benchmark rate that falls within the scope of Regulation (EU) 2016/1011 of the European Parliament and of the Council*[8] *and which may be used in the context of the currency conversion charges.* | |
| Amendment 11<br>Article 1, point (27), of the proposed master regulation<br>(Article 39f(2) of the ESMA Regulation) | |
| '(27) The following chapter IIa is inserted:<br>"[…]<br>*Article 39f*<br>[…]<br>2. Unless otherwise provided for in other Union acts applicable to a specific sector or area, the fine shall not exceed:<br>(a) in the case of a legal person, EUR 1 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency according to euro foreign exchange reference rate published by the European Central Bank applying on the date when the fine is imposed. | '(27) The following chapter IIa is inserted:<br>"[…]<br>*Article 39f*<br>[…]<br>2. Unless otherwise provided for in other Union acts applicable to a specific sector or area, the fine shall not exceed:<br>(a) in the case of a legal person, EUR 1 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency according to ~~euro foreign exchange reference rate published by the European Central Bank~~ **a foreign exchange benchmark rate that complies with Regulation (EU) 2016/1011 and** |

5 See the ECB's Framework for the euro foreign exchange reference rates, available on the ECB's website at www.ecb.europa.eu.

6 See Opinion CON/2021/3 of the European Central Bank of 25 January 2021 on a proposal for a regulation on cross-border payments in the Union (OJ C 65, 25.2.2021, p. 4).

7 See Opinion CON/2024/13 of the European Central Bank of 30 April 2024 on a proposed Regulation and Directive on payment and electronic money services (OJ C C/2024/3869, 19.6.2024).

8 Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/1011/oj).

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| | **which applies** ~~applying~~ on the date when the fine is imposed. |
| (b) or 10% of the annual turnover of the financial market participant under the Authority's supervision subject to investigation concerned in the preceding business year whichever is higher; | (b) or 10% of the annual turnover of the financial market participant under the Authority's supervision subject to investigation concerned in the preceding business year whichever is higher; |
| (c) in the case of a natural person, EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency according to euro foreign exchange reference rate published by the European Central Bank applying on the date when the fine was imposed. | (c) in the case of a natural person, EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency according to ~~euro foreign exchange reference rate published by the European Central Bank~~ **a foreign exchange benchmark rate that complies with Regulation (EU) 2016/1011 and which applies** ~~applying~~ on the date when the fine was imposed. |
| […]";' | […]";' |
| *Explanation*<br>*See the explanation under Amendment 9.* | |
| Amendment 12<br>Article 1, point (28), of the proposed master regulation<br>(Article 40 of the ESMA Regulation) | |
| '(28) Article 40 is amended as follows: | '(28) Article 40 is amended as follows: |
| (a) in paragraph 1, the following point ba is inserted: | (a) in paragraph 1, the following point**s** ~~ba is~~ **are** inserted: |
| "(ba) 5 independent members of the Executive Board;"; | "(ba) 5 independent members of the Executive Board;<br>**(bb) one representative of the ECB, who shall be non-voting;**"; |
| (b) paragraph 3 is replaced by the following: | (b) paragraph**s** 3 **and 4 are** ~~is~~ replaced by the following: |
| "3. Each of the authorities referred to in paragraph 1 shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in | "3. Each of the authorities referred to in paragraph 1 shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| paragraph 1(b), where that person is prevented from attending.";' | paragraph 1(b), where that person is prevented from attending.<br>**4. In Member States where more than one authority is responsible for the supervision according to this Regulation, those authorities shall agree on a common representative. Nevertheless, when an item to be discussed by the Board of Supervisors falls within the competence of a national central bank, a representative from the relevant national central bank shall be invited to attend the item, in addition to the member of the Board of Supervisors referred to in paragraph 1(b). For the purposes of voting, the representatives of the authorities of any one Member State shall, together, be considered as one member.**";' |
| *Explanation*<br>*The ECB should also become a non-voting member of the ESMA Board of Supervisors. Additionally, in some Member States, the responsibility for supervision of certain entities (e.g. CCPs, CSDs, trading venues) is exercised by an NCB not represented on the ESMA Board of Supervisors, whether alone or jointly with another authority. These NCBs should be able to attend the ESMA Board of Supervisors and vote when items falling within their field of competence are discussed and should be invited by ESMA accordingly.*<br>*See paragraphs 2.2 and 2.4 of the ECB Opinion and Amendment 2.* | |
| Amendment 13<br>Article 1, point (29), of the proposed master regulation<br>(Article 41 of the ESMA Regulation) | |
| '(29) Article 41 is replaced by the following:<br>"The Board of Supervisors on its own initiative or at the request of the Chairperson may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, to the Executive | '(29) Article 41 is replaced by the following:<br>"The Board of Supervisors on its own initiative or at the request of the Chairperson may establish internal committees for specific tasks attributed to it. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to internal committees, to the Executive |

| Text proposed by the Commission | Amendments proposed by the ECB |
| --- | --- |
| Board, the Executive Director or to the Chairperson.<br>Where an internal committee discusses matters in relation to a central counterparty or central securities depository, the European Central Bank and the other relevant central banks of issue of the Union currencies shall have the right to be non-voting members.";' | Board, the Executive Director or to the Chairperson.<br>Where an internal committee discusses matters in relation to ~~a~~ central ~~counterparty~~ **counterparties,** ~~or~~ central securities ~~depository~~ **depositories**, **or crypto-asset service providers,** the European Central Bank and the other ~~relevant~~ central banks of issue of the Union currencies shall also have the right to be non-voting members.<br>**Where an internal committee discusses matters in relation to central counterparties, central securities depositories or trading venues, national central banks designated by their Member State as the competent authority responsible for central counterparties under Article 22(1) of Regulation (EU) No 648/2012, central securities depositories under Article 11(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council(*) or trading venues under Article 67 of Directive 2014/65/EU, respectively, shall have the right to be non-voting members.**<br>**Where an internal committee discusses, matters in relation to a credit institution or entities forming part of banking groups, the European Central Bank shall have the right to nominate a non-voting member to represent its role in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Regulation (EU) No 1024/2013.** |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| | **(*) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/909/oj).";'** |
| *Explanation*<br>*The ECB considers that when internal committees discuss matters in relation to CCPs, CSDs or CASPs, central banks of issue should be able to attend the discussion.*<br>*Moreover, NCBs should be involved where their Member State has designated that NCB as the competent authority responsible for the supervision of CCPs, CSDs or trading venues, even when they are not the authority chosen to represent their Member State on the Board of Supervisors. It also clarifies that all central banks of issue of Union currencies should have the right to attend, to avoid an overly restrictive interpretation of the term 'relevant'.*<br>*In addition, the ECB considers that the ECB, in its role as banking supervisor, should also have the right to be a non-voting member of internal committees, where such committees discuss matters with potential implications for credit institutions and banking groups. This is relevant, not only with regard to matters in relation to CCPs or CSDs, but also other financial markets participants under ESMA's supervision, including CASPs that form part of a banking group.*<br>*See paragraphs 2.3 and 2.4 of the ECB Opinion, and Amendments 14 and 15.* | |
| Amendment 14<br>Article 1, point (33), of the proposed master regulation<br>(Article 44a(2) of the ESMA Regulation) | |
| '(33) the following Article 44a is inserted:<br>"*Article 44a*<br>[…]<br>2. Where the decisions referred to in Article 8 paragraph 1, point l in relation to a directly supervised entity are deliberated upon, the member of the Board of Supervisors from the Member State where the relevant entity is established may participate in the deliberations | '(33) the following Article 44a is inserted:<br>"*Article 44a*<br>[…]<br>2. Where the decisions referred to in Article 8 paragraph 1, point l in relation to a directly supervised entity are deliberated upon, the member of the Board of Supervisors from the Member State where the relevant entity is established may participate in the deliberations during the relevant meetings of the Executive |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| during the relevant meetings of the Executive Board.<br>Where supervisory matters in relation to a central counterparty or central securities depository are discussed, a representative of the ECB shall have the right to attend the discussion.<br>The observers specified in subparagraphs 1 and 2 shall not be present during the vote following such deliberations.<br>The Executive Board may decide to admit other observers to the deliberations.<br>[…]";' | Board. **Where the national central bank of the same Member State has competence in respect of the relevant entity, a representative of that national central bank shall also be invited to participate in these deliberations.**<br>Where ~~supervisory~~ matters in relation to a central counterparty, ~~or~~ central securities depository**, or crypto-asset service provider** are discussed, a representative of the ECB shall have the right to attend the discussion.<br>The observers specified in subparagraphs 1 and 2 shall not be present during the vote following such deliberations.<br>The Executive Board may decide to admit other observers to the deliberations.<br>[…]";' |
| *Explanation*<br>*The ECB should have the right to be a non-voting member of the ESMA Executive Board, not only in respect of discussions on supervisory matters, but in respect of all matters concerning CCPs, CSDs and CASPs. Under the proposed Article 46a of the ESMA Regulation, the Executive Board is tasked not only with the adoption of decisions on supervisory matters, but must also take decisions in respect of other specified supervisory convergence tools and may give opinions and make proposals on all matters to be decided by the Board of Supervisors. Involving the ECB will ensure that, in addition to individual supervisory decisions, where the ESMA Executive Board discusses technical standards, guidelines, recommendations and other practical instruments and supervisory convergence tools in respect of CCPs, CSDs and CASPs, the discussions can take into account the ECB's perspective and expertise in ensuring the safety and soundness of financial market infrastructures, and the stability of the financial system.*<br>*Additionally, in some Member States, the responsibility for supervision of certain entities (e.g. CCPs, CSDs and trading venues) is exercised by an NCB not represented on the ESMA Board of Supervisors. These NCBs should be able to attend the Executive Board when items falling within their fields of competence are discussed and should be invited by ESMA accordingly.*<br>*See paragraphs 2.3 and 2.4 of the ECB Opinion.* | |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| Amendment 15<br>Article 1, point (37), of the proposed master regulation<br>(Article 45c of the ESMA Regulation) | |
| ‘(37) the following Article 45c is inserted:<br>“*Article 45c*<br>Internal committees<br>1. The Executive Board, on its own initiative, at the request of the Chairperson or where specified in other Union acts, may establish internal committees for specific tasks attributed to it. The Executive Board may provide for the delegation of certain clearly defined tasks and decisions to internal committees, to the Executive Director or to the Chairperson.<br>Where an internal committee discusses supervisory matters in relation to a central counterparty or central securities depository, the European Central Bank and the other relevant central banks of issue of the Union currencies shall have the right to be non-voting members.”;’ | ‘(37) the following Article 45c is inserted:<br>“*Article 45c*<br>Internal committees<br>1. The Executive Board, on its own initiative, at the request of the Chairperson or where specified in other Union acts, may establish internal committees for specific tasks attributed to it. The Executive Board may provide for the delegation of certain clearly defined tasks and decisions to internal committees, to the Executive Director or to the Chairperson.<br>Where an internal committee discusses ~~supervisory~~ matters in relation to ~~a~~ central ~~counterparty~~ **counterparties** ~~or~~ central securities ~~depository~~ **depositories**, **or crypto-asset service providers,** the European Central Bank and the other ~~relevant~~ central banks of issue of the Union currencies**;** shall have the right to be non-voting members.<br>**Where an internal committee discusses matters in relation to central counterparties, central securities depositories or trading venues, national central banks designated by their Member State as the competent authority responsible for central counterparties under Article 22(1) of Regulation (EU) No 648/2012, central securities depositories under Article 11(1) of Regulation (EU) No 909/2014 or trading venues under Article 67 of Directive 2014/65/EU, respectively, shall have the right to be non-voting members.**<br>**Where an internal committee discusses, matters in relation to a credit institution or** |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| | **entities forming part of banking groups, the European Central Bank shall have the right to nominate a non-voting member to represent its role in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013.";'** |
| *Explanation*<br>*See paragraphs 2.3 and 2.4 of the ECB Opinion, and Amendments 13 and 14.* | |

**Article 2 of the proposed master regulation**

**Proposed amendments to Regulation (EU) No 648/2012 (EMIR)**

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| Amendment 16<br>Article 2, point (10), of the proposed master regulation<br>(Article 17c of EMIR) | |
| ‘(10) Article 17c is amended as follows:<br>(a) in paragraph 1, the first subparagraph is replaced by the following:<br>“[…]<br>ESMA shall make available the information shared via the central database under this Regulation to any authority relevant for the purpose of Regulation (EU) No 909/2014 and Regulation (EU) […/… on settlement finality], where relevant or necessary for the performance of their duties.”;<br>**[…];’** | ‘(10) Article 17c is amended as follows:<br>(a) in paragraph 1, the first subparagraph is replaced by the following:<br>“[…]<br>ESMA shall make available the information shared via the central database under this Regulation to any authority relevant for the purpose of Regulation (EU) No 909/2014 and Regulation (EU) […/… on settlement finality], **and to the ESRB and relevant members of the ESCB** where ~~relevant or~~ necessary for the performance of their duties**, including their financial stability and macroprudential responsibilities**.”;<br>[…];’ |
| *Explanation*<br>*Where relevant or necessary for the performance of their macroprudential responsibilities, the European Systemic Risk Board and the members of the ESCB should have access to the information shared via the central database established under Article 17c of EMIR.*<br>*See paragraph 3.3.2 of the ECB Opinion.* | |
| Amendment 17<br>Article 2, point (15), of the proposed master regulation<br>(Article 22a(2) of EMIR) | |
| ‘(15) the following Articles 22a to 22e are inserted:<br>“Article 22a<br>[…]<br>2. A CCP shall be considered significant where it fulfils at least one of the following conditions: | ‘(15) the following Articles 22a to 22e are inserted:<br>“Article 22a<br>[…]<br>2. A CCP shall be considered significant where it fulfils at least one of the following conditions: |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| (a) the average open interest of securities transactions, including securities financing transactions, exchange traded derivatives or non-financial instruments cleared by the CCP over a period of one year prior to the assessment is more than EUR 100 billion;<br>(b) the average gross notional outstanding of OTC derivatives transactions cleared by the CCP over a period of one year prior to the assessment is more than EUR 500 billion;<br>(c) the average aggregated initial margin requirement and default fund contributions for accounts held by the CCP's clearing members, calculated on a net basis at clearing member account level, over a period of one year prior to the assessment, is more than EUR 25 billion;<br>(d) it belongs to the same group as any of the following:<br>(i) a CCP authorised under Article 14 or a Tier 2 CCP;<br>(ii) a CSD or a trading venue for which ESMA is the competent authority.<br>(e) the Member State where the CCP is established has designated ESMA as the CCP's competent authority in accordance with paragraph 1a of Article 22, where this designation applies to that CCP.<br>ESMA shall determine whether a CCP meets the conditions for qualifying as significant in accordance with this Article.<br>[…]";' | (a) the average open interest of securities transactions, including securities financing transactions, exchange traded derivatives or non-financial instruments cleared by the CCP over a period of one year prior to the assessment is more than EUR 100 billion;<br>(b) the average gross notional outstanding of OTC derivatives transactions cleared by the CCP over a period of one year prior to the assessment is more than EUR 500 billion;<br>(c) the average aggregated initial margin requirement and default fund contributions for accounts held by the CCP's clearing members, calculated on a net basis at clearing member account level, over a period of one year prior to the assessment, is more than EUR 25 billion;<br>(d) it belongs to the same group as any of the following:<br>(i) a CCP authorised under Article 14 or a Tier 2 CCP;<br>(ii) a CSD or a trading venue for which ESMA is the competent authority.<br>**(e) it has established an interoperability arrangement with a CCP authorised under Article 14 or recognised under Article 25;**<br>(**f**~~e~~) the Member State where the CCP is established has designated ESMA as the CCP's competent authority in accordance with paragraph 1a of Article 22, where this designation applies to that CCP.<br>ESMA shall determine whether a CCP meets the conditions for qualifying as significant in accordance with this Article.<br>[…]";' |
| *Explanation* | |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| *A further condition for considering a CCP to be significant, and thus subject to direct supervision by ESMA, should be added, namely where the CCP has established an interoperability arrangement with another CCP. This additional condition reflects the fact that interoperability links are a source of cross-border relevance for interoperable CCPs, which would justify their direct supervision by ESMA. In addition, this would allow a more efficient supervision given that the Commission proposal grants ESMA the competence to approve interoperability arrangements. Last, this could foster the wider use of interoperability arrangements and integration, by providing reassurance to CCPs willing to establish such arrangements that they are subject to harmonised supervision by ESMA.*<br>*See paragraph 3.1 of the ECB Opinion.* | |
| Amendment 18<br>Article 2, point (15), of the proposed master regulation<br>(Article 22d of EMIR) | |
| ‘(15) the following Articles 22a to 22e are inserted:<br>“[…]<br>Article 22d<br>Relevant authorities for significant CCPs<br>The following entities shall be involved in the authorisation and supervision carried out by the CCP’s competent authority of a significant CCP and be referred to as relevant authorities for such CCP:<br>(a) the national competent authority of the Member State in which the significant CCP is established;<br>(b) the competent authorities responsible for the supervision of the clearing members, of the significant CCP, which are established in the three Member States with the largest contributions to the default fund referred to in Article 42 of this Regulation on an aggregate basis over a one-year period, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory | ‘(15) the following Articles 22a to 22e are inserted:<br>“[…]<br>Article 22d<br>Relevant authorities for significant CCPs<br>The following entities shall be involved in the authorisation and supervision carried out by the CCP’s competent authority of a significant CCP and be referred to as relevant authorities for such CCP:<br>(a) the national competent authority of the Member State in which the significant CCP is established;<br>(b) the competent authorities responsible for the supervision of the clearing members, of the significant CCP, which are established in the three Member States with the largest contributions to the default fund referred to in Article 42 of this Regulation on an aggregate basis over a one-year period, **as well as the competent authorities responsible for banking supervision in the home Member State of the CCP,** including, where relevant, the ECB in the |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013;<br>(c) the competent authorities responsible for the supervision of trading venues served by the significant CCP;<br>(d) the competent authorities supervising central securities depositories to which the significant CCP is linked;<br>(e) the ECB where the significant CCP clears or intends to clear financial and non-financial instruments denominated in euro;<br>(f) the central banks of issue of the most relevant Union currencies other than euro, of the financial and non-financial instruments cleared or to be cleared by the significant CCP.";' | framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013;<br>(c) the competent authorities responsible for the supervision of trading venues served by the significant CCP;<br>(d) the competent authorities supervising central securities depositories to which the significant CCP is linked;<br>~~(e) the ECB where the significant CCP clears or intends to clear financial and non-financial instruments denominated in euro;~~<br>(f) the central banks of issue of ~~the most relevant~~ **the** Union currencies ~~other than euro,~~ of the financial and non-financial instruments cleared or to be cleared by the significant CCP~~;~~.<br>**(g) the relevant members of the ESCB responsible for the oversight of the CCP and the relevant members of the ESCB responsible for the oversight of the CCPs with which interoperability arrangements have been established;**<br>**(h) in Member States where CCPs are subject to additional requirements in accordance with Article 14(5), the competent authorities responsible for the supervision of those requirements.";'** |
| *Explanation*<br>*The list of 'relevant authorities for significant CCPs' should be further clarified.*<br>*First, further clarifications are needed to ensure involvement of central banks of issue, to ensure simplification and continuity with Article 18(2), point (h). Moreover, clarifications are needed to support the involvement of the central banks of issue of Union currencies other than the euro. This clarification is necessary, in particular to ensure consistency with their involvement in CCP colleges under Article 18(2), point (i), of EMIR, and to avoid an overly restrictive interpretation of the term 'relevant'. The* | |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| *current definition of 'the most relevant Union currencies' established in Article 1 of Commission Delegated Regulation (EU) No 876/2013*[9] *means that central banks of issue of non-euro Union currencies may not be identified as relevant authorities for significant CCPs clearing instruments in major international currencies. It is thus necessary to clarify their involvement, to ensure that they can access information and are thereby well-equipped to adequately assess and manage risks that significant CCPs clearing instruments denominated in those Union currencies may pose for their respective money markets, and thereby manage any potential disruptions in their functioning.*<br><br>*Second, NCBs should be included within the definition of 'relevant authorities for significant CCPs', where those NCBs have oversight responsibilities for CCPs under national law and are not otherwise a designated competent authority under EMIR. Such NCBs were members of the CCP college pursuant to Article 18(2), point (g), of EMIR. In the interests of continuity, and given their experience and expertise, those NCBs should continue to be involved in the supervision of significant CCPs, as relevant authorities, including by means of cooperation arrangements.*<br><br>*Third, in Member States where CCPs are subject to additional requirements in accordance with Article 14(5) of EMIR – including requirements relating to Union or national banking legislation – the competent authorities responsible for the supervision of those requirements in that Member State should be included on the list of relevant authorities.*<br><br>*See paragraph 3.3 of the ECB Opinion.* | |

9 Commission Delegated Regulation (EU) No 876/2013 of 28 May 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties (OJ L 244, 13.9.2013, p. 19, ELI: http://data.europa.eu/eli/reg_del/2013/876/oj).

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| Amendment 19<br>Article 2, point (15), of the proposed master regulation<br>(Article 22e(1) of EMIR) | |
| ‘(15) the following Articles 22a to 22e are inserted:<br>“Article 22e<br>Consultation of central banks of issue regarding significant CCPs<br>1. With regard to supervisory assessments conducted in relation to, and decisions to be taken pursuant to, Articles 41, 44, 46, 49, 50 and 54 in relation to significant CCPs, the Executive Board shall consult the central banks of issue referred to in Article 22d, points (e) and (f), before finalising its assessment.<br>Each central bank of issue may respond.<br>Where the central bank of issue decides to respond, it shall do so within 10 working days of receipt of the draft decision. In emergency situations, that period shall not exceed 24 hours. Where a central bank of issue proposes amendments or objects to assessments related to, or draft decisions pursuant to Articles 41, 44, 46, 49, 50 and 54, it shall provide full and detailed reasons, in writing.<br>Upon conclusion of the period for consultation, the Executive Board shall duly consider the response and any amendments proposed by the central banks of issue and provide its assessment to the central bank of issue.<br>[…]”;’ | ‘(15) the following Articles 22a to 22e are inserted:<br>“Article 22e<br>Consultation of central banks of issue regarding significant CCPs<br>1. With regard to **all** supervisory assessments ~~conducted in relation to,~~ and decisions ~~to be taken pursuant to,~~ **in relation to the requirements under** Articles 41, 44, 46, 49, 50 and 54 in relation to significant CCPs, **including where such supervisory assessments and decisions are taken pursuant to other provisions, including Articles 15, 17, 20 and 21,** the Executive Board shall consult the central banks of issue referred to in Article 22d, points (e) and (f), before finalising its assessment.<br>**For the purposes of the consultation referred to in the first subparagraph, ESMA shall share the following information with the central banks of issue, either directly or via the central database:**<br>**(a) the documents and information submitted by the significant CCP to ESMA, as soon as they are received; and**<br>**(b) the draft supervisory assessment report and decision being prepared by ESMA.**<br>Each central bank of issue may respond.<br>Where the central bank of issue decides to respond, it shall do so within 10 working days of receipt of the draft decision. In emergency situations, that period shall not exceed 24 hours. Where a central bank of issue proposes amendments or objects to **supervisory** |

| Text proposed by the Commission | Amendments proposed by the ECB |
| --- | --- |
| | assessments ~~related to,~~ or draft decisions **referred to in paragraph 1**~~pursuant to Articles 41, 44, 46, 49, 50 and 54~~, it shall provide full and detailed reasons, in writing.<br>Upon conclusion of the period for consultation, the Executive Board shall duly consider the response and any amendments proposed by the central banks of issue and provide its assessment to the central bank of issue.<br>[…]";' |

*Explanation*

*The obligation to consult central banks of issue in respect of the supervision of significant CCPs should be clarified.*

*First, a clarification should be introduced to ensure that central banks of issue will be consulted on all supervisory assessments and decisions that impact the six areas of relevance for central banks of issue, i.e. margin requirements, liquidity risk controls, collateral, review of models, stress testing and back testing, settlement, and interoperability arrangements as set out in Articles 41, 44, 46, 49, 50 and 54 of EMIR. The drafting suggestion seeks to confirm, for the avoidance of doubt, that central banks of issue should be consulted, irrespective of whether those assessments or decisions are taken separately, or as part of broader procedures, such as the procedures for extending activities and services, granting and refusing authorisation, withdrawal of authorisation and review and evaluation under Articles 15, 17, 20 and 21 of EMIR.*

*Second, it is important to clarify that central banks of issue have access to all documents and information relevant to the supervisory assessment and decisions on which they are being consulted. This includes the documents, information and applications submitted by the significant CCP to ESMA, and the draft reports and decisions being prepared by ESMA. To the extent that such documents are included in the central database pursuant to Article 17c of EMIR, these are necessary for the performance of the duties of the central banks of issue and should be accessed there. Where those documents are not included in the central database, ESMA should provide these documents directly to the central banks of issue.*

*See paragraph 3.3.1 of the ECB Opinion and Amendments 21 and 22.*

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| Amendment 20<br>Article 2, point (16), of the proposed master regulation<br>(Article 23(3) of EMIR) | |
| ‘(16) in Article 23, the following paragraph 3 is added:<br>“3. For each significant CCP, ESMA and the relevant authorities shall establish cooperation arrangements as laid down in Article 8a of Regulation (EU) No 1095/2010, including in relation to ESMA’s direct supervision of the CCP. Such arrangements shall reflect the distribution of competences and responsibilities pursuant to this Regulation and frame practical cooperation modalities in view of ESMA exercising its competencies and responsibilities with regard to significant CCPs.<br>In particular, such arrangements may cover support and assistance by the relevant authorities, as relevant, in respect of all of the following:<br>(a) the carrying out of supervisory tasks over a significant CCP, including investigations and on-site inspections;<br>(b) the preparation of decisions, reports or other measures under this Regulation in relation to the significant CCP, including where specified under Articles 14, 15, 17, 17a, 20, 21, 24, 30, 31, 32, 35, 37, 41, 49, 49a and 51;<br>(c) any supervisory task to ensure the financial stability and monitor the operational resilience and market conduct of the significant CCP, including stress-testing;<br>(d) addressing emergency situations in relation to the significant CCP.”;’ | ‘(16) in Article 23, the following paragraph 3 is added:<br>“3. For each significant CCP, ESMA and the relevant authorities shall establish cooperation arrangements as laid down in Article 8a of Regulation (EU) No 1095/2010, including in relation to ESMA’s direct supervision of the CCP. Such arrangements shall reflect the distribution of competences and responsibilities pursuant to this Regulation and frame practical cooperation modalities in view of ESMA exercising its ~~competencies~~**competences** and responsibilities with regard to significant CCPs.<br>**Without prejudice to the competences of the relevant authorities, ESMA shall ensure the consistency of cooperation arrangements across all significant CCPs.**<br>In particular, such arrangements **shall determine the modalities for** ~~may cover support and assistance by the relevant authorities, as relevant, in respect of all of the following~~:<br>**(a) how the national competent authority of the Member State in which the CCP is established, and, upon each relevant authority’s request, the relevant authorities, are to be involved in supervisory activities relating to a significant CCP, including:**<br>**(i) the establishment of supervisory priorities and the supervisory examination programme for the significant CCP;**<br>**(ii)** ~~(a)~~ the carrying out of supervisory tasks over a significant CCP, including investigations and on-site inspections; |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| | **(iii)** ~~(b)~~ the preparation of **supervisory** decisions, **assessments** reports or other measures under this Regulation in relation to the significant CCP, including where specified under Articles 14, 15, 17, 17a, 20, 21, 24, 30, 31, 32, 35, 37, 41, 49, 49a ~~and~~ 51 **and 54; and**<br>**(iv)** ~~(c) any~~ supervisory task**s** to ensure ~~the~~ financial stability and monitor the operational resilience and market conduct of the significant CCP, including stress-testing;<br>**(b) the exchange of information between ESMA, the national competent authority, and all relevant authorities relating to the significant CCP;**<br>**(c) the consultations of the relevant authorities referred to in Article 20(3), point (b);**<br>(d) addressing emergency situations in relation to the significant CCP.";' |
| *Explanation*<br>*The provisions in the Commission proposals concerning cooperation arrangements for significant CCPs should be sufficiently prescriptive.*<br>*First, the ECB makes drafting suggestions to promote consistency across cooperation arrangements for different significant CCPs.*<br>*Second, the cooperation arrangements should clarify the involvement in supervisory activities of the national competent authority of the Member State in which the CCP is established and, upon their request, relevant authorities for the significant CCP. The caveat 'upon their request' is important, to ensure that such involvement is voluntary and flexible, and is tailored to their interests, capacity and resources of those relevant authorities.*<br>*Third, further details should be introduced as regards the supervisory activities that should be incorporated in the cooperation arrangements for significant CCPs. These include the establishment of supervisory priorities and the supervisory examination programme for the significant CCP, and supervisory decisions and assessment reports concerning the approval of interoperability arrangements. The inclusion of the approval of interoperability arrangements is important to* | |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| *complement the fact that the Commission proposals confer competence on ESMA to approve interoperability arrangements pursuant to Article 54 of EMIR.*<br>*Finally, cooperation arrangements should ensure the exchange of information between ESMA, the national competent authorities and all relevant authorities of the significant CCPs – also including the relevant authorities which are not involved in supervisory activities.*<br>*See paragraph 2.5 of the ECB Opinion.* | |
| Amendment 21<br>Article 2, point (20a) of the proposed master regulation (new)<br>(Article 24b(1) of EMIR) | |
| No text. | ‘(20a) in Article 24b, paragraph 1 is replaced by the following:<br>**“1. With regard to all supervisory assessments and decisions in relation to the requirements under Articles 41, 44, 46, 49, 50 and 54 in relation to Tier 2 CCPs, including where such supervisory assessments and decisions are taken pursuant to other provisions, including Articles 25, 25b, 25p and 25q, the Executive Board shall consult the central banks of issue referred to in Article 25(3), point (f).**<br>**For the purposes of the consultation referred to in the first subparagraph, ESMA shall share the following information with the central banks of issue, either directly or via the central database:**<br>**(a) the documents and information submitted by the significant CCP to ESMA, as soon as they are received; and**<br>**(b) the draft supervisory assessment report and decision being prepared by ESMA.**<br>**Each central bank of issue may respond. Where the central bank of issue decides to respond, it shall do so within 10 working days of receipt of the draft decision. In emergency** |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| | **situations, that period shall not exceed 24 hours. Where a central bank of issue proposes amendments or objects to supervisory assessments, or draft decisions referred to in paragraph 1, it shall provide full and detailed reasons, in writing. Upon conclusion of the period for consultation, the Executive Board shall duly consider the response and any amendments proposed by the central banks of issue and provide its assessment to the central bank of issue.";'** |
| *Explanation*<br>*Clarifications should be introduced with respect to the obligation to consult central banks of issue in respect of the supervision of Tier 2 third country CCPs, to confirm the scope of such consultations, and for the avoidance of doubt. These clarifications aim to ensure consistency with the wording of the new Article 22e on the consultation of central banks of issue for significant Union CCPs, including reference to all six areas of relevance for central banks of issue. Moreover, the amendments update the wording to ensure reference to the new ESMA Executive Board, replacing references to the CCP Supervisory Committee.*<br>*See paragraph 3.3.1 of the ECB Opinion and the explanations under Amendment 19 and 22.* | |
| Amendment 22<br>Article 2, point (24a) of the proposed Regulation (new)<br>(Article 25b(1) of EMIR) | |
| No text. | **'(24a) in Article 25b, paragraph 1 is replaced by the following:**<br>**"1. ESMA shall be responsible for carrying out the duties resulting from this Regulation for the supervision on an ongoing basis of the compliance of recognised Tier 2 CCPs with the requirements referred to Article 25(2b), point (a). With regard to supervisory assessments and decisions in relation to the requirements under Articles 41, 44, 46, 49, 50 and 54, ESMA shall consult the central banks** |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| | **of issue referred to in Article 25(3), point (f), in accordance with Article 24b(1).";'** |
| *Explanation*<br>*Clarifications should be introduced with respect to the obligation to consult central banks of issue in respect of the supervision of Tier 2 third country CCPs, to confirm the scope of such consultations, and for the avoidance of doubt. See Amendments 19 and 21.* | |

**Article 4 of the proposed master regulation**

**Proposed amendments to Regulation (EU) No 909/2014 (the CSDR)**

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| Amendment 23<br>Article 4, point (1), of the proposed master regulation<br>(Article 1(4) of the CSDR) | |
| '(1) in Article 1, paragraph 4 is replaced by the following:<br>"4. Articles 10 to 20, 22 to 24a and 27, Article 28(6), Article 30(4) and Articles 46 and 47, Article 48(2), (2a) and (2b), and Article 48b, the provisions of Title IV and the requirements to report to competent authorities or relevant authorities or to comply with their orders under this Regulation, do not apply to the members of the ESCB, other Member States' national bodies performing similar functions, or to other public bodies charged with or intervening in the management of public debt in the Union in relation to any CSD which the aforementioned bodies directly manage under the responsibility of the same management body, which has access to the funds of those bodies and which is not a separate entity.";' | '(1) in Article 1, paragraph 4 is replaced by the following:<br>"4. Articles 10 to 20, **~~22~~ 21a** to 24a and 27, Article 28(6), Article 30(4) and Articles 46 and 47, Article 48(2), (2a) and (2b), and Article 48b, the provisions of Title IV and the requirements to report to competent authorities or relevant authorities or to comply with their orders under this Regulation, do not apply to the members of the ESCB, other Member States' national bodies performing similar functions, or to other public bodies charged with or intervening in the management of public debt in the Union in relation to any CSD which the aforementioned bodies directly manage under the responsibility of the same management body, which has access to the funds of those bodies and which is not a separate entity.";' |
| *Explanation*<br>*It should be clarified that Article 21a does not apply to CSDs operated by public bodies, as the use of the central database is only relevant for CSDs subject to supervision by a competent authority.* | |
| Amendment 24<br>Article 4, point (5), of the proposed master regulation<br>(Article 7(2) of the CSDR) | |
| '(5) in Article 7(2), third subparagraph, the third sentence is replaced by the following:<br>"The cash penalties shall not be configured as a revenue source for the CSD or its participants. | '(5) in Article 7(2), third subparagraph, the third sentence is replaced by the following:<br>"The cash penalties shall not be configured as a revenue source for the CSD or its participants. |

10 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| Cash penalties shall be paid in cash or in e-money tokens.";' | Cash penalties shall be paid in cash or**, where provided for in the CSD's rules,** in e-money tokens.";' |
| *Explanation*<br>*A clarification should be introduced that the acceptance of e-money tokens (EMTs) for the payment of cash penalties should be at the discretion of each CSD, as set out in its rules, as a general requirement that EMTs must be accepted as equivalent to cash would be overly burdensome for CSDs that do not intend to use DLT or tokenisation in their operations.* | |
| Amendment 25<br>Article 4, point (13), of the proposed master regulation<br>(Article 14(3) of the CSDR) | |
| '(13) in Article 14, the following paragraphs 3 and 4 are inserted:<br><br>"3. For each significant CSD, ESMA, the national competent authority and the relevant authorities shall establish cooperation arrangements, as laid down in Article 8a of Regulation (EU) No 1095/2010, including in relation to ESMA's direct supervision of each significant CSD. Such arrangements shall reflect the distribution of competences and responsibilities pursuant to this Regulation and frame practical cooperation modalities in view of ESMA exercising its competencies and responsibilities with regard to significant CSDs.<br><br>In particular, such arrangements may cover support and assistance by the relevant authorities and the national competent authority in respect of all of the following:<br><br>(a) the carrying out of supervisory tasks over a significant CSD, including investigations and on-site inspections;<br><br>(b) the preparation of authorisations, approvals, decisions, reports or other measures pertaining to the significant CSD under this Regulation, including where specified under the relevant | '(13) in Article 14, the following paragraphs 3 and 4 are inserted:<br><br>"3. For each significant CSD, ESMA, the national competent authority**,** ~~and~~ the relevant authorities, **the competent authorities of the host Member States where the CSD provides services in accordance with Article 23, and, where relevant, for each significant CSD authorised pursuant to Article 54, the competent authorities responsible for the supervision of the CSD as a credit institution pursuant to Directive 2013/36/EU, or as a bank pursuant to national law,** shall establish cooperation arrangements, as laid down in Article 8a of Regulation (EU) No 1095/2010, including in relation to ESMA's direct supervision of each significant CSD. Such arrangements shall reflect the distribution of competences and responsibilities pursuant to this Regulation and frame practical cooperation modalities in view of ESMA exercising its ~~competencies~~ **competences** and responsibilities with regard to significant CSDs.<br><br>**Without prejudice to the competences of the authorities involved in the cooperation** |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| Article and under Articles 15, 16, 17,19, 19a, 22, 27, 27a, 27b, 33(3), 48, 48a, 48b, 55, 56 and 60;<br>(c) any supervisory tasks to ensure financial stability and to monitor the operational resilience and market conduct of the significant CSD, including stress testing;<br>(d) addressing emergency situations in relation to the significant CSD.<br>[…]";' | **arrangements, ESMA shall ensure the consistency of those arrangements across all significant CSDs.**<br>In particular, such arrangements **shall determine the modalities for** ~~may cover support and assistance by the relevant authorities, as relevant, in respect of all of the following~~:<br>(a) **how the national competent authority of the Member State in which the CSD is established, and, upon each relevant authority's request, of the relevant authorities, are to be involved in supervisory activities relating to a significant CSD, including:**<br>**(i) the establishment of supervisory priorities and the supervisory examination programme for the significant CSD;**<br>**(ii)** the carrying out of supervisory tasks over a significant CSD, including investigations and on-site inspections;<br>**(iii)** ~~(b)~~ the preparation of authorisations, approvals, decisions, reports or other measures pertaining to the significant CSD under this Regulation, including where specified under the relevant Article and under Articles 15, 16, 17,19, 19a, 22, 27, 27a, 27b, 33(3), 48, 48a, 48b, 55, 56 and 60;<br>**(iv)** ~~(c)~~ ~~any~~ supervisory task**s** to ensure the financial stability and monitor the operational resilience and market conduct of the significant CSD, including stress-testing; **and**<br>**(b) the exchange of information between ESMA and all authorities involved in the cooperation arrangement relating to the significant CSD and the supervisory activities referred to in point (a);** |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| | **(c) where relevant, the coordination of the supervisory activities referred to in point (a) with the supervisory activities carried out pursuant to Directive 2013/36/EU;**<br>(d) addressing emergency situations in relation to the significant CSD.<br>[…]";' |

*Explanation*

*The provisions in the Commission proposals concerning cooperation arrangements for significant CSDs should be sufficiently prescriptive.*

*First, to maintain the same level and scope of information sharing within cooperation arrangements regarding significant CSDs as within colleges for less significant CSDs, cooperation arrangements should include the competent authorities of the host Member States where the CSD provides services and, for CSDs authorised to provide banking-type ancillary services, the competent authority responsible for the supervision of the CSD as a credit institution.*

*Second, the ECB makes drafting suggestions to promote consistency across cooperation arrangements for different significant CSDs.*

*Third, the cooperation arrangements should clarify the involvement in supervisory activities of the national competent authority of the Member State in which the CSD is established and, upon their request, of the relevant authorities for the significant CSD. The caveat 'upon their request' aims to ensure that such involvement is voluntary and tailored to the interests, capacity and resources of those relevant authorities.*

*Fourth, the ECB suggests further details as regards the supervisory activities that should be incorporated in the cooperation arrangements for significant CSDs.*

*Fifth, cooperation arrangements should ensure the exchange of information between all authorities involved in the cooperation arrangement – also including the relevant authorities which are not involved in supervisory activities and the competent authorities of the host Member States where the CSD provides services. This would ensure that cooperation arrangements guarantee an equivalent level of information sharing to that within CSD colleges.*

*Finally, the cooperation arrangements should provide for cooperation with the banking supervisors of significant CSDs providing banking-type ancillary services in accordance with Title IV of the CSDR. This is necessary because while the supervision of these CSDs under the CSDR and the CRD is currently conducted within the same national competent authority, it would need to remain well coordinated between ESMA and the banking supervisor of each of those CSDs.*

*See paragraph 2.5 of the ECB Opinion.*

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| Amendment 26<br>Article 4, point (16), of the proposed master regulation<br>(Article 17 of the CSDR) | |
| ‘(16) Article 17 is amended as follows:<br>[…]<br>(b) paragraph 3 is replaced by the following:<br>“3. During the period specified under paragraph 8, the competent authority, ESMA and the relevant authorities may request the applicant CSD to provide additional documents or information, where such documents or information are needed to assess that the applicant CSD meets all of its obligations as laid down in this Regulation. The competent authority may take a decision on the application in the absence of the CSD’s response.<br>(c) paragraph 4 is amended as follows:<br>(i) the first, second and third subparagraphs are replaced by the following:<br>“4. During the period specified under paragraph 8, the competent authority shall conduct a risk assessment of the applicant CSD’s compliance with the requirements laid down in this Regulation and shall consult the relevant authorities, ESMA, and, where applicable, the college referred to in Article 24a concerning the features of the securities settlement system operated by the applicant CSD.<br>Within three months of the acknowledgement of receipt of the application referred to in Article 21a(2), where the applicant CSD has applied for an initial authorisation pursuant to Article 16, or within one month of the acknowledgement of receipt of the application referred to in Article 21a(2), where an applicant CSD has applied for an extension of an existing authorisation or for | ‘(16) Article 17 is amended as follows:<br>[…]<br>(b) paragraph 3 is replaced by the following:<br>“3. ~~During the period specified under paragraph 8, the competent authority, ESMA and the relevant authorities may request the applicant CSD to provide additional documents or information, where such documents or information are needed to assess that the applicant CSD meets all of its obligations as laid down in this Regulation. The competent authority may take a decision on the application in the absence of the CSD’s response.~~ **The competent authority shall assess the completeness of the application within 30 working days from receiving it and, if this is not complete, it shall set a time limit by which the applicant CSD has to provide additional information. The competent authority shall inform the applicant CSD once the application is considered to be complete.”;**<br>(c) paragraph 4 is amended as follows:<br>(i) the first, second and third subparagraphs are replaced by the following:<br>“4. During the period specified under paragraph 8, the competent authority shall conduct a**n** ~~risk~~ assessment of the applicant CSD’s compliance with the requirements laid down in this Regulation and shall ~~consult~~ **submit its draft decision and assessment report to** the relevant authorities, ESMA, and, where applicable, the college referred to in Article 24a ~~concerning the features of the securities settlement system operated by~~ |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| the outsourcing of a core service, pursuant to Article 19:<br>(a) ESMA shall adopt an opinion pursuant to Article 14(4) determining whether the applicant CSD complies with the requirements laid down in this Regulation, and transmit it to the registered recipients referred to in Article 21a; and<br>(b) each relevant authority may issue an opinion within its areas of competence, determining whether the applicant CSD complies with the requirements laid down in this Regulation, and transmit it to the registered recipients referred to in Article 21a.<br>When providing the opinions referred to in the first subparagraph, ESMA and the relevant authorities, within their areas of competence, shall assess any relevant risks in relation to the applicant CSD, including any cross-border risks or risks to the financial stability of the Union, and may include any conditions or recommendations they consider necessary to mitigate any shortcomings in the applicant CSD's risk management. ESMA may also include in its opinion any elements needed to promote a consistent and coherent application of a relevant Article of this Regulation. A negative opinion shall state in writing the full and detailed reasons why the requirements laid down in this Regulation or other requirements of Union law are not met.<br>Where any of the relevant authorities or ESMA, has issued a negative reasoned opinion, and the competent authority nevertheless intends to grant the authorisation, that competent authority shall, within 30 working days of receipt of the negative opinion, where the applicant CSD has applied for an initial authorisation pursuant to Article 16, or within 15 working days of receipt of | ~~the applicant CSD~~ **within two months of the submission of a complete application, where the applicant CSD has applied for an initial authorisation pursuant to Article 16, and within one month of the submission of a complete application, where an applicant CSD has applied for an extension of an existing authorisation or for the outsourcing of a core service, pursuant to Article 19**.<br>Within ~~three~~ **two** months of the ~~acknowledgement of receipt of the application referred to in Article 21a(2)~~ **submission of the draft decision and assessment report**, where the applicant CSD has applied for an initial authorisation pursuant to Article 16, or within one month of the ~~acknowledgement of receipt of the application referred to in Article 21a(2)~~ **submission of the draft decision and assessment report**, where an applicant CSD has applied for an extension of an existing authorisation or for the outsourcing of a core service, pursuant to Article 19:<br>(a) ESMA shall adopt an opinion pursuant to Article 14(4) determining whether the applicant CSD complies with the requirements laid down in this Regulation, and transmit it to the registered recipients referred to in Article 21a; and<br>(b) each relevant authority may issue an opinion within its areas of competence, determining whether the applicant CSD complies with the requirements laid down in this Regulation, and transmit it to the registered recipients referred to in Article 21a.<br>When providing the opinions referred to in the first subparagraph, ESMA and the relevant authorities, within their areas of competence, shall assess any relevant risks in relation to the applicant CSD, including any cross-border risks |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
| --- | --- |
| the negative opinion, where an applicant CSD has applied for an extension of an existing authorisation or for the outsourcing of a core service, pursuant to Article 19, provide the relevant authority concerned or ESMA with the reasons why it intends to grant the authorisation notwithstanding the negative opinion.";<br>(ii) the seventh subparagraph is deleted;<br>(b) paragraph 6 is replaced by the following:<br>"[…]"; (c) paragraphs 7 and 7a are deleted;<br>(d) paragraph 8 is replaced by the following:<br>"8. Within six months from the acknowledgement of receipt of the application referred to in Article 21a(2), where the applicant CSD has applied for an initial authorisation pursuant to Article 16, or within three months from of the acknowledgement of receipt of the application referred to in Article 21a(2), where an applicant CSD has applied for an extension of an existing authorisation or for the outsourcing of a core service, pursuant to Article 19, the competent authority shall adopt its decision and transmit it to the registered recipients referred to in Article 21a and the applicant CSD. The decision shall include a fully reasoned explanation of whether the authorisation has been granted or refused.<br>Where the decision of the competent authority does not reflect the opinion of ESMA, or any of the relevant authorities, including any conditions or recommendations contained therein, it shall contain a fully reasoned explanation of any significant deviation from those opinions or conditions or recommendations.<br>Where the competent authority does not comply or does not intend to comply with an opinion of ESMA or with any conditions or recommendations included therein, the | or risks to the financial stability of the Union, and may include any conditions or recommendations they consider necessary to mitigate any shortcomings in the applicant CSD's risk management. ESMA may also include in its opinion any elements needed to promote a consistent and coherent application of a relevant Article of this Regulation. A negative opinion shall state in writing the full and detailed reasons why the requirements laid down in this Regulation or other requirements of Union law are not met.<br>Where any of the relevant authorities or ESMA, has issued a negative reasoned opinion, and the competent authority nevertheless intends to grant the authorisation, that competent authority shall, ~~within 30 working days of receipt of the negative opinion, where the applicant CSD has applied for an initial authorisation pursuant to Article 16, or~~ within 15 working days of receipt of the negative opinion, ~~where an applicant CSD has applied for an extension of an existing authorisation or for the outsourcing of a core service, pursuant to Article 19,~~ provide the relevant authority concerned or ESMA with the reasons why it intends to grant the authorisation notwithstanding the negative opinion.";<br>(ii) the seventh subparagraph is deleted;<br>(~~b~~**d**) paragraph 6 is replaced by the following:<br>"[…]"; (~~c~~**e**) paragraphs 7 and 7a are deleted;<br>(~~d~~**f**) paragraph 8 is replaced by the following:<br>"8. Within six months from ~~the acknowledgement of receipt of the application referred to in Article 21a(2)~~ **the submission of a complete application**, where the applicant CSD has applied for an initial authorisation pursuant to Article 16, or within ~~three~~ **four** months from ~~of the acknowledgement of receipt of the application~~ |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| Executive Board shall inform the Board of Supervisors. The information shall also include the reasoning from the competent authority for non-compliance or for its intention not to comply.";<br>[…]' | ~~referred to in Article 21a(2)~~ **the submission of a complete application**, where an applicant CSD has applied for an extension of an existing authorisation or for the outsourcing of a core service, pursuant to Article 19, the competent authority shall adopt its decision and transmit it to the registered recipients referred to in Article 21a and the applicant CSD. The decision shall include a fully reasoned explanation of whether the authorisation has been granted or refused.<br>Where the decision of the competent authority does not reflect the opinion of ESMA, or any of the relevant authorities, including any conditions or recommendations contained therein, it shall contain a fully reasoned explanation of any significant deviation from those opinions or conditions or recommendations.<br>Where the competent authority does not comply or does not intend to comply with an opinion of ESMA or with any conditions or recommendations included therein, the Executive Board shall inform the Board of Supervisors. The information shall also include the reasoning from the competent authority for non-compliance or for its intention not to comply.";<br>[…]' |
| *Explanation*<br>*The changes proposed by the ECB as part of this amendment aim to improve the authorisation procedure to make it more effective and manageable for the authorities involved. The ECB proposes to reinstate the completeness check provided for under Article 17(3) of the CSDR, which is an essential step to ensure that competent and relevant authorities conduct their review of the application based on complete documentation. The text proposed by the Commission would force the competent authority to provide its assessment, and ESMA and the relevant authorities to provide their opinions, based on incomplete documentation, which may lead to either insufficient scrutiny of the CSD's compliance with regulatory requirements, or a failure of the application process, including on account of potential negative opinions from ESMA or relevant authorities.* | |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| *The ECB fully supports the proposal for the competent authority, given its expertise on, and proximity to, the CSD's operations, to prepare an assessment of the CSD's compliance with CSDR requirements, as for CCPs under EMIR. To avoid confusion, given that some CSDR requirements do not relate to risk management, the text could simply refer to 'an assessment'. Additionally, the timeframes for the various steps set out in the procedure should be adjusted to improve their clarity and ensure that ESMA and relevant authorities can consider the assessment prepared by the competent authorities prior to issuing their opinion, making the overall process more efficient and ensuring a cooperative dialogue between authorities on the CSD's compliance.*<br>*Finally, the reference to 'the features of the securities settlement system operated by the applicant CSD' should be deleted as it was only relevant from the perspective of central banks acting as relevant authorities, but not for ESMA and CSD colleges, and is in any case outdated, as determining the aspects of a CSD's compliance that are relevant to the SSS it operates is not straightforward and has led to unnecessary confusion in some cases.*<br>*See paragraph 4.1.2 of the ECB Opinion and Amendment 34.* | |
| Amendment 27<br>Article 4, point (19), of the proposed master regulation<br>(Article 19 of the CSDR) | |
| '(19) Article 19 is amended as follows:<br>(a) in paragraph 1, the introductory wording is replaced by the following:<br>"An authorised CSD shall submit an application for authorisation to the competent authority where it wishes to outsource a core service to a third party pursuant to Article 30, other than to a CSD within its group as referred to in Article 19a, or extend its activities to one or more of the following:";<br>(b) paragraph 2 is amended as follows:<br>[…];<br>(c) paragraphs 3 to 7 are deleted;' | '(19) Article 19 is amended as follows:<br>(a) in paragraph 1, the introductory wording is replaced by the following:<br>"1. An authorised CSD shall submit an application for authorisation to the competent authority where it wishes to outsource a core service to a third party pursuant to Article 30, other than to a CSD within its group as referred to in Article 19a, or extend its activities to one or more of the following:";<br>**(b) in paragraph 1, the following point (aa) is inserted:**<br>**'(aa) the provision of one or more core services listed in Section A of the Annex using DLT;";**<br>(~~b~~**c**) paragraph 2 is amended as follows:<br>[…]; |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| | (~~c~~**d**) paragraphs 3 to 7 are deleted;' |
| *Explanation*<br>*The use of DLT to provide core CSD services is a major change in a CSD's operations, with significant implications for its compliance with several requirements of the CSDR, in particular Article 45 and the proposed Article 45a. This amendment would subject a CSD's proposed use of DLT to provide one or more CSD services to an authorisation procedure, as is the case for other major changes to CSD operations.*<br>*See paragraph 4.1.4 of the ECB Opinion.* | |
| Amendment 28<br>Article 4, point (23)(c), of the proposed master regulation<br>(Article 22(6) of the CSDR) | |
| '(c) in paragraph 6, the first and second subparagraphs are replaced by the following:<br>"When performing the review and evaluation referred to in paragraph 1, the competent authority shall cooperate closely with ESMA, and with the relevant authorities. The competent authority shall, at an early stage, transmit the necessary information to ESMA, the relevant authorities and, where applicable, to the authority referred to in Article 67 of Directive 2014/65/EU, and consult them on whether the requirements of this Regulation or other requirements of Union law are met by the CSD as regards the functioning of the securities settlement systems operated by the CSD.<br>Within 90 working days of receipt of the information referred to in the first subparagraph from the competent authority:<br>(a) the relevant authorities and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU may issue an opinion within their areas of competence; and | '(c) in paragraph 6, the first and second subparagraphs are replaced by the following:<br>"When performing the review and evaluation referred to in paragraph 1, the competent authority shall cooperate closely with ESMA, and with the relevant authorities. **The competent authority shall assess the CSD's compliance with the requirements laid down in this Regulation during the period under review.** The competent authority shall, at an early stage, transmit the necessary information **and its assessment report** to ESMA, the relevant authorities and, where applicable, to the authority referred to in Article 67 of Directive 2014/65/EU, and consult them on whether the requirements of this Regulation or other requirements of Union law are met by the CSD ~~as regards the functioning of the securities settlement systems operated by the CSD~~.<br>Within 90 working days of receipt of the information referred to in the first subparagraph from the competent authority:<br>(a) the relevant authorities and, where applicable, the authority referred to in Article 67 of Directive |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| (b) ESMA may issue an opinion pursuant to Article 14(4) in accordance with the procedure laid down in Article 17a.";' | 2014/65/EU may issue an opinion within their areas of competence; and<br>(b) ESMA may issue an opinion pursuant to Article 14(4) in accordance with the procedure laid down in Article 17a.";' |
| *Explanation*<br>*This amendment aims to align the process for reviews and evaluations with the proposed process for authorisations by introducing the preparation of an assessment report by the competent authority, to be submitted together with the necessary information to the authorities consulted on the review and evaluation, and by removing the reference to 'the functioning of the securities settlement systems operated by the CSD'.*<br>*See paragraph 4.1.1 of the ECB Opinion.* | |
| Amendment 29<br>Article 4, point (33)(b), of the proposed master regulation<br>(Article 30(6) of the CSDR) | |
| '(b) the following paragraphs 6 and 7 are added:<br>"6. The use of DLT by a CSD to provide the core services shall not be considered as outsourcing, unless the CSD is entering into an arrangement with a third party to provide the core services using DLT.<br>[…]";' | '(b) the following paragraphs 6 and 7 are added:<br>"6. The use of DLT by a CSD to provide **its** core services shall not be considered as outsourcing~~,~~ ~~unless~~ when the CSD **operates a DLT platform itself and** ~~is entering~~ **does not enter** into an arrangement with a third party to provide **those** core services using DLT**, even if one or more network nodes participating in the consensus mechanism are operated by third parties**.<br>[…]";' |
| *Explanation*<br>*This amendment aims to clarify the circumstances in which the use of DLT by a CSD would not be considered outsourcing.* | |
| Amendment 30<br>Article 4, point (34), of the proposed master regulation<br>(Article 33(7) of the CSDR) | |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| '(34) in Article 33, the following paragraph 7 is added:<br>"7. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to enable CSDs to also allow private individuals to become participants in a CSD where such private individuals have been allowed to participate in a securities settlement system under [Regulation (EU) …/… on settlement finality]. The delegated acts shall specify any additional requirements needed to mitigate any risks that may arise for CSDs accepting private individuals as participants.";' | '~~(34) in Article 33, the following paragraph 7 is added:~~<br>~~"7. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to enable CSDs to also allow private individuals to become participants in a CSD where such private individuals have been allowed to participate in a securities settlement system under [Regulation (EU) …/… on settlement finality]. The delegated acts shall specify any additional requirements needed to mitigate any risks that may arise for CSDs accepting private individuals as participants.";~~' |
| *Explanation*<br>*Financial market infrastructures must establish legal, financial and operational requirements to ensure that their participants can fulfil their obligations towards the infrastructure in a timely manner. The legal soundness and financial and operational capacity of direct participants are key safeguards for the stability of financial market infrastructures, and in the case of CSDs, for settlement efficiency. Natural persons typically do not have the financial and operational capacity to be a CSD participant, and if they have the means to develop such capacity, they should also be able to set up a legal entity for that purpose. There have been past cases where admitting a private individual as a participant has resulted in losses for an FMI and its participants. While the admission of private individuals has been permitted on a limited scale under the DLT Pilot Regime, the ECB would caution against extending that possibility broadly across wholesale financial markets.*<br>*See paragraph 4.3 of the ECB Opinion.* | |
| Amendment 31<br>Article 4, point (39), of the proposed master regulation<br>(Article 40(3) of the CSDR) | |
| 'Article 40 is replaced by the following:<br>"Article 40<br>Cash and e-money token settlement<br>[…]<br>3. Where a CSD does not settle in central bank money as provided in paragraph 1, a CSD shall | 'Article 40 is replaced by the following:<br>"Article 40<br>Cash and e-money token settlement<br>[…]<br>3. Where a CSD does not settle in central bank money as provided in paragraph 1, a CSD shall |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| only offer to settle the cash payments for all or part of its securities settlement systems:<br>(a) through its own accounts;<br>(b) through accounts opened with a credit institution authorised in accordance with Article 8 of Directive 2013/36/EU; or<br>(c) through accounts opened with another CSD whether within the same group of undertakings ultimately controlled by the same parent undertaking or not.<br>A CSD wishing to settle the cash payments as specified in points (a) to (c) of the first subparagraph, shall obtain an authorisation to do so in accordance with Articles 54, 54a or 54b and, where applicable, 54c, and Article 55, and shall comply with the requirements set out in Title IV.";' | only offer to settle the cash payments for all or part of its securities settlement systems:<br>(a) through its own accounts;<br>(b) through accounts opened with a credit institution authorised in accordance with Article 8 of Directive 2013/36/EU; or<br>(c) through accounts opened with another CSD whether within the same group of undertakings ultimately controlled by the same parent undertaking or not.<br>A CSD wishing to settle the cash payments as specified in points (a) to (c) of the first subparagraph, shall obtain an authorisation to do so in accordance with Articles 54, 54a or 54b and, where applicable, 54c, and Article 55, and shall comply with the requirements set out in Title IV.<br>**Where the authorisation referred to in the second subparagraph relates to a CSD intending to settle payments for its securities settlement systems in e-money tokens in any currency for which settlement in tokenised central bank money is available, the competent authority shall consult the relevant central bank of issue. The competent authority shall only grant this authorisation where it determines, on the basis of detailed evidence to be submitted by the CSD that settlement in central bank money would not be practical, and that the CSD complies with the relevant requirements of Title IV of this Regulation.**";' |
| *Explanation*<br>*The general requirement pursuant to Article 40(1) of the CSDR for CSDs to settle cash payments in central bank money 'where practical and available' has been interpreted in a flexible manner that has allowed some CSDs to settle very significant amounts in their domestic currency in commercial bank money, even when they could conceivably settle in central bank money. Similar flexibility would not be warranted for settlement in EMTs, in view of the additional risks posed by this type of settlement* | |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| *asset, including the credit risk posed by the issuer and the risk that the price of the EMT may decrease. Additionally, the use cases for settlement in EMTs are those where both securities and the settlement asset are held and settled in tokenised form, and where settlement in tokenised central bank money should therefore always be practical, if available. This amendment would therefore make conditional the possibility to settle in e-money tokens to a prior authorisation by the relevant competent authority, in consultation with the relevant central bank of issue, on the basis of detailed evidence from the CSD that settlement in central bank money would not be practical, including for its participants. .*<br>*See paragraph 4.5.2 of the ECB Opinion and Amendment 33.* | |
| Amendment 32<br>Article 4, point (40), of the proposed master regulation<br>(Article 45a of the CSDR) | |
| ‘(40) the following Article 45a is inserted:<br>“Article 45a<br>Risks related to the use of distributed ledger technology outside of an outsourcing arrangement<br>1. Without prejudice to the provisions of Article 45, where a CSD operates itself a core service listed in Section A of the Annex using DLT the CSD shall ensure it complies with the following requirements:<br>(a) the use of DLT does not result in depriving the CSD of the systems and controls necessary to manage the risks it faces;<br>(b) the use of DLT does not negatively affect the relationship and obligations of the CSD towards its participants or issuers;<br>(c) the use of DLT does not prevent the exercise of supervisory and oversight functions, including on-site access to acquire any relevant information needed to fulfil those functions;<br>(d) the CSD retains the expertise and resources necessary to provide its services on DLT, to | ‘(40) the following Article 45a is inserted:<br>“Article 45a<br>Risks related to the use of distributed ledger technology outside of an outsourcing arrangement<br>1. Without prejudice to the provisions of Article 45, where a CSD operates itself a core service listed in Section A of the Annex using DLT the CSD shall ensure it complies with the following requirements:<br>(a) the use of DLT does not result in depriving the CSD of the systems and controls necessary to manage the risks it faces;<br>(b) the use of DLT does not negatively affect the relationship and obligations of the CSD towards its participants or issuers;<br>(c) the use of DLT does not prevent the exercise of supervisory and oversight functions, including on-site access to acquire any relevant information needed to fulfil those functions;<br>**(d) the CSD has identified, assessed the suitability of, and approved the participation** |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| monitor the services provided using DLT and to effectively manage the risks associated with the use of DLT on an ongoing basis;<br>(e) the CSD has direct access to the relevant information in relation to the provision of services using DLT.<br>2. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks referred to in paragraph 1 and the methods of assessment thereof, and to specify the methods for the CSD to meet the requirements set out in paragraph 1.<br>ESMA shall submit those draft regulatory technical standards to the Commission by [OP insert date = 12 months after the entry into force of this amending Regulation].<br>Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.";' | **of, all third parties operating network nodes participating in the consensus mechanism;**<br>**(e) the CSD adequately manages the risks related to the use of DLT, including operational and governance risks relating to the DLT network, the network nodes participating in the consensus mechanism, the smart contracts and protocols used by the DLT, the use of cryptography, key custody, and the use of external data providers;**<br>**(f) if the CSD uses DLT to provide the settlement service, it ensures that the settlement of transactions is operationally deterministic and irreversible;**<br>(~~d~~**g**) the CSD retains the expertise and resources necessary to provide its services on DLT, to monitor the services provided using DLT and to effectively manage the risks associated with the use of DLT on an ongoing basis;<br>(~~e~~**h**) the CSD has direct access to the relevant information in relation to the provision of services using DLT.<br>2. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks referred to in paragraph 1 and the methods of assessment thereof, and to specify the methods for the CSD to meet the requirements set out in paragraph 1.<br>ESMA shall submit those draft regulatory technical standards to the Commission by [OP insert date = 12 months after the entry into force of this amending Regulation].<br>Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.";' |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| *Explanation*<br>*This amendment aims to clarify regulatory expectations in terms of risk management for the use of DLT, especially as regards the suitability of network node operators, the relevant operational and governance risks, and the certainty and irreversibility of settlement. Such clarification would also better frame the development of the RTS by ESMA, in close cooperation with the ESCB.*<br>*See paragraph 4.4 of the ECB Opinion.* | |
| Amendment 33<br>Article 4, point (50), of the proposed master regulation<br>(Article 54c of the CSDR) | |
| ‘(50) the following Articles 54a, 54b and 54c are inserted:<br>“[…]<br>Article 54c<br>Additional requirements for settlement of cash payments in e-money tokens<br>1. A CSD may offer to settle the cash payments for all or part of its securities settlement systems in e-money tokens. A CSD shall only be able to do so through any of the following:<br>(a) its own accounts in accordance with Article 54;<br>(b) accounts opened with another CSD in accordance with Article 54a;<br>(c) accounts opened with a credit institution in accordance with Article 54b.<br>2. Where a CSD intends to settle the cash payments for all or part of its securities settlement systems in e-money tokens, it shall ensure that all of the following conditions are met:<br>(a) the e-money token intended to be used for settlement of the cash leg is listed in the ESMA register established in accordance with Article 109 of Regulation (EU) 2023/1114 and is classified as a significant e-money token by EBA | ‘(50) the following Articles 54a, 54b and 54c are inserted:<br>“[…]<br>Article 54c<br>Additional requirements for settlement of cash payments in e-money tokens<br>1. A CSD may offer to settle the cash payments for all or part of its securities settlement systems in e-money tokens. A CSD shall only be able to do so through any of the following:<br>(a) its own accounts in accordance with Article 54;<br>(b) accounts opened with another CSD in accordance with Article 54a;<br>(c) accounts opened with a credit institution in accordance with Article 54b.<br>2. Where a CSD intends to settle the cash payments for all or part of its securities settlement systems in e-money tokens, it shall ensure that all of the following conditions are met:<br>(a) the e-money token intended to be used for settlement of the cash leg is listed in the ESMA register established in accordance with Article 109 of Regulation (EU) 2023/1114 and is classified as a significant e-money token by EBA |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| in accordance with Articles 56, or 57 of that Regulation;<br>(b) the settlement of such payments in e-money tokens takes place through pre-funded accounts;<br>(c) the e-money token intended to be used for the settlement in the CSD is accessible to the CSD's participants in a sufficient amount to meet the intended use in the securities settlement system operated by the CSD;<br>(d) the information provided by the CSD itself, or by the credit institution or CSD it designated, to market participants about the risks and costs associated with settlement in e-money tokens is clear, fair and not misleading;<br>(e) the CSD makes available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement in e-money tokens and provides such information on request.<br>[…]";' | in accordance with Articles 56, or 57 of that Regulation;<br>**(b) the issuer of the e-money token has sufficient creditworthiness and liquidity to meet its obligations, and is operationally reliable and resilient;**<br>**(c) the reserve of assets backing the e-money token bears a low level of credit and market risks;**<br>**(d) the issuer of the e-money token is contractually required and operationally capable of redeeming e-money tokens held by the CSD or the CSD's participants, in accordance with Article 49(4) of Regulation (EU) 2023/1114, and of ensuring the transfer of funds within one business day of the redemption request;**<br>**(e) the CSD maintains procedures to monitor the issuer of the e-money token and its ongoing compliance with points (a), (b), (c) and (d);**<br>**(f) the CSD maintains procedures to manage the default or operational failure of the issuer of the e-money token, or a decrease in the price of the e-money token, including to allocate potential losses and to ensure the continuity of cash-leg settlement;**<br>(~~b~~**g**) the settlement of such payments in e-money tokens takes place through pre-funded accounts;<br>(~~c~~**h**) the e-money token intended to be used for the settlement in the CSD is accessible to the CSD's participants in a sufficient amount to meet the intended use in the securities settlement system operated by the CSD;<br>**(i) the e-money token is not fungible with any crypto-asset issued by an issuer not registered in the ESMA register established in** |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| | **accordance with Article 109 of Regulation (EU) 2023/1114;**<br>(~~d~~**j**) the information provided by the CSD itself, or by the credit institution or CSD it designated, to market participants about the risks and costs associated with settlement in e-money tokens is clear, fair and not misleading;<br>(~~e~~**k**) the CSD makes available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement in e-money tokens and provides such information on request.<br>[…]";' |
| | *Explanation*<br>*This amendment aims to better frame the possibility for CSDs to use EMTs as settlement assets in their securities settlement systems, in view of the additional risks posed by this type of settlement asset, including the credit risk posed by the issuer and the risk that the price of the EMT may decrease. Additional risk management safeguards should be introduced to address the need for increased safety and risk mitigation when such a settlement asset is used in wholesale financial markets, consistent with international standards, including the 2022 report of the Committee on Payments and Market Infrastructures' and Board of the International Organization of Securities Commissions' titled 'Application of the Principles for Financial Market Infrastructures to stablecoin arrangements'.*<br>*The safeguards proposed in this amendment aim to mitigate any credit risk [towards] the issuer and the risk that the price of the EMT may decrease, and to ensure that CSD participants have prompt access to their funds in cash when they redeem e-money tokens used for securities settlement. Additionally, settlement in EMTs should only be permitted if it is subject to sound risk management safeguards to minimise the risks associated with their use, in line with international standards. Moreover, settlement in EMTs should only be permitted if the EMT is issued by a Union entity in compliance with Title IV of MiCAR and such EMT is not fungible with any crypto-asset(s) issued outside the Union, including in the case of crypto-assets that are part of any third-country multi-issuer scheme, given the risks posed by such schemes, as outlined by the ESRB in Recommendation ESRB/2025/9 of the European Systemic Risk Board of 25 September 2025 on third-country multi-issuer stablecoin schemes.*<br>*See paragraph 4.5.2 of the ECB Opinion and Amendment 31.* |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| Amendment 34<br>Article 4, point (51), of the proposed master regulation<br>(Article 55 of the CSDR) | |
| ‘(51) Article 55 is amended as follows:<br>[…]<br>(d) paragraph 4 is amended as follows:<br>[…]<br>(iii) point (d) is replaced by the following:<br>“(d) where applicable, the members of the college referred to in Article 24a;”;<br>(e) paragraph 5 is amended as follows:<br>(i) in the first subparagraph, the first sentence is replaced by the following:<br>“The authorities referred to in paragraph 4 may issue a reasoned opinion on the authorisation within two months of receipt of the application as referred to in that paragraph.”;<br>(ii) the second, third and fourth subparagraphs are replaced by the following:<br>“Where an authority referred to in paragraph 4 issues a negative reasoned opinion, the competent authority intending to grant the authorisation shall, within 30 working days of receipt of that negative opinion, provide the authorities referred to in paragraph 4 with the reasons addressing the negative opinion.<br>Where, within 30 working days of those reasons being presented, any of the authorities referred to in paragraph 4 issues a negative opinion and the competent authority nevertheless intends to grant the authorisation, any of the authorities that issued a negative opinion may refer the matter to ESMA for assistance under Article 31(2), point (c), of Regulation (EU) No 1095/2010. | ‘(51) Article 55 is amended as follows:<br>[…]<br>(d) paragraph 4 is amended as follows:<br>[…]<br>(iii) point (d) is replaced by the following:<br>“(d) where applicable, the members of the college referred to in Article 24a;”;<br>**(e) the following paragraphs 4a and 4b are inserted:**<br>**“4a. Within 30 working days from the receipt of the application, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a time limit by which the applicant CSD has to provide additional information. The competent authority shall inform the applicant CSD when the application is considered to be complete.**<br>**4b. During the period specified in paragraph 5a, the competent authority shall conduct an assessment of the applicant CSD’s compliance with the requirements laid down in this Regulation and, within two months of the submission of a complete application, shall submit its draft decision and assessment report to the relevant authorities, ESMA, and, where applicable, the college referred to in Article 24a.”;**<br>(~~e~~**f**) paragraph 5 is amended as follows:<br>(i) in the first subparagraph, the first sentence is replaced by the following: |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| Where 30 working days after referral to ESMA the issue is not settled, the competent authority wishing to grant the authorisation shall take the final decision and provide a detailed explanation of its decision in writing to the authorities referred to in paragraph 4.";<br>(iii) the seventh subparagraph is deleted.<br>(f) the following paragraph 5a is inserted:<br>"5a. Within six months from the acknowledgement of receipt of the application referred to in Article 21a(2), the competent authority shall adopt its decision and transmit it to the registered recipients referred to in Article 21a, the authorities referred to in paragraph 4 and the applicant CSD via the central database. The decision shall include a fully reasoned explanation of whether the authorisation has been granted or refused. Where the decision of the competent authority does not reflect the opinion of any of the authorities referred to in paragraph 4, it shall contain a fully reasoned explanation of any significant deviation from those opinions or conditions or recommendations.<br>Where the competent authority does not comply or does not intend to comply with an opinion of ESMA or with any conditions or recommendations included therein, the Executive Board shall inform the Board of Supervisors. The information shall also include the reasoning from the competent authority for non-compliance or for its intention not to comply.";<br>(g) […];' | "The authorities referred to in paragraph 4 may issue a reasoned opinion on the authorisation within two months of ~~receipt of the application~~ **the submission of the draft decision and assessment report** as referred to in ~~that~~ paragraph **4b**.";<br>(ii) the second, third and fourth subparagraphs are replaced by the following:<br>"Where an authority referred to in paragraph 4 issues a negative reasoned opinion, the competent authority intending to grant the authorisation shall, within ~~30~~ **15** working days of receipt of that negative opinion, provide the authorities referred to in paragraph 4 with the reasons addressing the negative opinion.<br>Where, within 30 working days of those reasons being presented, any of the authorities referred to in paragraph 4 issues a negative opinion and the competent authority nevertheless intends to grant the authorisation, any of the authorities that issued a negative opinion may refer the matter to ESMA for assistance under Article 31(2), point (c), of Regulation (EU) No 1095/2010.<br>Where 30 working days after referral to ESMA the issue is not settled, the competent authority wishing to grant the authorisation shall take the final decision and provide a detailed explanation of its decision in writing to the authorities referred to in paragraph 4.";<br>(iii) the seventh subparagraph is deleted.<br>(~~f~~**g**) the following paragraph 5a is inserted:<br>"5a. Within six months from the ~~acknowledgement of receipt of the~~ **submission of a complete** application ~~referred to in Article 21a(2)~~, the competent authority shall adopt its decision and transmit it to the registered recipients referred to in Article 21a, the authorities |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| | referred to in paragraph 4 and the applicant CSD via the central database. The decision shall include a fully reasoned explanation of whether the authorisation has been granted or refused. Where the decision of the competent authority does not reflect the opinion of any of the authorities referred to in paragraph 4, it shall contain a fully reasoned explanation of any significant deviation from those opinions or conditions or recommendations.<br>Where the competent authority does not comply or does not intend to comply with an opinion of ESMA or with any conditions or recommendations included therein, the Executive Board shall inform the Board of Supervisors. The information shall also include the reasoning from the competent authority for non-compliance or for its intention not to comply.";<br>(~~g~~**h**) […];' |
| *Explanation*<br>*This amendment aims to align the procedure for authorisation under Article 55 of the CSDR with the procedure for authorisation under Article 17 of the CSDR, notably by reintroducing the completeness check, previously covered by the cross-reference to Article 17(3) of the CSDR, which the ECB proposes to delete, introducing an assessment to be prepared by the competent authority, as envisaged in Article 17 as proposed by the Commission, and aligning the timelines for both authorisation procedures.*<br>*See paragraph 4.1.2 of the ECB Opinion and Amendment 26.* | |
| Amendment 35<br>Article 4, point (56), of the proposed master regulation<br>(Article 60(2) of the CSDR) | |
| '(56) in Article 60, paragraph 2 is amended as follows:<br>(a) in the first subparagraph, points (a) and (b) are replaced by the following: | '(56) in Article 60, paragraph 2 is ~~amended as follows~~ **replaced by the following**:<br>~~(a) in the first subparagraph, points (a) and (b) are replaced by the following:~~ |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| “(a) in the cases referred to in Articles 54a and 54b, whether all the necessary arrangements between the CSD and the designated CSDs or designated credit institutions allow them to meet their respective obligations as laid down in this Regulation;<br>(b) in the case referred to in Article 54, whether the arrangements relating to the authorisation to provide banking-type ancillary services allow the CSD to meet its obligations as laid down in this Regulation.”;<br>(b) the second and third subparagraphs are replaced by the following:<br>“The competent authority of the CSD shall regularly, and at least immediately after the end of every review and evaluation period, inform the authorities referred to in Article 55(4) and, where applicable, the college referred to in Article 24a, of the results, including any remedial actions or penalties, of its review and evaluation under this paragraph.<br>Where a CSD designates another CSD in accordance with Article 54a, or a credit institution in accordance with Article 54b, in view of the protection of the participants in the securities settlement systems it operates, a CSD shall ensure that it has access from the CSD or the credit institution it designates to all necessary information for the purpose of this Regulation and it shall report any infringements thereof to the competent authority of the CSD, to the relevant authorities and to competent authorities referred to in paragraph 1 of this Article.”;’ | “2. **The competent authority of the CSD shall review and evaluate at least every two years the following:**<br>(a) in the cases referred to in Articles 54a and 54b, whether all the necessary arrangements between the CSD and the designated CSDs or designated credit institutions allow them to meet their respective obligations as laid down in this Regulation;<br>(b) in the case referred to in Article 54, whether the arrangements relating to the authorisation to provide banking-type ancillary services allow the CSD to meet its obligations as laid down in this Regulation.~~”;~~<br>**The competent authority shall cooperate closely with the competent authorities referred to in paragraph 1, ESMA, and the relevant authorities. The competent authority shall conduct an assessment of the compliance of the arrangements referred to in the first subparagraph with the requirements laid down in this Regulation during the period under review. The competent authority shall, at an early stage, transmit the necessary information and its assessment report to the competent authorities referred to in paragraph 1, ESMA, and the relevant authorities and shall consult them on whether the requirements of this Regulation or other requirements of Union law are met.**<br>**Within 90 working days of receipt of the information referred to in the first subparagraph from the competent authority:**<br>**(a) the competent authorities referred to in paragraph 1 and the relevant authorities may issue an opinion within their areas of competence; and** |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
|---|---|
| | **(b) ESMA may issue an opinion pursuant to Article 14(4) in accordance with the procedure laid down in Article 17a.**<br>**The third to seventh subparagraphs of Article 22(6) shall apply to opinions issued in accordance with point (a) of the second subparagraph.**<br>~~(b) the second and third subparagraphs are replaced by the following:~~<br>~~"~~The competent authority of the CSD shall regularly, and at least immediately after the end of every review and evaluation period, inform the authorities referred to in Article 55(4) and, where applicable, the college referred to in Article 24a, of the results, including any remedial actions or penalties, of its review and evaluation under this paragraph.<br>Where a CSD designates another CSD in accordance with Article 54a, or a credit institution in accordance with Article 54b, in view of the protection of the participants in the securities settlement systems it operates, a CSD shall ensure that it has access from the CSD or the credit institution it designates to all necessary information for the purpose of this Regulation and it shall report any infringements thereof to the competent authority of the CSD, to the relevant authorities and to competent authorities referred to in paragraph 1 of this Article.";' |

| Text proposed by the Commission | Amendments proposed by the ECB[10] |
| --- | --- |
| *Explanation*<br>*This amendment aims to align the procedure for the review and evaluation of banking-type ancillary services with that conducted in accordance with Article 22 of the CSDR, as regards the competent authority's preparation of an assessment of the CSD's compliance and its consultation of other authorities.*<br>*See paragraph 4.1.1. of the ECB Opinion.* | |

**Article 8 of the proposed master regulation**

**Proposed amendments to Regulation (EU) 2022/858 (the DLTPR)**

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| Amendment 36<br>Article 8, point (5), of the proposed master regulation<br>(Article 4a(3) of the DLTPR) | |
| ‘(5) the following Article 4a is inserted:<br>“Article 4a<br>[…]<br>3. Within two months of declaring the request complete, the competent authority shall submit a draft assessment of the request referred to in paragraph 2 to ESMA, together with the complete request. Within two months of receiving the draft assessment, ESMA shall provide the competent authority with a non-binding opinion on the draft assessment and the exemptions requested, including, where it deems necessary, recommendations for additional compensatory measures.<br>The competent authority shall give that opinion due consideration and shall provide ESMA with a statement regarding any significant deviations from that opinion if ESMA so requests. ESMA’s opinion and the competent authority’s statement shall not be made public.”;’ | ‘(5) the following Article 4a is inserted:<br>“Article 4a<br>[…]<br>3. Within two months of declaring the request complete, the competent authority shall submit a draft assessment of the request referred to in paragraph 2 to ESMA, together with the complete request. Within two months of receiving the draft assessment, ESMA shall ~~provide~~ **address a decision to** the competent authority ~~with a non-binding opinion~~ on the draft assessment and the exemptions requested, including, where it deems necessary, recommendations for additional compensatory measures.<br>The competent authority shall ~~give that opinion due consideration and shall provide ESMA with a statement regarding any significant deviations from that opinion if ESMA so requests~~ **comply with ESMA’s decision**. ~~ESMA’s opinion and the competent authority’s statement shall not be made public.~~”;’ |
| *Explanation*<br>*The power to exempt regulated entities from compliance with Level 1 legislative requirements is very significant and should be exercised in a way that ensures the harmonised application of Union law. To this effect, ESMA should be granted the power to adopt a decision, in accordance with the proposed Article 4a(3), that is binding on the competent authority handling the request.*<br>*See paragraph 5.3 of the ECB Opinion and Amendment 38.* | |

11 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| Amendment 37<br>Article 8, point (6), of the proposed master regulation<br>(Article 5(8c) to (8h) of the DLTPR) | |
| ‘(6) Article 5 is amended as follows:<br>[…]<br>(b) The following paragraphs 8a to 8h are inserted:<br>“[…]<br>8c. Where the settlement of payments is carried out in commercial bank money through the accounts of a credit institution, Title IV of Regulation (EU) No 909/2014 shall apply to the operator of the DLT SS and the designated credit institution, with the exception of Article 54b(5), point (c).<br>Where the designated credit institution provides the DLT notary and the DLT central account maintenance service in accordance with Articles 10b or 10c, the credit institution shall be additionally exempted from Article 54b(5), point (b), of Regulation (EU) No 909/2014.<br>By way of derogation from the first subparagraph of this paragraph, Title IV of Regulation (EU) No 909/2014 shall not apply to a credit institution when it provides the settlement of payments using commercial bank money to a DLT market infrastructure operated under the simplified regime.<br>When the settlement of payments is carried out using representations in the DLT TSS of prefunded commercial bank money held in one or more accounts at a credit institution, it shall be considered settlement in the accounts of the credit institution, provided that the following conditions are met:<br>(a) where the DLT TSS is operated under the simplified regime: | ‘(6) Article 5 is amended as follows:<br>[…]<br>(b) The following paragraphs 8a to 8h are inserted:<br>“[…]<br>8c. Where the settlement of payments is carried out in commercial bank money through the accounts of a credit institution, **the operator of the DLT SS shall comply with the provisions of** Title IV of Regulation (EU) No 909/2014 **which apply to a CSD referred to in Article 54b(1) of that Regulation** ~~shall apply to the operator of the DLT SS and the designated credit institution~~, **and the credit institution shall comply with the requirements of Article 54b(5) of that Regulation,** with the exception of ~~Article 54b(5),~~ point (c).<br>Where the designated credit institution provides the DLT notary and the DLT central account maintenance service in accordance with Articles 10b or 10c, the credit institution shall be additionally exempted from Article 54b(5), point (b), of Regulation (EU) No 909/2014.<br>By way of derogation from the first subparagraph of this paragraph, Title IV of Regulation (EU) No 909/2014 shall not apply ~~to a credit institution~~ when ~~it~~ **a credit institution** provides the settlement of payments using commercial bank money to a DLT market infrastructure operated under the simplified regime.<br>When the settlement of payments is carried out using **tokenised** representations **of cash, issued by the operator of a DLT TSS** ~~in the DLT TSS, of prefunded commercial bank money~~ **fully backed by funds** held in one or more accounts at a credit |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| (1) the DLT TSS operator is authorised as an investment firm; and<br>(2) the DLT TSS operator identifies, measures, monitors, manages, and minimises any risks arising from this settlement model;<br>(b) where the DLT TSS is operated under the regular regime:<br>(1) the DLT TSS operator is authorised as an investment firm;<br>(2) the DLT TSS operator identifies, measures, monitors, manages, and minimises any risks arising from this settlement model;<br>(3) the credit institution holding the accounts with prefunded commercial bank money is subject to Title IV of Regulation (EU) No 909/2014, with the exception of Article 54b(5), point (c).<br>8d. Settlement of payments in e-money tokens shall be carried out only in an e- money token referencing the value of an official EU currency, except where carried out for the settlement of a DLT financial instrument denominated in a non-EU currency.<br>8e. Where the settlement of payments is carried out in e-money tokens, the service of providing cash accounts for e-money tokens may be provided by the operator of a DLT SS, a credit institution, a CASP authorised to provide custody of e-money tokens in accordance with Regulation (EU) 2023/1114 or by any other financial entity permitted to provide custody of e-money tokens in accordance with Article 60 of that Regulation, subject to the notification procedure specified in that article.<br>Services related to e-money tokens, other than providing cash accounts for e-money tokens and processing of payments of e-money tokens, that amount to services listed in Section C of the Annex to Regulation (EU) No 909/2014 shall be provided | institution, it shall be considered settlement in **commercial bank money** ~~the accounts of the credit institution~~, provided that the following conditions are met:<br>(a) ~~where the DLT TSS is operated under the simplified regime:~~<br>~~(1)~~ the DLT TSS operator is authorised as an investment firm; ~~and~~<br>~~(2)~~ **(b)** the DLT TSS operator identifies, measures, monitors, manages, and minimises any risks arising from this settlement model;<br>**(c) the tokenised representations of cash issued by the DLT TSS operator are used exclusively for the purpose of settlement in the DLT TSS;**<br>~~(b) where the DLT TSS is operated under the regular regime:~~<br>~~(1) the DLT TSS operator is authorised as an investment firm;~~<br>~~(2) the DLT TSS operator identifies, measures, monitors, manages, and minimises any risks arising from this settlement model;~~<br>~~(3)~~ **(d) the DLT TSS operator is authorised in accordance with Title IV of Regulation (EU) No 909/2014 to designate the credit institution holding the accounts in accordance with Article 54b of that Regulation, and** the credit institution holding the accounts with prefunded commercial bank money ~~is subject to Title IV of Regulation (EU) No 909/2014~~ **complies with Article 54b(5) of that Regulation**, with the exception of ~~Article 54b(5),~~ point (c).<br>**Point (d) of the previous subparagraph shall not apply when the DLT TSS is operated under the simplified regime.**<br>8d. Settlement of payments in e-money tokens shall be carried out only in an e-money token referencing the value of an official EU currency, |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| by a credit institution complying with Title IV of Regulation (EU) No 909/2014, with the exception of Article 54b(5), point (c).<br>Where the credit institution provides the DLT notary and the DLT central account maintenance service in accordance with Articles 10b or 10c, the credit institution shall be additionally exempted from Article 54b(5), point (b), of Regulation (EU) No 909/2014.<br>By way of derogation from the second subparagraph of this paragraph, Title IV of Regulation (EU) No 909/2014 shall not apply to a credit institution providing services listed in Section C of the Annex to Regulation (EU) No 909/2014 to a DLT market infrastructure operating in the simplified regime.<br>8f. Where the settlement occurs using commercial bank money provided by a credit institution to which Title IV of Regulation (EU) No 909/2014 does not apply by virtue of the second subparagraph of paragraph 8c, or where the settlement of payments occurs using 'e-money tokens', the DLT SS shall identify, measure, monitor, manage, and minimise any risks arising from the use of such means.<br>8g. At the request of a DLT SS operator, the competent authority may exempt that DLT SS from Article 45a of Regulation (EU) No 909/2014, provided that that DLT SS demonstrates compliance with Article 7.<br>8h. At the request of a DLT SS operator, the competent authority may exempt that DLT SS from Article 48a of Regulation (EU) No 909/2014, provided that that DLT SS commits to the participation in the industry group referred to in Article 10g. The competent authority shall maintain the exemption so long as the DLT SS operators demonstrates its participation in the industry group | except where carried out for the settlement of a DLT financial instrument denominated in a non-EU currency.<br>8e. Where the settlement of payments is carried out in e-money tokens, the service of providing cash accounts for e-money tokens may be provided by **any of the following:**<br>**(a)** the operator of ~~a~~ **the** DLT SS, **which shall comply with Title IV of Regulation (EU) No 909/2014;**<br>**(b) a CSD designated by the operator of the DLT SS in accordance with Article 54a of Regulation (EU) No 909/2014, which shall be done in accordance with Title IV of that Regulation; or**<br>**(c)** a credit institution~~, a CASP authorised to provide custody of e-money tokens in accordance with Regulation (EU) 2023/1114 or by any other financial entity permitted to provide custody of e-money tokens in accordance with Article 60 of that Regulation, subject to the notification procedure specified in that article.~~ **designated by the operator of the DLT SS in accordance with Article 54b of Regulation (EU) No 909/2014, in which case the operator of the DLT SS shall comply with the provisions of Title IV of that Regulation which apply to a CSD referred to in Article 54b(1) of that Regulation, and the credit institution shall comply with the requirements of Article 54b(5) of that Regulation, with the exception of point (c).**<br>**The operator of the DLT SS shall ensure that all of the conditions of Article 54c(2) of Regulation (EU) No 909/2014 are met.**<br>~~Services related to e-money tokens, other than providing cash accounts for e-money tokens and processing of payments of e-money tokens, that amount to services listed in Section C of the Annex to Regulation (EU) No 909/2014 shall be provided~~ |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
| --- | --- |
| until the group delivers the technical standards referred to in Article 10g.";' | ~~by a credit institution complying with Title IV of Regulation (EU) No 909/2014, with the exception of Article 54b(5), point (c).~~<br>Where the credit institution **referred to in point (c) of the previous subparagraph** provides the DLT notary and the DLT central account maintenance service in accordance with Articles 10b or 10c, the credit institution shall be additionally exempted from Article 54b(5), point (b), of Regulation (EU) No 909/2014.<br>By way of derogation from the ~~second~~ **first three** subparagraph**s** of this paragraph, ~~Title IV of Regulation (EU) No 909/2014 shall not apply to a credit institution providing services listed in Section C of the Annex to Regulation (EU) No 909/2014 to a DLT market infrastructure operating in the simplified regime~~ **where the DLT SS is operated under the simplified regime, the service of providing cash accounts for e-money tokens may be provided by the operator of ~~a~~ the DLT SS, a credit institution, a CASP authorised to provide custody of e-money tokens in accordance with Regulation (EU) 2023/1114 or by any other financial entity permitted to provide custody of e-money tokens in accordance with Article 60 of that Regulation, subject to the notification procedure specified in that article. Title IV of Regulation (EU) No 909/2014 shall not apply in that case.**<br>8f. Where **a DLT SS operating under the simplified regime settles payments** ~~the settlement occurs~~ using commercial bank money ~~provided by a credit institution to which~~ **or e-money tokens without complying with** Title IV of Regulation (EU) No 909/2014 ~~does not apply by virtue of the second subparagraph of paragraph 8c, or where the settlement of payments occurs using 'e-money tokens'~~, the DLT SS **operator** shall |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| | identify, measure, monitor, manage, and minimise any risks arising from the use of such means.<br>8g. At the request of a DLT SS operator, the competent authority may exempt that DLT SS from Article 45a of Regulation (EU) No 909/2014, provided that that DLT SS demonstrates compliance with Article 7**, where the DLT SS is operated under the simplified regime**.<br>8h. At the request of a DLT SS operator, the competent authority may exempt that DLT SS from Article 48a of Regulation (EU) No 909/2014, provided that that DLT SS commits to the participation in the industry group referred to in Article 10g. The competent authority shall maintain the exemption so long as the DLT SS operators demonstrates its participation in the industry group until the group delivers the technical standards referred to in Article 10g.";' |

*Explanation*

*This proposed amendment aims to further clarify the provisions relating to settlement in commercial bank money, notably regarding the applicability of Title IV of the CSDR, which always applies primarily to the applicant CSD (in this case the DLT SS operator), while a CSD or credit institution designated by the applicant CSD / DLT SS operator must only comply with specific provisions of Title IV.*

*Additionally, where a DLT TSS operator issues a tokenised representation of cash backed by funds held at a credit institution in accordance with the proposed paragraph 8c, fourth subparagraph, this tokenised representation of cash should not be used for any purpose other than settlement in the DLT TSS, in order to avoid any use as an e-money token without the relevant authorisation under MiCAR.*

*Finally, the use of EMTs for settlement carries additional risks compared to the use of commercial bank money and should therefore not benefit from a more lenient regulatory treatment. To ensure a level playing field between DLT market infrastructures using commercial bank money and EMTs for settlement, Title IV of the CSDR should apply to all such infrastructures operating under the regular regime.*

*For the avoidance of doubt, the ECB strongly agrees that the provision of CSDR banking-type ancillary services relating to EMTs – especially those other than the provision of accounts and processing of payments – should be subject to compliance with Title IV of the CSDR outside the simplified regime. The suggested deletion of Article 5(8e), second subparagraph, proposed above should be read in the context of the ECB's suggestion to apply Title IV more generally to settlement in EMTs under the regular regime.*

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| *Should the co-legislators not adopt this suggestion, Article 5(8e), second subparagraph, should be maintained.*<br>*See paragraph 5.4 of the ECB Opinion.* | |
| Amendment 38<br>Article 8, point (7), of the proposed master regulation<br>(Article 5a of the DLTPR) | |
| ‘(7) The following Article 5a is inserted:<br>“Article 5a<br>[…]<br>3. Within two months of declaring the request complete, the competent authority shall submit a draft assessment of the request referred to in paragraph 2 to ESMA, together with the complete application. Within two months of receiving the draft assessment, ESMA shall provide the competent authority with a non-binding opinion on the draft assessment and the exemptions requested, including, where it deems necessary, recommendations for additional compensatory measures.<br>The competent authority shall give that opinion due consideration and shall provide ESMA with a statement regarding any significant deviations from that opinion if ESMA so requests. ESMA’s opinion and the competent authority’s statement shall not be made public.”;’ | ‘(7) The following Article 5a is inserted:<br>“Article 5a<br>[…]<br>3. Within two months of declaring the request complete, the competent authority shall submit a draft assessment of the request referred to in paragraph 2 to ESMA, together with the complete ~~application~~ **request**. Within two months of receiving the draft assessment, ESMA shall ~~provide~~ **address a decision to** the competent authority ~~with a non-binding opinion~~ on the draft assessment and the exemptions requested, including, where it deems necessary, recommendations for additional compensatory measures.<br>The competent authority shall ~~give that opinion due consideration and shall provide ESMA with a statement regarding any significant deviations from that opinion if ESMA so requests~~ **comply with ESMA’s decision**. ~~ESMA’s opinion and the competent authority’s statement shall not be made public.~~”;’ |
| *Explanation*<br>*The power to exempt regulated entities from compliance with Level 1 legislative requirements is very significant and should be exercised in a way that ensures the harmonised application of Union law. To this end, ESMA should be granted the power to adopt decisions, in accordance with the proposed Article 5a(3), that are binding on the competent authority handling the request.*<br>*See paragraph 5.3 of the ECB Opinion and Amendment 36.* | |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| | |
| Amendment 39<br>Article 8, point (10), of the proposed master regulation<br>(Article 7a of the DLTPR) | |
| ‘(10) the following Article 7a is inserted:<br>“Article 7a<br>[…]<br>5. By way of derogation from the requirements of Regulation (EU) No 909/2014 that apply to a DLT SS or a DLT TSS by virtue of Article 5(1), first subparagraph 6(1), first subparagraph, point (c), and Article 6(2), first subparagraph, point (a), of this Regulation, entities operating in the simplified regime shall not be subject to the following parts of Regulation (EU) No 909/2014:<br>(a) Title II, Chapter III and Chapter IV, with the exception of Articles 6(3) and 6(4), 7(1) and 7(7) and 8;<br>(b) Article 22a(2) to (7) and 24a;<br>(c) Title III, Chapter II, with the exception of Articles 26(1) to 26(3), 26(5), 26(7), 27(1), 27(3), 27(5) to 27(7), 27a(1), 29(1) to 29(2), 30(1) to 30(3), 30(5), 32, 33(1), 36, 37, 38(1), 38(2), 39(3), 39(5), 40(1), 40(3), 41(1), 42 to 44, 45 (1) to (3), 45(6); and<br>(d) Title VI.”;’ | ‘(10) the following Article 7a is inserted:<br>“Article 7a<br>[…]<br>5. By way of derogation from the requirements of Regulation (EU) No 909/2014 that apply to a DLT SS or a DLT TSS by virtue of Article 5(1), first subparagraph 6(1), first subparagraph, point (c), and Article 6(2), first subparagraph, point (a), of this Regulation, entities operating in the simplified regime shall not be subject to the following parts of Regulation (EU) No 909/2014:<br>(a) Title II, Chapter III and Chapter IV, with the exception of Articles 6(3) and 6(4), 7(1) and 7(7) and 8;<br>(b) Article 22a(2) to (7) and 24a;<br>(c) Title III, Chapter II, with the exception of Articles 26(1) to 26(3), 26(5), 26(7), 27(1), 27(3), 27(5) to 27~~(7)~~**(10)**, 27a(1), 29(1) to 29(2), 30(1) to 30(3), 30(5), 32, 33(1), **33(4)**, 36, 37, 38(1), 38(2), **38(7),** 39(3), 39(5) **to 39(7)**, 40(1), 40(3), 41(1), 42 to 44, 45 (1) to (3), **45(5),** 45(6)**, 46(1) to (3)**; and<br>(d) Title VI.”;’ |
| *Explanation*<br>*This amendment aims to ensure that DLT SSs and TSSs operating under the simplified regime comply with certain essential requirements of the CSDR, or requirements that ensure the effectiveness of other essential requirements (all references are to the CSDR unless otherwise mentioned):*<br>• *Article 27(8) to (10) include important safeguards for the exercise of supervisory powers. Compliance implies no administrative or operational burden for DLT SS/TSS operators.* | |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| • *Article 33(4) requires the establishment of procedures for the suspension and exit of participants that no longer meet participation criteria, which are critical to ensure the effectiveness and objective enforcement of these criteria.*<br>• *Article 38(7) includes an important safeguard for DLT SS/TSS participants, restricting the DLT SS/TSS operators from using securities that do not belong to it without the participant's prior express consent. Compliance implies minimal administrative or operational burdens for DLT SS/TSS operators.*<br>• *Article 39(6) ensures the availability of funds for DLT SS/TSS participants. Any market infrastructure operating in wholesale financial markets should avoid trapping liquidity in its system.*<br>• *Article 39(7) requires delivery versus payment ) settlement, which should not be prevented by the use of DLT and should be required for all DLT SS/TSS (as envisaged e.g. in Article 5(8) of the DLTPR).*<br>• *Article 45(5) requires testing of business continuity / disaster recovery procedures and ICT tools, which is necessary to ensure the effectiveness of operational risk management requirements. The requirements for testing should rather be modulated through the proposed ESMA RTS, in line with the proposed Article 7a(6), point (b), of the DLTPR.*<br>• *Article 46(1) to (3) establish minimum safeguards for the DLT SS/TSS operator's investment policy, which should apply to all infrastructures to avoid overly risky investments of their assets.*<br>*See paragraph 5.1.3 of the ECB Opinion.* | |
| Amendment 40<br>Article 8, point (14), of the proposed master regulation<br>(Article 10b of the DLTPR) | |
| '(14) The following Articles 10a to 10g are inserted:<br>"[…]<br>Article 10b<br>[…]<br>5. A DLT SS, DLT TSS or a CSD operating solely under Regulation (EU) No 909/2014 may admit for settlement DLT financial instruments maintained in securities accounts managed by DLT account keepers that have an aggregate market value that amounts to no more than the amount specified under Article 3(2b) at the time of settlement of the first transaction. | '(14) The following Articles 10a to 10g are inserted:<br>"[…]<br>Article 10b<br>[…]<br>5. **The aggregate market value of all DLT financial instruments recorded by a DLT notary or maintained in securities accounts managed by a DLT account keeper shall not exceed the amount specified under Article 3(2) of Regulation (EU) No 2022/858 at the time of initial recording of a new DLT financial instrument.** |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| By derogation from the first subparagraph, a DLT SS, DLT TSS or a CSD operating solely under Regulation (EU) No 909/2014 may admit for settlement DLT financial instruments maintained in securities accounts managed by DLT account keepers that have an aggregate market value that amounts to no more than the EUR 30 billion at the time of settlement of the first transaction, where such DLT financial instruments are transferable securities issued by SMEs.<br>[…]<br>10. ESMA shall develop regulatory technical standards to specify the provisions of Title III of Regulation (EU) No 909/2014 that apply to each of the DLT notary and the DLT central maintenance service, and, where necessary, supplement the non-essential elements of the provisions of that title and amend regulatory technical standards to adapt them to the use of DLT and the specificities of business models involving the distributed provision of CSD core services.";' | A DLT SS, DLT TSS or a CSD operating solely under Regulation (EU) No 909/2014 may admit for settlement DLT financial instruments maintained in securities accounts managed by DLT account keepers that have an aggregate market value that amounts to no more than the amount specified under Article 3(2b) at the time of settlement of the first transaction.<br>By derogation from the first subparagraph, a DLT SS, DLT TSS or a CSD operating solely under Regulation (EU) No 909/2014 may admit for settlement DLT financial instruments maintained in securities accounts managed by DLT account keepers that have an aggregate market value that amounts to no more than the EUR 30 billion at the time of settlement of the first transaction, where such DLT financial instruments are transferable securities issued by SMEs.<br>[…]<br>10. ESMA**, in close cooperation with the European System of Central Banks,** shall develop regulatory technical standards to specify the provisions of Title III of Regulation (EU) No 909/2014 that apply to each of the DLT notary and the DLT central maintenance service, and, where necessary, supplement the non-essential elements of the provisions of that title and amend regulatory technical standards to adapt them to the use of DLT and the specificities of business models involving the distributed provision of CSD core services.";' |
| *Explanation*<br>*To ensure the overall consistency of the DLT pilot regime, the activity of DLT notaries and DLT account keepers should be limited overall, in line with the practice for DLT market infrastructures, and not only through a limitation applied to the DLT SS/TSS or CSD admitting their DLT financial instruments for settlement.* | |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| *Given the ESCB's role in the application of the CSDR and its interest in the safety and soundness of CSD services, the regulatory technical standards provided for under Article 10b should be developed in close cooperation with the ESCB.*<br>*See paragraph 5.5.1 of the ECB Opinion.* | |
| Amendment 41<br>Article 8, point (14), of the proposed master regulation<br>(Article 10c of the DLTPR) | |
| '(14) The following Articles 10a to 10g are inserted:<br>"[…]<br>Article 10c<br>Settlement within a settlement scheme<br>1. DLT account keepers shall settle transactions in DLT financial instruments under Article 10b(5) only within a settlement scheme authorised under Article 10d.<br>DLT account keepers shall only settle transactions with other DLT account keepers that are part of the same settlement scheme.<br>2. DLT account keepers settling transactions within a settlement scheme shall ensure that:<br>(a) all transactions are settled only with central bank deposits that the DLT account keepers hold with the central bank of issue of the relevant currency;<br>(b) all transactions in DLT financial instruments that involve a cash leg are settled on a DVP basis;<br>(c) the settlement scheme provides adequate settlement finality of transfers of cash and DLT financial instruments, ensuring:<br>(i) settlement finality is achieved at least on the day of the settlement date;<br>(ii) moments of entry and of irrevocability of transfer orders are clearly defined<br>(d) the settlement scheme effectively manages its legal, business and operational risks. | '(14) The following Articles 10a to 10g are inserted:<br>"[…]<br>Article 10c<br>Settlement within a settlement scheme<br>1. DLT account keepers shall settle transactions in DLT financial instruments under Article 10b(~~5~~**6**) only within a settlement scheme authorised under Article 10d.<br>DLT account keepers shall only settle transactions with other DLT account keepers that are part of the same settlement scheme.<br>2. DLT account keepers settling transactions within a settlement scheme shall ensure that:<br>(a) ~~all~~ **the cash leg of** transactions ~~are~~ **is** settled ~~only with central bank deposits~~ **in central bank money through accounts** that the DLT account keepers hold with the central bank of issue of the relevant currency;<br>(b) all transactions in DLT financial instruments that involve a cash leg are settled on a DVP basis;<br>(c) the settlement scheme provides adequate settlement finality of transfers of cash and DLT financial instruments, ensuring:<br>(i) settlement finality is achieved at least on the day of the settlement date;<br>(ii) moments of entry and of irrevocability of transfer orders are clearly defined; |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| 3. DLT account keepers settling transactions within a settlement scheme shall ensure that the settlement scheme they are a part of, and each DLT account keeper participating in the settlement scheme, complies with the following principles:<br>(a) ensuring safe, efficient and smooth settlement;<br>(b) ensuring robust risk management of operations, including management of credit and liquidity risk as specified in paragraphs 5 and 6; and<br>(c) ensuring protection of assets of clients of DLT account keepers.<br>4. DLT account keepers participating in a settlement scheme shall identify sources of operational risk to the functioning of the settlement scheme, both internal and external, and minimise their impact through the deployment of appropriate ICT tools, processes and policies set up and managed in accordance with Regulation (EU) 2022/2554 of the European Parliament and of the Council, as well as through any other relevant appropriate tools, controls and procedures for other types of operational risk.<br>5. DLT account keepers participating in a settlement scheme shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan, including ICT business continuity policy and ICT response and recovery plans established in accordance with Regulation (EU) 2022/2554, to ensure the preservation of settlement activities within the settlement scheme and the timely recovery of its operations.<br>DLT account keepers participating in a settlement scheme shall identify, monitor and manage the risks that service and utility providers might pose to its operations.<br>6. Each DLT account keeper providing banking services to their clients, related to the settlement activity within the settlement scheme, shall comply | (d) the settlement scheme effectively manages its legal, business and operational risks.<br>3. DLT account keepers settling transactions within a settlement scheme shall ensure that the settlement scheme they are a part of, and each DLT account keeper participating in the settlement scheme, complies with the following principles:<br>(a) ensuring safe, efficient and smooth settlement;<br>(b) ensuring robust risk management of operations, including management of credit and liquidity risk as specified in paragraphs **6** ~~5~~ and **8** ~~6~~; and<br>(c) ensuring protection of assets of clients of DLT account keepers.<br>**4. DLT account keepers participating in a settlement scheme shall establish common, effective and clearly defined rules and procedures to manage the default of one or more of their clients that use the settlement service they provide through the settlement scheme.**<br>**5.**~~4.~~ DLT account keepers participating in a settlement scheme shall identify sources of operational risk to the functioning of the settlement scheme, both internal and external, and minimise their impact through the deployment of appropriate ICT tools, processes and policies set up and managed in accordance with Regulation (EU) 2022/2554 of the European Parliament and of the Council, as well as through any other relevant appropriate tools, controls and procedures for other types of operational risk.<br>**6.**~~5.~~ DLT account keepers participating in a settlement scheme shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan, including ICT business continuity policy and ICT response and recovery plans established in accordance with Regulation (EU) 2022/2554, to ensure the preservation of |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| with the following specific prudential requirements for the credit risks related to those services:<br>(a) it shall establish a robust framework to manage the corresponding credit risks;<br>(b) it shall regularly identify the sources of such credit risks, measure and monitor corresponding credit exposures and use appropriate risk-management tools to control those risks;<br>(c) it shall fully cover corresponding credit exposures to individual borrowing participants using highly liquid collateral, or other collateral to which it shall apply appropriate haircuts, and other equivalent financial resources;<br>(d) it shall set appropriate limits on credit exposures to individual clients;<br>(e) it shall provide credit only to participants that have cash accounts with it; and<br>(f) it shall provide for effective reimbursement procedures of intra-day credit<br>7. Each DLT account keeper providing banking services to their clients, related to the settlement activity within the settlement scheme, shall comply with the following specific prudential requirements for the liquidity risks related to those services:<br>(a) it shall have a robust framework and tools to measure, monitor, and manage its liquidity risks, including intra-day liquidity risks, for each currency of the settlement scheme in which it settles transactions;<br>(b) it shall measure and monitor on an ongoing basis its liquidity needs and the level of liquid assets it holds;<br>(c) it shall have sufficient liquid resources in all relevant currencies for timely settlement of DLT financial instruments under a wide range of potential stress scenarios including, but not limited to the liquidity risk generated by the default of at least one participant, including its parent | settlement activities within the settlement scheme and the timely recovery of its operations.<br>DLT account keepers participating in a settlement scheme shall identify, monitor and manage the risks that service and utility providers might pose to its operations.<br>**7. Each DLT account keeper participating in a settlement scheme shall plan and carry out a programme of tests of the arrangements referred to in paragraphs 5 and 6.**<br>**8.**~~6.~~ Each DLT account keeper providing banking services to their clients, related to the settlement activity within the settlement scheme, shall comply with the following specific prudential requirements for the credit risks related to those services:<br>(a) it shall establish a robust framework to manage the corresponding credit risks;<br>(b) it shall regularly identify the sources of such credit risks, measure and monitor corresponding credit exposures and use appropriate risk-management tools to control those risks;<br>(c) it shall fully cover corresponding credit exposures to individual borrowing participants using highly liquid collateral, or other collateral to which it shall apply appropriate haircuts, and other equivalent financial resources;<br>(d) it shall set appropriate limits on credit exposures to individual clients;<br>(e) it shall provide credit only to participants that have cash accounts with it; and<br>(f) it shall provide for effective reimbursement procedures of intra-day credit<br>**9.**~~7.~~ Each DLT account keeper providing banking services to their clients, related to the settlement activity within the settlement scheme, shall comply with the following specific prudential requirements for the liquidity risks related to those services: |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| undertakings and subsidiaries, to which it has the largest exposures;<br>(d) where prearranged funding arrangements are used, it shall select only creditworthy financial institutions as liquidity providers and establish and apply appropriate concentration limits for each of the corresponding liquidity providers including its parent undertaking and subsidiaries;<br>(e) it shall have prearranged arrangements to ensure that it can liquidate in a timely fashion the collateral provided to it by a defaulting client.<br>8. DLT account keepers participating in a settlement scheme shall enter into a legally binding written agreement clearly specifying the roles and responsibilities of the DLT account keepers within the settlement scheme.<br>A DLT account keeper shall be a member of no more than two settlement schemes.<br>A settlement scheme shall comprise at least two DLT account keepers.<br>9. Each settlement scheme may admit for settlement DLT financial instruments maintained in securities accounts managed by its participating DLT account keepers that have an aggregate market value that amounts to no more than the amount specified under Article 3(2b) at the time of settlement of the first transaction.<br>Where the aggregate market value of all the DLT financial instruments that are admitted to settlement by a settlement scheme has reached the amount specified under Article 3(3), the DLT account keepers shall activate the transition strategy referred to in Article 10(e). The DLT account keepers shall notify ESMA of the activation of its transition strategy and of the timescale for the transition.<br>By derogation from the first subparagraph, each settlement scheme may admit for settlement DLT | (a) it shall have a robust framework and tools to measure, monitor, and manage its liquidity risks, including intra-day liquidity risks, for each currency of the settlement scheme in which it settles transactions;<br>(b) it shall measure and monitor on an ongoing basis its liquidity needs and the level of liquid assets it holds;<br>(c) it shall have sufficient liquid resources in all relevant currencies for timely settlement of DLT financial instruments under a wide range of potential stress scenarios including, but not limited to the liquidity risk generated by the default of at least one participant, including its parent undertakings and subsidiaries, to which it has the largest exposures;<br>(d) where prearranged funding arrangements are used, it shall select only creditworthy financial institutions as liquidity providers and establish and apply appropriate concentration limits for each of the corresponding liquidity providers including its parent undertaking and subsidiaries;<br>(e) it shall have prearranged arrangements to ensure that it can liquidate in a timely fashion the collateral provided to it by a defaulting client.<br>**10.**~~8.~~ DLT account keepers participating in a settlement scheme shall enter into a legally binding written agreement clearly specifying the roles and responsibilities of the DLT account keepers within the settlement scheme. **The written agreement shall establish common rules and procedures for the settlement scheme that are clear, understandable, and enforceable in all relevant jurisdictions. It shall be made available to the clients of the DLT account keepers that use the settlement service provided through the settlement scheme.** |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| financial instruments maintained in securities accounts managed by DLT account keepers that have an aggregate market value that amounts to no more than EUR 30 billion at the time of settlement of the first transaction, where such DLT financial instruments are transferable securities issued by SMEs. The DLT account keepers shall activate its transition strategy when the market value of those transferable securities reaches EUR 45 billion.<br>10. DLT account keepers shall report to ESMA on a monthly basis the following information:<br>(a) transfers that take place with the settlement scheme they participate to, including aggregate volumes;<br>(b) the aggregate market value of DLT financial instruments admitted for settlement, calculated in accordance with Article 3(4);<br>(c) most common issues that result in settlement fails;<br>(d) the extent and management of intra-day liquidity risk by each DLT account keeper;<br>(e) reporting on peak credit exposures to their clients, the type of collateral accepted, haircuts applied and collateral concentration.<br>DLT account keepers shall report sufficiently detailed information for ESMA to verify compliance of the settlement scheme and participating DLT account keepers with this Article.<br>The reporting requirement may be discharged by any DLT account keeper participating in the settlement scheme on behalf of other participants. All participants remain individually responsible for the completeness and veracity of information reported on their behalf.";' | A DLT account keeper shall be a member of no more than two settlement schemes.<br>A settlement scheme shall comprise at least two DLT account keepers.<br>**11.** ~~9.~~ Each settlement scheme may admit for settlement DLT financial instruments maintained in securities accounts managed by its participating DLT account keepers that have an aggregate market value that amounts to no more than the amount specified under Article 3(2b) at the time of settlement of the first transaction.<br>Where the aggregate market value of all the DLT financial instruments that are admitted to settlement by a settlement scheme has reached the amount specified under Article 3(3), the DLT account keepers shall activate the transition strategy referred to in Article 10(e). The DLT account keepers shall notify ESMA of the activation of its transition strategy and of the timescale for the transition.<br>By derogation from the first subparagraph, each settlement scheme may admit for settlement DLT financial instruments maintained in securities accounts managed by DLT account keepers that have an aggregate market value that amounts to no more than EUR 30 billion at the time of settlement of the first transaction, where such DLT financial instruments are transferable securities issued by SMEs. The DLT account keepers shall activate its transition strategy when the market value of those transferable securities reaches EUR 45 billion.<br>**12.** ~~10.~~ DLT account keepers shall report to ESMA on a monthly basis the following information:<br>(a) transfers that take place with the settlement scheme they participate to, including aggregate volumes; |

| Text proposed by the Commission | Amendments proposed by the ECB[11] |
|---|---|
| | (b) the aggregate market value of DLT financial instruments admitted for settlement, calculated in accordance with Article 3(4);<br>(c) most common issues that result in settlement fails;<br>(d) the extent and management of intra-day liquidity risk by each DLT account keeper;<br>(e) reporting on peak credit exposures to their clients, the type of collateral accepted, haircuts applied and collateral concentration.<br>DLT account keepers shall report sufficiently detailed information for ESMA to verify compliance of the settlement scheme and participating DLT account keepers with this Article.<br>The reporting requirement may be discharged by any DLT account keeper participating in the settlement scheme on behalf of other participants. All participants remain individually responsible for the completeness and veracity of information reported on their behalf.";' |
| *Explanation*<br>*The amendment aims to ensure that settlement schemes comply with requirements equivalent to those CSDR requirements with which DLT market infrastructures operating under the simplified regime are expected to comply, and to clarify that, where relevant, DLT account keepers participating in a settlement scheme should establish common rules and procedures to ensure the safe and smooth functioning of the scheme. While the coverage of relevant CSDR requirements is not exhaustive, this is intended to extend the requirement applicable to DLT account keepers to comply with the relevant CSDR requirements to be defined by the regulatory technical standards developed in accordance with Article 10b(10).*<br>*See paragraph 5.5.2 of the ECB Opinion.* | |

**Article 9 of the proposed master regulation**

**Proposed amendments to Regulation (EU) 2023/1114 (MiCAR)**

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| Amendment 42<br>Article 9, point (1a), of the proposed master regulation (new)<br>(Article 40(2) of MiCAR) | |
| No text. | '(1a) Article 40(2) is replaced by the following:<br>"2. Crypto-asset service providers shall not grant interest when providing crypto-asset services related to asset-referenced tokens **nor when engaging in any other activity with holders of asset-referenced tokens**.";' |
| *Explanation*<br>*This amendment strengthens the existing prohibition on granting interest for asset-referenced tokens (ARTs) by clarifying that it also applies to any other activity involving holders of ARTs. The aim of this is to prevent circumvention of the rule through unlicensed or ancillary activities as observed in the market, such as crypto-lending or borrowing schemes, which could undermine the regulatory intent, as well as to counter risk taking by CASPs for which they are not requested to hold own funds.* | |
| Amendment 43<br>Article 9, point (1b), of the proposed master regulation (new)<br>(Article 50(2) of MiCAR) | |
| No text. | '(1b) Article 50(2) is replaced by the following:<br>"2. Crypto-asset service providers shall not grant interest when providing crypto-asset services related to e-money tokens **nor when engaging in any other activity with holders of e-money tokens**.";' |
| *Explanation*<br>*This amendment strengthens the existing prohibition on granting interest for EMTs by clarifying that it also applies to any other activity involving holders of EMTs. The aim is to prevent circumvention of the rule through unlicensed or ancillary activities as observed in the market, such as crypto-lending* | |

12 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| *or borrowing schemes, which could undermine the regulatory intent, as well as to counter risk taking by CASPs for which they are not requested to hold own funds.* | |
| Amendment 44<br>Article 9, point (3), of the proposed master regulation<br>(Article 60 of MiCAR) | |
| '(3) in Article 60, the following paragraph 6a is inserted:<br>"6a. The entities referred to in paragraphs 2 to 6 shall be required to submit yearly to their competent authority and ESMA information on their total annual turnover, in particular, the percentage of their total annual turnover according to the last available financial statements approved by their management body, which is generated from the provision of crypto-asset services.";' | '(3) ~~in~~ Article 60~~, the following paragraph 6a~~ is ~~inserted~~ **amended as follows:**<br>**(a) paragraph 1 is replaced by the following:**<br>**"1. A credit institution may provide crypto-asset services if it notifies the information referred to in paragraph 7 to ESMA at least 40 working days before providing those services for the first time. ESMA shall forward the notification submitted by the credit institution to the authority in charge of conducting supervision under Directive 2013/36/EU.";**<br>**(b) paragraph 3 is replaced by the following: "3. An investment firm may provide crypto-asset services in the Union if it notifies the competent authority of the home Member State of the information referred to in paragraph 7 of this Article at least 40 working days before providing those services for the first time.**<br>**For the purposes of this paragraph:**<br>[…]<br>**(j) providing transfer services for crypto-assets on behalf of clients is a new activity investment firms are entitled to engage in. Where such transfers relate to e-money tokens this also requires notification by the ESMA to the competent authorities under Directive 2009/110/EC and compliance with the applicable requirements under Directive (EU) 2015/2366.';** |

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| | **(c)** the following paragraph 6a is inserted:<br>'6a. The entities referred to in paragraphs 2 to 6 shall be required to submit yearly to their competent authority and ESMA information on their total annual turnover, in particular, the percentage of their total annual turnover according to the last available financial statements approved by their management body, which is generated from the provision of crypto-asset services.';' |
| Explanation<br>*This amendment proposes that credit institutions notify ESMA rather than the competent authority of their home Member State under MiCAR. For information purposes, ESMA should forward such notifications to the authority in charge of conducting supervision under the CRD as such activities may have other implications, such as for the bank's business model, governance, risk management, capital and liquidity requirements.*<br>*Moreover, in view of the need for simplification and proportionality, investment firms, which can already provide all but one crypto-asset service under their MiFID licence, should be allowed to provide all crypto-asset services based on a notification. In view of simplification and to reduce the number of double licences, in case of EMT transfers, investment firms should notify the competent authorities under Directive (EU) 2015/2366 of the European Parliament and of the Council[13] and Directive 2009/110/EC of the European Parliament and of the Council[14] and comply with those requirements, rather than apply for a separate payment service licence*.<br>*See paragraph 7.2 of the ECB Opinion.* | |
| Amendment 45<br>Article 9, point (5)(b), of the proposed master regulation<br>(Article 63(6) of MiCAR) | |
| '(b) paragraphs 1 to 9 are replaced by the following: | '(b) paragraphs 1 to 9 are replaced by the following: |

13 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35, ELI: http://data.europa.eu/eli/dir/2015/2366/oj).

14 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, p. 7, ELI: http://data.europa.eu/eli/dir/2009/110/oj).

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| […]<br>"6. Before granting or refusing an authorisation as a crypto-asset service provider, ESMA:<br>a) may consult the competent authorities for anti-money laundering and counter-terrorist financing and financial intelligence units of the home Member State, in order to verify that the applicant crypto-asset service provider has not been the subject of an investigation into conduct relating to money laundering or terrorist financing;<br>(b) may consult the competent authorities for anti-money laundering and counter-terrorist financing of the home Member State, to ensure that the applicant crypto-asset service provider that operates establishments or relies on third parties established in high-risk third countries identified pursuant to [Article 9 of Directive (EU) 2015/849 complies with the provisions of national law transposing Articles 26(2), 45(3) and 45(5) of that Directive];(c) shall, where appropriate, consult the competent authorities for anti-money laundering and counter-terrorist financing of the home Member State to ensure that the applicant crypto-asset service provider has put in place appropriate procedures to comply with the provisions of national law transposing [Article 18a(1) and (3) of Directive (EU) 2015/849].";' | […]<br>"6. Before granting or refusing an authorisation as a crypto-asset service provider, ESMA:<br>a) ~~may~~ **shall** consult the competent authorities for anti-money laundering and counter-terrorist financing and financial intelligence units of the home Member State, in order to verify that the applicant crypto-asset service provider **and entities of the same group** ~~has~~ **have** not been the subject of an investigation into conduct relating to money laundering or terrorist financing;<br>(b) ~~may~~ **shall** consult the competent authorities for anti-money laundering and counter-terrorist financing of the home Member State, to ensure that the applicant crypto-asset service provider that operates establishments or relies on third parties established in high-risk third countries identified pursuant to [Article 9 of Directive (EU) 2015/849 complies with the provisions of national law transposing Articles 26(2), 45(3) and 45(5) of that Directive];<br>(c) shall~~, where appropriate,~~ consult the competent authorities for anti-money laundering and counter-terrorist financing of the home Member State to ensure that the applicant crypto-asset service provider has put in place appropriate procedures to comply with the provisions of national law transposing [Article 18a(1) and (3) of Directive (EU) 2015/849].";' |

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| *Explanation*<br>*Checking with competent authorities for anti-money laundering and counter-terrorist financing should be mandatory rather than optional, which is what this amendment reflects. Such competent authorities should also consider findings related to other entities within the group.* | |
| Amendment 46<br>Article 9, point (7a), of the proposed master regulation (new)<br>(Article 67 of MiCAR) | |
| No text. | ‘**(7a) Article 67 is amended as follows:**<br>**(a) in paragraph 1, the following point (c) is added**:<br>**“(c) the K-factor requirement calculated in accordance with Article 15 of Regulation (EU) 2019/2033 of the European Parliament and of the Council(*). For this purpose, the K-factor methodology shall apply to crypto-asset services under this Regulation by reference to their equivalent activities under Directive 2014/65/EU, ensuring that custody and administration of crypto-assets corresponds to K-AUM, the operation of a trading platform corresponds to K-NPR, execution and transmission of orders and placement correspond to K-COH, exchange of crypto-assets for funds or other crypto-assets corresponds to K-DTF, and lending or borrowing of crypto-assets corresponds to K-TCD.”;**<br>**(b) the following paragraphs 1a and 1b are inserted:**<br>**“1a. ESMA shall require a crypto-asset service provider to hold an amount of own funds which is up to 20 % higher than the amount resulting from the application of paragraph 1 where the crypto-asset service provider is exposed to risks or elements of risk, not or not** |

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| | **sufficiently covered, by paragraph 1 or where other institution-specific circumstances raise material supervisory concerns.**<br>**1b. ESMA shall take the necessary measures to prevent the multiple use of elements eligible for own funds where the crypto-asset service provider belongs to the same group as another financial institution. This paragraph shall also apply where a crypto-asset service provider is of a hybrid character and carries out activities other than crypto-asset services.;**<br>**(*) Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/2033/oj).”’** |
| *Explanation*<br>*The current MiCAR framework sets out fixed minimum capital requirements and a simple overhead-based calculation for CASPs. While this provides a baseline, it does not adequately reflect the risk profile of CASPs engaging in diverse and complex activities such as custody, proprietary trading, lending, and order execution. These activities are economically and operationally similar to those performed by investment firms under MiFID, which are subject to risk-sensitive capital requirements under Regulation (EU) 2019/2033 of the European Parliament and of the Council[15] (hereinafter the ‘IFR’). In view of this, to ensure a level playing field and robust prudential safeguards, CASPs should also be subject to a comparable risk-based approach. This is what this amendment aims to achieve.*<br>*Indeed, the IFR’s K-factor methodology is designed to capture risks to clients, markets, and the firm itself, and is therefore well-suited to address the operational and counterparty risks inherent in crypto-asset services. Applying this methodology to CASPs - through a clear mapping of MiCAR services to equivalent MiFID activities - ensures that own funds requirements scale with the actual risk drivers of the business model, rather than relying solely on static thresholds.* | |

15 Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/2033/oj).

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| *This alignment achieves three key objectives:*<br>- *Risk sensitivity: capital requirements reflect the nature and scale of CASP activities, mitigating prudential, financial stability and investor protection risks.*<br>- *Regulatory consistency: harmonisation with existing Union prudential frameworks avoids regulatory arbitrage and supports supervisory convergence.*<br>- *Proportionality: this approach accommodates both small and large CASPs by combining fixed overheads, minimum capital floors, and activity-based K-factors.*<br>*See paragraph 7.1.1 of the ECB Opinion.* | |
| Amendment 47<br>Article 9, point (8)(b)(c), of the proposed master regulation<br>(Article 68(8) and (9) of MiCAR) | |
| ‘(b) in paragraph 8, first subparagraph, the first sentence is replaced with the following:<br>“8. Crypto-asset service providers shall have in place mechanisms, systems and procedures as required by Regulation (EU) 2022/2554, as well as effective procedures and arrangements for risk assessment, to comply with the provisions of national law transposing [Directive (EU) 2015/849] in their home Member State.”;<br>(c) paragraph 9 is replaced by the following:<br>“9. Crypto-asset service providers shall arrange for records to be kept of all crypto-asset services, activities, orders, and transactions undertaken by them. Those records shall be sufficient to enable ESMA to fulfil its supervisory tasks and to take enforcement measures, and in particular to ascertain whether crypto-asset service providers have complied with all obligations including those with respect to clients or prospective clients and to the integrity of the market.<br>The records kept pursuant to the first subparagraph shall be provided to clients upon request and shall be kept for a period of five | ‘(b) in paragraph 8, first subparagraph, the first sentence is replaced with the following:<br>“8. Crypto-asset service providers shall **establish and maintain strategies and policies for taking up, managing, monitoring and mitigating the risks that the said crypto-asset service provider is or might be exposed to, including those posed by the macroeconomic environment in which they operate. They shall** have in place mechanisms, systems and procedures as required by Regulation (EU) 2022/2554, as well as effective procedures and arrangements for risk assessment, to comply with the provisions of national law transposing [Directive (EU) 2015/849] in their home Member State.”;<br>(c) paragraph 9 is replaced by the following:<br>“9. Crypto-asset service providers shall arrange for records to be kept of all crypto-asset services, activities, orders, and transactions undertaken by them. Those records shall be sufficient to enable ESMA to fulfil its supervisory tasks and to take enforcement measures, and in particular to |

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| years and, where requested by competent authorities or ESMA for crypto-asset service providers authorised pursuant to Article 63, before five years have elapsed, for a period of up to seven years.';" | ascertain whether crypto-asset service providers have complied with all obligations including those with respect to clients or prospective clients and to the integrity of the market. **Crypto-asset service providers conducting any of the activities listed in Class 2 or 3 of Annex IV of this Regulation, shall be considered public-interest entities as defined by Article 2, point 13, of Directive 2006/43/EC of the European Parliament and of the Council(*) and thus subject to statutory audit as set out by Regulation (EU) 537/2014 of the European Parliament and of the Council(**).**<br>The records kept pursuant to the first subparagraph shall be provided to clients upon request and shall be kept for a period of five years and, where requested by competent authorities or ESMA for crypto-asset service providers authorised pursuant to Article 63, before five years have elapsed, for a period of up to seven years.;<br>(*) **Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87, ELI: http://data.europa.eu/eli/dir/2006/43/oj).**<br>**(**) Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77, ELI: http://data.europa.eu/eli/reg/2014/537/oj).'"** |
| *Explanation* | |

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| *This amendment is designed to strengthen risk management. Currently, MiCAR does not impose any requirement regarding the legal form of undertakings operating as CASPs. Consequently, some entities may not be subject to independent audits and, under national law, may not be required to publish financial statements. In contrast, MiFID provides that where a natural person offers services involving the holding of third-party funds or transferable securities, that person's annual accounts must be audited by one or more persons authorised under national law. The absence of such safeguards under MiCAR creates a risk of undetected misappropriation of client assets. For example, the collapse of FTX illustrates that external verification of asset segregation could have prevented or significantly mitigated the severity of losses. Thus all CASPs should be subject to independent audits.*<br>*See paragraph 7.1.1 of the ECB Opinion.* | |
| Amendment 48<br>Article 9, point (14), of the proposed regulation<br>(Article 85 of MiCAR) | |
| '(14) Article 85 is deleted;' | '(14) Article 85 is ~~deleted~~ **replaced by the following**:<br>"**1. A crypto-asset service provider shall be deemed significant if, in the Union, it meets at least three of the following criteria:**<br>**(a) the crypto-asset service provider has at least 10 million active users, on average, in one calendar year, where the average is calculated as the average of the daily number of active users throughout the previous calendar year. A user is always considered active when it maintains an account with a balance either in funds or in crypto-assets irrespective of the execution of any transactions;**<br>**(b) the crypto-asset service provider is designated under Article 31 of Regulation (EU) 2022/2554 as a critical ICT third-party service provider;**<br>**(c) the volume of trades for the crypto-asset service provider's platforms exceeds EUR 1.2** |

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
| --- | --- |
| | **billion, measured over the preceding 12 months;**<br>**(d) the value of crypto-assets under the crypto-asset service provider's custody and/or administration exceeds EUR 1.2 billion, calculated by the total value of crypto-assets safeguarded or administered for clients;**<br>**(e) the average daily volume of client orders executed or transmitted by the crypto-asset service provider exceeds EUR 100 million, measured over the preceding six months;**<br>**(f) the crypto-asset service provider's balance sheet total exceeds EUR 1.2 billion, based on its most recent audited financial statements;**<br>**(g) the crypto-asset service provider, or any entity within its group, issues at least one asset-referenced token or e-money token;**<br>**(h) the crypto-asset service provider, or any entity within its group, is a provider of core platform services designated as a gatekeeper in accordance with Regulation (EU) 2022/1925;**<br>**(i) the activities of the crypto-asset service provider are significant on an international scale, including the conduct of proprietary trading, crypto-asset lending and/or borrowing;**<br>**(j) the crypto-asset service provider is interconnected with the financial system.**<br>**If the crypto-asset service provider is part of a group, the total of all crypto-asset related activities of the group shall be considered. The criteria for identifying significant crypto-asset service providers shall be subject to periodic review, to assess the calibration of the criteria, and to ensure their continued relevance, proportionality, and effectiveness. This review shall include an assessment of the** |

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
| --- | --- |
| | **thresholds, indicators, and metrics employed in the determination of significance, taking into account evolving market conditions, technological developments, and systemic risk considerations.**<br>**(***) Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (OJ L 333, 27.12.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/2554/oj)**<br>**2. Crypto-asset service providers shall notify ESMA within two months of fulfilling any of the criteria set out in paragraph 1. ESMA shall assess the information provided and, where at least three of the criteria are fulfilled, it shall publish, within two months, a decision on whether to designate the crypto-asset service provider as significant.**<br>**3. Significant crypto-asset service providers shall, within a timeframe defined by ESMA, comply with the following, at both individual and group level:**<br>**(a) if not already regulated under Article 21b of Directive 2013/36/EU, a significant crypto-asset service provider shall establish a financial holding company in the Union for all its activities related to financial services, become subject to consolidated group supervision by ESMA and disclose its worldwide group structure and close links to ESMA and other competent authorities within the Union;**<br>**(b) a significant crypto-asset service provider shall establish and maintain written policies and procedures regarding internal** |

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
| --- | --- |
| | **governance and risk management which are commensurate to the size, complexity and riskiness of its operations. Significant crypto-asset service providers engaging in activities that give rise to maturity or liquidity transformation, or to leverage risk, shall ensure that appropriate policies and procedures are established and maintained to address such risks as part of its internal control framework;**<br>**(c) a significant crypto-asset service provider shall establish and maintain a remuneration policy that promotes the sound and effective risk management of such crypto-asset service provider and that does not create incentives to relax risk standards;**<br>**(d) a significant crypto-asset service provider shall establish a recovery plan at group level for its total Union financial services activities. If such a crypto-asset service provider is part of a group with subsidiaries, branches or affiliated entities established in, or operating from, offshore jurisdictions, the recovery plan shall pay due attention to the implications deriving from such parties;**<br>**(e) a significant crypto-asset service provider shall notify ESMA of any material change to the business model. The commencement or modification of activities entailing crypto-assets, although not subject to this Regulation, shall also constitute a material change to the business model;**<br>**(f) a significant crypto-asset service provider shall obtain prior approval for the appointment of any new member of the management body or any key function holder;** |

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| | **(g) a significant crypto-asset service provider shall comply with enhanced requirements with respect to the identification, prevention, management and disclosure of conflicts of interest;**<br>**(h) a significant crypto-asset service provider shall submit enhanced reporting on risks and activities as defined by ESMA at individual and group level.**<br>**4. ESMA, in cooperation with the EBA and the ECB, shall develop draft regulatory technical and implementing standards to specify, for the purposes of this Article, the requirements under paragraph 3, points (b), (c), (d), (g) and (h). ESMA shall submit those draft regulatory technical and implementing standards to the Commission within six months from the date of approval of this Regulation.**<br>**5. With respect to paragraph 3, point (d), ESMA shall consult all other impacted competent authorities within the Union to ensure the adequacy of the group-wide recovery plan.";**' |

*Explanation*

*This amendment complements the proposed master regulation which aims to centralise CASP supervision under ESMA by enhancing the existing framework for identifying significant CASPs with a view to introducing a risk-based framework for imposing additional requirements on significant CASPs.*

*While the proposed master regulation transfers authorisation and oversight of all CASPs to ESMA, it does not differentiate between small and large entities. This amendment addresses that gap by defining objective criteria for systemic relevance and by imposing proportionate obligations. This is necessary because large CASPs can pose systemic risks similar to other major financial institutions, given their scale, cross-border operations, and concentration risks.*

*Concretely, the amendment replaces the single user-based trigger in MiCAR with a multi-dimensional test where a CASP is deemed significant if it meets at least three of ten criteria, assessed on a group-wide basis. This approach ensures systemic risk drivers beyond client count are considered.*

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| *Equally, by requiring CASPs to notify ESMA upon reaching defined thresholds, the amendment ensures timely supervisory action which provides legal certainty and transparency, enabling proportional oversight. Significant CASPs should comply with enhanced group-level obligations within 12 months of achieving the status of significance, including by establishing a Union financial holding company, implementing group-wide governance and risk management policies, adopting sound remuneration frameworks, and preparing a recovery plan for Union financial services activities. Additional measures include prior approval for management appointments, strengthened conflict-of-interest controls, and enhanced reporting at entity and group level.*<br>*Finally, the amendment proposes that ESMA, in cooperation with the EBA and the ECB, be mandated to develop draft regulatory technical and implementing standards to specify governance, risk, recovery planning and reporting requirements. For recovery planning, ESMA must consult other impacted authorities to ensure adequacy and consistency across sectors.*<br>*These changes introduce a proportionate escalation mechanism for CASPs of systemic relevance, they reduce supervisory fragmentation, and align oversight with prudential principles applied to other large financial groups.*<br>*See paragraph 7.1.2 of the ECB Opinion.* | |
| Amendment 49<br>Article 9, point (22), of the proposed master regulation<br>(Article 138a(2) of MiCAR) | |
| ‘(22) in Title VII, the following Chapter 6 is inserted:<br>“[…]<br>2. ESMA shall be responsible for the ongoing supervision and carrying out the supervisory functions and duties provided in this Regulation, as well as the supervisory functions and duties provided in other Union legislative acts on financial services for entities allowed to provide crypto-asset services pursuant to Article 60(2) to (6), whose main activity is the provision of crypto asset services.<br>An entity shall be considered to be providing crypto asset services as its main activity when more than 50% of its total annual turnover according to the last available financial | ‘(22) in Title VII, the following Chapter 6 is inserted:<br>“[…]<br>2. ESMA shall be responsible for the ongoing supervision and carrying out the supervisory functions and duties provided in this Regulation, as well as the supervisory functions and duties provided in other Union legislative acts on financial services for entities allowed to provide crypto-asset services pursuant to Article 60(2) to (6), whose main activity is the provision of crypto asset services.<br>An entity shall be considered to be providing crypto asset services as its main activity when**, with regard to the total amount of financial** |

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| statements approved by the management body, is generated from the provision of crypto-asset services, for at least 2 consecutive years.<br>In the case of the entities referred to in the first subparagraph, ESMA shall enter into cooperation agreements with the competent authorities that authorised those entities under other Union legislative acts on financial services. On the basis of the cooperation agreement, those competent authorities shall provide support and assistance to ESMA in the supervision of the activities that are not covered by this Regulation.' | **service activities in the Union, any of the following apply:**<br>**(a)** more than 50% of its total annual turnover according to the last available financial statements approved by the management body, is generated from the provision of crypto-asset services, for at least 2 consecutive years**;**<br>**(b) More than 50 % of its total volume of operations derives from crypto-asset services, including proprietary trading in crypto-assets and derivatives, or from borrowing and lending of crypto-assets;**<br>**(c) More than 50 % of its total assets or liabilities are related to crypto-asset services, including proprietary trading in crypto-assets and derivatives, or to borrowing and lending of crypto-assets;**<br>**(d) For entities that are part of a group, the calculation of turnover, and volume of operations and total assets or liabilities in the Union is performed on a consolidated basis, taking into account all entities within the group that provide crypto-asset services or related activities in the Union.**<br>**The thresholds apply if either the single-entity or the consolidated calculation exceeds the limits set out in points (a) or (b).**<br>In the case of the entities referred to in the first subparagraph, ESMA shall enter into cooperation agreements with the competent authorities (specifically, those that authorised those entities under other Union legislative acts on financial services). On the basis of the cooperation agreement, those competent authorities shall provide support and assistance to ESMA in the supervision of the activities that are not covered by this Regulation.' |

| Text proposed by the Commission | Amendments proposed by the ECB[12] |
|---|---|
| | *Explanation*<br>*Reliance on a single metric such as 50 % turnover may not adequately capture business models where the key risk driver is the volume of operations (e.g. custody, trading venue). Consideration should also be given to proprietary trading in crypto assets and derivatives as well as borrowing and lending of crypto assets; these are activities that give rise to material risks which would not be captured by a turnover-based approach. Moreover, the anchor for these criteria should be the total financial service activities in the Union in order to avoid the circumvention of these criteria by conducting other unregulated activities.*<br>*See paragraph 7.2 of the ECB Opinion.* |

**Article 11 of the proposed master regulation**

**Proposed amendments to Regulation (EU) 2016/1011 (the Benchmarks Regulation)**

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| Amendment 50<br>Article 11, point (2)(b), of the proposed master regulation<br>(Article 48f(2) of Regulation (EU) 2016/1011) | |
| ‘(b) paragraph 2 is replaced by the following:<br>“Notwithstanding Article 39f of Regulation (EU) No 1095/2010, the maximum amount of the fine for infringements of point (d) of Article 11(1) or of Article 11(4) shall be EUR 250 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency according to euro foreign exchange reference rate published by the European Central Bank applying on the date when the fine was imposed or 2 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, whichever is the higher for legal persons, and EUR 100 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency according to euro foreign exchange | ‘(b) paragraph 2 is replaced by the following:<br>“Notwithstanding Article 39f of Regulation (EU) No 1095/2010, the maximum amount of the fine for infringements of point (d) of Article 11(1) or of Article 11(4) shall be EUR 250 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency according to ~~euro foreign exchange reference rate published by the European Central Bank~~ **a foreign exchange benchmark rate that complies with this Regulation and which applies** ~~applying~~ on the date when the fine was imposed or 2 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, whichever is the higher for legal persons, and EUR 100 000 or, in the Member States whose official currency is not the |

| Text proposed by the Commission | Amendments proposed by the ECB |
|---|---|
| reference rate published by the European Central Bank applying on the date when the fine was imposed for natural persons.<br>For the purposes of Article 39f paragraph 2 point (a) of Regulation (EU) No 1095/2010, where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.";' | euro, the corresponding value in the national currency according to ~~euro foreign exchange reference rate published by the European Central Bank~~ **a foreign exchange benchmark rate, which complies with this Regulation and which applies** ~~applying~~ on the date when the fine was imposed for natural persons.<br>For the purposes of Article 39f paragraph 2 point (a) of Regulation (EU) No 1095/2010, where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.";' |
| *Explanation*<br>*See Amendments 10 and 11.* | |

**Technical working document (2/3)**

**produced in connection with ECB Opinion [CON/2026/13][16]**

**Drafting proposals in relation to the proposal for a Regulation of the European Parliament and of the Council on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements (the proposed settlement finality regulation or proposed SFR)**

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| Amendment 1<br>Article 2(1) | |
| ‘1. For the purpose of this Regulation, the following definitions shall apply:<br>[…]<br>(3) “settlement” means settlement as defined in Article 2(1), point (7), of Regulation (EU) No 909/2014 of the European Parliament and of the Council;<br>[…]<br>(5) “securities settlement system” means a system whose activity consists of the settlement of transfer orders;<br>[…]<br>(12) “central securities depository” or “CSD” means a central securities depository as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014;<br>[…]<br>(14) ‘clearing house’ means an entity responsible for the calculation of the net positions of institutions, including a CCP or a settlement agent;<br>[…]<br>(15) “participant” means any of the following entities, which participates in a system: | ‘1. For the purpose of this Regulation, the following definitions shall apply:<br>[…]<br>(3) “settlement” means**, as regards securities settlement,** settlement as defined in Article 2(1), point (7), of Regulation (EU) No 909/2014 of the European Parliament and of the Council**, and as regards payment settlement, the completion of transfers of funds with the aim of discharging payment obligations of the parties**;<br>[…]<br>(5) “securities settlement system” means a system whose activity consists of the settlement of transfer orders**, where at least one of the transfer orders settled for each transaction is an instruction referred to in point (20)(b) of this paragraph**;<br>[…]<br>(12) “central securities depository” or “CSD” means a central securities depository as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014; |

16 This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published on EUR-Lex alongside the opinion itself.

17 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| […]<br>(vii) an entity other than the entities listed in points (i) to (vi);<br>[…]<br>(16) “system member” means an entity referred to in point (15) (a)(vii);<br>[…]<br>(20) “transfer order” means any of the following instructions, including instructions that require the use of a cryptographic key or other device or method to digitally sign:<br>(a) an instruction by a participant to place at the disposal of a recipient or member an amount of funds which results in the assumption or discharge of a payment obligation as laid down in the rules of the system;<br>(b) an instruction by a participant to transfer the title to, or interest in, financial instruments and other instruments, where authorised by the system, including in relation to collateral arrangements and clearing, recorded by means of a book-entry or electronic recording on a register having a similar function or otherwise;’ | **(12a) “DLT settlement system” or “DLT SS” means a DLT settlement system as defined in Article 2(7) of Regulation (EU) 2022/858;**<br>**(12b) “DLT trading and settlement system” or “DLT TSS” means a DLT trading and settlement system as defined in Article 2(10) of Regulation (EU) 2022/858;**<br>[…]<br>(14) “clearing house” means an entity**, including a CCP or settlement agent,** responsible for the calculation of the net positions of institutions~~, including a CCP or a settlement agent~~;<br>[…]<br>(15) “participant” means any of the following entities, which participates in a system:<br>[…]<br>(vii) ~~an entity~~ **a legal person** other than the entities listed in points (i) to (vi);<br>[…]<br>(16) “system member” means ~~an entity~~ **a legal person** referred to in point (15) (a)(vii);<br>[…]<br>(20) “transfer order” means any of the following instructions, including instructions that require the use of a cryptographic key or other device or method to digitally sign, **recorded by means of a book-entry or electronic recording on a register having a similar function or otherwise**:<br>(a) an instruction by a participant to place at the disposal of a recipient or member an amount of funds which results in the assumption or discharge of a payment obligation as laid down in the rules of the system;<br>(b) an instruction by a participant to transfer the title to, or interest in, financial instruments and other instruments, where authorised by the |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| | system, including in relation to collateral arrangements and clearing~~, recorded by means of a book-entry or electronic recording on a register having a similar function or otherwise~~;' |
| *Explanation*<br>*The proposed definition of 'settlement' covers only securities settlement and should also cover payment settlement. Conversely, the proposed definition of 'securities settlement system' is very broad and could be construed to cover payment systems as well. Suggestions are made in both respects.*<br>*New definitions of DLT SS and DLT TSS should be introduced in order to clarify – in relation to the definition of designating authority proposed in Amendment 2 – that they are within the scope of the proposed SFR.*<br>*The existing definition of clearing house should be adjusted to avoid any misinterpretation and clarify that the phrase 'including a CCP or a settlement agent' refers to a clearing house and not to 'institutions'.*<br>*As regards the definitions of 'participant' and 'system member', the term 'entity' is not fully clear, and it is thus suggested to refer to 'legal persons' in the definition of 'participant', as all other entities listed are also legal persons. Any future inclusion of natural persons in the definition of 'participant' or 'system member' should be subject to a thorough impact assessment. Financial market infrastructures establish legal, financial and operational requirements for their participants to fulfil in a timely manner. This, notably, involves having in place adequate information and communication technology systems and sufficient staff. The legal soundness and financial and operational capacity of participants are key safeguards for the stability of financial market infrastructures and for settlement efficiency, justifying the restriction of participation to legal entities (preferably, regulated financial institutions). Private individuals should not be able to become participants.*<br>*As regards the definition of transfer order, recording by means of book-entry or electronic recording could refer to both categories of instructions.*<br>*See paragraphs 4.3 and 6.5 of the ECB Opinion.* | |
| Amendment 2<br>Article 2(1) | |
| '1. For the purpose of this Regulation, the following definitions shall apply:<br>[…] | '1. For the purpose of this Regulation, the following definitions shall apply:<br>[…] |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| (33) “designating authority” means the competent authority responsible for designating the system in accordance with Article 4(1);<br>(34) “national competent authority” means the competent authority in the Member State where the system operator is established;<br>(35) “registering authority” means the competent authority responsible for registration the system in accordance with Article 12;’ | (33) “designating authority” means ~~the competent authority responsible for designating the system in accordance with Article 4(1);~~**:**<br>**(a) for systems operated by CCPs:**<br>**(i) ESMA, for significant CCPs defined in Article 2(1a) of Regulation (EU) No 648/2012, or**<br>**(ii) a competent authority designated in accordance with Article 22(1) of that Regulation for less significant CCPs defined in Article 2(1b) of that Regulation, or**<br>**(iii) by way of derogation from point (ii), the ESCB member responsible for the oversight of CCPs, where appointed by a Member State in accordance with Article 10;**<br>**(b) for securities settlement systems operated by CSDs:**<br>**(i) ESMA, for significant CSDs defined in Article 2(1a) of Regulation (EU) No 909/2014, or**<br>**(ii) a competent authority designated in accordance with Article 10(1) of that Regulation, for less significant CSDs defined in Article 2(1b) of that Regulation, or**<br>**(iii) by way of derogation from point (ii), the ESCB member responsible for the oversight of securities settlement systems, where appointed by a Member State in accordance with Article 10;**<br>**(c) for securities settlement systems operated by the operator of a DLT settlement system or a DLT trading and settlement system:**<br>**(i) a competent authority as defined in Article 2(21) of Regulation (EU) 2022/858, or** |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
| --- | --- |
| | **(ii) by way of derogation from point (i), the ESCB member responsible for the oversight of securities settlement systems, where appointed by the Member State in accordance with Article 10;**<br>**(d) for payment systems identified in accordance with Article 3(3) of Regulation (EU) 2025/1355 of the European Central Bank (ECB/2025/22)(*), the competent authority defined in Article 2(7) of that Regulation;**<br>**(e) for payment systems other than those referred to in point (d), the member of the ESCB responsible for the oversight of their system operator;**<br>**(f) by way of derogation from points (a) to (d), for any system operated by a member of the ESCB, the member of the ESCB overseeing the system;**<br>**(33a) "competent authority" means an authority appointed pursuant to Article 10;**<br>(34) "national competent authority" means ~~**the competent authority in the Member State where the system operator is established**~~**:**<br>**(a) as regards systems operated by significant CCPs as defined in Article 2(1a) of Regulation (EU) No 648/2012, the authority designated in accordance with Article 22(1) of that Regulation; and**<br>**(b) as regards securities settlement systems operated by significant CSDs as defined in Article 2(1a) of Regulation (EU) No 909/2014, the authority designated in accordance with Article 10(1) of that Regulation**;<br>(35) "registering authority" means the competent authority ~~responsible for registration the system~~ **designated** in accordance with Article 12;<br>**(35a) "coordinating authority" means ESMA as regards third-country securities settlement** |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| | **systems and clearing systems, and the ECB as regards third-country payment systems;**<br><br>**(*) Regulation (EU) 2025/1355 of the European Central Bank of 2 July 2025 on oversight requirements for systemically important payment systems (ECB/2025/22) (OJ L, 2025/1355, 14.7.2025, ELI:** http://data.europa.eu/eli/reg/2025/1355/oj**)**’ |
| *Explanation*<br>*These amendments aim to refine the definition of ‘designating authority’ to ensure that in all cases where the system operators are authorised under Union law or overseen by ESCB central banks, the designating authority is the competent authority responsible for the supervision or oversight of the system operator, or, by way of derogation, in the case of a system operated by a central bank, the central bank itself. This would avoid any duplication between the regulatory and oversight frameworks to which a system operator is subject and the assessment of its compliance with the requirements of this Regulation envisaged prior to designation. The definition of national competent authority is adjusted accordingly, as it would then be only relevant for systems operated by a CCP or CSD supervised by ESMA. Additionally, in relation to the proposed simplification of the registration process for third-country systems, it is suggested to introduce a definition of ‘coordinating authority’.*<br>*See paragraph 6.2 of the ECB Opinion.* | |
| Amendment 3<br>Article 3 | |
| ‘2. The designating authority of the Member State whose law governs the system may designate the system, where at least one of its participants has its head office in that Member State.’ | ~~2. The designating authority of the Member State whose law governs the system may designate the system, where at least one of its participants has its head office in that Member State.~~ |
| *Explanation*<br>*The ECB recommends deleting Article 3(2) of the proposed SFR: first, it is duplicative of Article 5(1), specifically point (b), and introduces ambiguity as Article 3(2) provides that the designating authority ‘may’ designate the system while Article 5(1) requires that it ‘shall’. Second, it is not consistent with the ECB’s suggested definition of a designating authority.*<br>*See paragraph 6.4 of the ECB Opinion and Amendment 2.* | |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| Amendment 4<br>Article 4 | |
| ‘*Article 4*<br>*Procedure for granting and refusing designation*<br>1. A system operator that applies for designation of a system that it operates shall submit an application for designation addressed to the designating authority of the Member State whose law governs the system.<br>2. The application shall be immediately shared with all of the following:<br>(a) the designating authority;<br>(b) where applicable, the national competent authority;<br>(c) ESMA;<br>(d) EBA for systems operating transfer orders set out in Article 2(1), point (20)(a);<br>(e) The ESCB.’ | ‘*Article 4*<br>*Procedure for granting and refusing designation*<br>1. A system operator that applies for designation of a system that it operates shall submit an application for designation addressed to the designating authority ~~of the Member State whose law governs the system~~ **by uploading it to the central database in accordance with Article 26(3**).<br>2. The application shall be immediately shared with all of the following:<br>(a) the designating authority;<br>(b) where applicable, the national competent authority;<br>(c) ESMA;<br>(d) ~~EBA for systems operating transfer orders set out in Article 2(1), point (20)(a);~~<br>~~(e) The ESCB~~ **the ECB and the national central bank of the Member State where the system operator is established**.’ |
| *Explanation*<br>*The amendment in paragraph 1 aims at clarifying that the designation application addressed to the designating authority is to be submitted to the central database in line with Article 26(3), and at aligning the text with the suggested definition of designating authority in Article 2(1), point (33).*<br>*See Amendment 2.*<br>*The amendments in paragraph 2 aim at simplifying the list of authorities involved, by limiting it to the authorities of the Member State, including the national central bank (NCB), ESMA, which has competence in respect of securities settlement systems and clearing systems, and the ECB, which has competence in respect of payment systems.*<br>*See paragraph 6.2 of the ECB Opinion.* | |
| Amendment 5<br>Article 5 | |
| ‘*Article 5*<br>*Conditions for designation* | ‘*Article 5*<br>*Conditions for designation* |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| 1. A designating authority shall designate a system in accordance with Article 3, only where the designating authority is satisfied that all of the following conditions are fulfilled:<br>(a) the system is governed by the law of the Member State of the designating authority;<br>(b) at least one of the participants to the system is established in the Member State of the designating authority;<br>[…]<br>2. ESMA may, in close cooperation with the ESCB, develop draft regulatory technical standards to further specify the conditions referred to in paragraph 1 for securities settlement systems and clearing systems.<br>The Commission shall be empowered to adopt delegated acts to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.<br>3. EBA may, in close cooperation with the ESCB, develop draft regulatory technical standards to further specify the conditions referred to in paragraph 1 for payment systems.<br>The Commission shall be empowered to adopt delegated acts to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.' | ~~1.~~ A designating authority shall designate a system in accordance with Article 3, only where the designating authority is satisfied that all of the following conditions are fulfilled:<br>(a) the system is governed by the law of the Member State of the designating authority;<br>(b) at least one of the participants to the system is established in the Member State ~~of the designating authority~~ **whose law governs the system**;<br>[…]<br>~~2. ESMA may, in close cooperation with the ESCB, develop draft regulatory technical standards to further specify the conditions referred to in paragraph 1 for securities settlement systems and clearing systems.~~<br>~~The Commission shall be empowered to adopt delegated acts to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.~~<br>~~3. EBA may, in close cooperation with the ESCB, develop draft regulatory technical standards to further specify the conditions referred to in paragraph 1 for payment systems.~~<br>~~The Commission shall be empowered to adopt delegated acts to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.~~' |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| *Explanation*<br>*The ECB would recommend removing the mandates given to ESMA and the EBA to develop regulatory technical standards (RTS). Most designation conditions fully or partially overlap with existing requirements already established under EMIR, CSDR and, for payment systems, in the SIPS Regulation and other applicable oversight frameworks, and adding further detail to these conditions would only make this issue more acute. Other designation conditions are specified in other provisions of the proposed SFR, some of which include their own RTS mandates. Moreover, the draft RTS that may be developed by the EBA in respect of payment systems would significantly overlap with the ECB's regulatory powers under Article 22 of the Statute of the ESCB in respect of euro area payment systems, including central bank-operated systems.*<br>*See paragraph 6.3 of the ECB Opinion.*<br>*The amendment to Article 5(1), point (b), ensures alignment with the suggested definition of designating authority in Article 2(1), point (33).*<br>*See Amendment 2.* | |
| Amendment 6<br>Article 6 | |
| '*Article 6*<br>*Notification of a designated system*<br>4. […]<br>5. The notification referred to in paragraph 1 shall contain at least all of the following information, as of the date of the designation:<br>[…]<br>(c) the Member State in which the system operator is established and the national competent authority, where applicable;<br>[…]<br>6. The designating authority shall notify ESMA and the authorities listed in Article 4(2), points (b), (d) and (e), as applicable, without undue delay, of any of the following:<br>(a) any notifications made by the system operator in accordance with Article 8(2);<br>(b) any changes to the designation of the system; | '*Article 6*<br>*Notification of a designated system*<br>4**1**. […]<br>~~5~~**2**. The notification referred to in paragraph 1 shall contain at least all of the following information, as of the date of the designation:<br>[…]<br>(c) the Member State in which the system operator is established ~~and the national competent authority, where applicable~~;<br>[…]<br>~~6~~**3**. The designating authority shall notify ESMA and the authorities listed in Article 4(2), points (b), (d) and (e), as applicable, without undue delay, of any of the following:<br>(a) any notifications made by the system operator in accordance with Article 8(2);<br>(b) any changes to the designation of the system; |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| (c) any updates to the information listed in paragraph 2.<br>7. ESMA shall publish in a standardised format the information referred to in paragraph 2, point (a) to (g), and any updates thereto in accordance with paragraph 3, point (c), on its website without undue delay and no later than 2 working days after receipt of that information. ESMA shall specify the date when updates to the information on its website were made and which information was updated.' | (c) any updates to the information listed in paragraph 2, **points (a) to (e)**.<br>~~7~~**4**. ESMA shall publish in a standardised format the information referred to in paragraph 2, point (a) to ~~(g)~~ **(e)**, and any updates thereto in accordance with paragraph 3, point (c), on its website without undue delay and no later than 2 working days after receipt of that information. ESMA shall specify the date when updates to the information on its website were made and which information was updated.' |
| *Explanation*<br>*The amendments to paragraph 2 and the introductory sentence of paragraph 3 aim to ensure alignment with the suggested amendments to Articles 2 and 4. The amendments to paragraph 3, point (c), and paragraph 4, point (c), aim to make the requirement concerning information to be published and updated on ESMA's website more proportionate, as the list of system participants and the system's rules and standardised procedures can be subject to frequent changes.*<br>*See paragraph 6.2 of the ECB Opinion.* | |
| Amendment 7<br>Article 9 | |
| '*Article 9*<br>*Withdrawal of designation*<br>[…]<br>2. A designating authority shall only decide to withdraw the designation of a system after it has informed the national competent authority and requested an opinion on the appropriateness of withdrawing the designation. The opinion shall be requested from ESMA and the ESCB for the withdrawal of the designation for securities settlement systems and clearing systems, or from EBA and the ESCB, for the withdrawal of the designation for payment systems.<br>Where ESMA, EBA or the ESCB are of the opinion that the withdrawal of the designation | '*Article 9*<br>*Withdrawal of designation*<br>[…]<br>2. A designating authority shall only decide to withdraw the designation of a system after it has informed the national competent authority and requested an opinion on the appropriateness of withdrawing the designation. The opinion shall be requested from ESMA and the ESCB for the withdrawal of the designation for securities settlement systems and clearing systems, or from ~~**EBA and**~~ the ESCB, for the withdrawal of the designation for payment systems.<br>Where ESMA~~, **EBA**~~ or the ESCB are of the opinion that the withdrawal of the designation may cause material risks to the financial stability |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| may cause material risks to the financial stability of the Union or in a Member State, it shall inform the designating authority within 10 working days of being informed of a potential withdrawal of a designation under first subparagraph and the designating authority shall, before withdrawing the designation of the system, convene an ad hoc meeting with the national competent authority, the ESCB and, depending on the nature of the system, ESMA or EBA, to cooperate on how to mitigate the risks identified.<br>Where the designated system is a CSD or a CCP, the designating authority shall not withdraw the designation without the consent of the authority responsible for the supervision of that CSD or CCP.<br>3. A designating authority shall examine whether a system remains in compliance with the conditions under which the designation was granted when requested to do so by ESMA and the ESCB, for securities settlement systems and clearing systems, or EBA and the ESCB, for payment systems.<br>4. Where the designating authority withdraws the designation, it shall notify simultaneously the system operator, the national competent authority, ESMA, EBA and the ESCB of its decision to withdraw the designation of a system and ESMA shall update its website accordingly on the day indicated by the designating authority in its notification.' | of the Union or in a Member State, it shall inform the designating authority within 10 working days of being informed of a potential withdrawal of a designation under first subparagraph and the designating authority shall, before withdrawing the designation of the system, convene an ad hoc meeting with the national competent authority, ~~the ESCB~~ **the national central bank, the ECB** and, ~~depending on the nature of the system~~ **as regards securities settlement systems and clearing systems**, ESMA ~~or EBA~~**,** to cooperate on how to mitigate the risks identified.<br>~~Where the designated system is a CSD or a CCP, the designating authority shall not withdraw the designation without the consent of the authority responsible for the supervision of that CSD or CCP.~~<br>3. A designating authority shall examine whether a system remains in compliance with the conditions under which the designation was granted when requested to do so by ESMA and the ESCB, for securities settlement systems and clearing systems, or ~~EBA and~~ the ESCB, for payment systems.<br>4. Where the designating authority withdraws the designation, it shall notify simultaneously the system operator, the national competent authority, ESMA~~, EBA~~ and the ESCB of its decision to withdraw the designation of a system and ESMA shall update its website accordingly on the day indicated by the designating authority in its notification.' |
| *Explanation*<br>*These amendments aim to simplify the involvement of authorities other than national authorities by limiting them to ESMA and the ESCB, in the light of their respective competences; and, in the case of the meeting provided for in paragraph 2, second subparagraph, by limiting ESCB involvement to the national central bank and the ECB, as involving all ESCB central banks is not practical. The* | |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| *provision prohibiting the withdrawal of designation without the consent of the supervisor would not be necessary in view of the change to the definition of the designating authority.*<br>*See paragraph 6.2 of the ECB Opinion.* | |
| Amendment 8<br>Article 10(1) | |
| '1. Each Member State shall appoint all competent authorities responsible for carrying out the duties resulting from this Regulation in relation to systems, including the designating authorities, the registering authorities and the competent authority referred to in Article 22(2).' | '1. Each Member State shall appoint ~~all~~ **the** competent authorities responsible for carrying out the duties resulting from this Regulation in relation to systems, including:<br>**(a)** the designating authorities, **in the cases referred to in Article 2(1), point (33)(a)(ii) and (iii), (b)(ii) and (iii), and (c);**<br>**(b)** the registering authorities and<br>**(c)** the competent authority referred to in Article 22(2).' |
| *Explanation*<br>*Under the approach proposed by the ECB Opinion, the Member States would only need to appoint designating authorities, in line with the provisions of Article 2(1), point (33), when the designating authority is an authority appointed by the Member States in accordance with EMIR, CSDR, the DLT Pilot Regulation, or national law.*<br>*See paragraph 6.2 of the ECB Opinion.* | |
| Amendment 9<br>Article 13 | |
| '*Article 13*<br>*Procedure for granting and refusing registration*<br>1. Where the system operator of a third-country system ('third-country system operator') wishes to register that system as a registered system, it shall submit an application for registration, addressed to ESMA.<br>2. ESMA shall immediately share the application with all of the following recipients: | '*Article 13*<br>*Procedure for granting and refusing registration*<br>1. Where the system operator of a third-country system ('third-country system operator') wishes to register that system as a registered system, it shall submit an application for registration, addressed to ~~ESMA~~ **the coordinating authority**. |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| (a) at least, all registering authorities referred to in Article 12;<br>(b) EBA for systems operating transfer orders set out in Article 2(1), point (20)(a);<br>(c) the ESCB.<br>[…]<br>4. An acknowledgement of receipt of the application referred to in paragraph 1 shall be sent to the third-country system operator within two working days of receipt of such application. The registering authorities shall, within 20 working days from receipt of the application, determine whether the application contains the documents and information required pursuant to paragraph 3.<br>Where, during the applicable period specified under the first subparagraph, any of the registering authorities concludes that not all documents or information required pursuant to paragraph 3 have been submitted, such authority shall request the third-country system operator to submit such additional documents or information. Where the third-country system operator has failed to comply with any such request in full, any of the registering authorities may reject the application.<br>5. By the end of the time limits referred to in paragraph 4, each registering authority shall notify ESMA, the third-country system operator and the authorities listed in paragraph 2, points (a), (b) and (c), whether the application is accepted or rejected.<br>6. After having notified the third-country system operator that the application is accepted, each registering authority that accepted the application shall conduct an assessment of the third-country system operator's and the system's compliance with the conditions for | 2. ~~ESMA~~ **The coordinating authority** shall immediately share the application with all of the following recipients:<br>(a) ~~at least, all~~ **the** registering authorities referred to in Article 12;<br>~~(b) EBA for systems operating transfer orders set out in Article 2(1), point (20)(a);~~<br>~~(c)~~ **(b)** the ESCB.<br>[…]<br>4. ~~An~~ **The coordinating authority shall send an** acknowledgement of receipt of the application referred to in paragraph 1 ~~shall be sent~~ to the third-country system operator within two working days of receipt of such application. The ~~registering~~ **coordinating** authorities shall, within 20 working days from receipt of the application, determine whether the application contains the documents and information required pursuant to paragraph 3.<br>**Within 15 working days from the receipt of the application, registering authorities may inform the coordinating authority that they consider that additional documents or information should be requested. The coordinating authority shall consider the request and inform the requesting registering authority whether it will act upon it.**<br>Where, during the applicable period specified under the first subparagraph, ~~any of the registering authorities~~ **the coordinating authority** concludes that not all documents or information required pursuant to paragraph 3 have been submitted, such authority shall request the third-country system operator to submit such additional documents or information. Where the third-country system operator has failed to comply with any such request in full, ~~any~~ |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| registration laid down in Article 14 within 80 working days of the notification set out in paragraph 5 (“the assessment period”).<br>7. During the assessment period, any registering authority may submit questions to, or request complementary information from, the third-country system operator.<br>Where the third-country system operator has not responded to the questions or provided the requested information within the deadline set by a requesting registering authority, ESMA may, upon request by any of the registering authorities that accepted the application, extend once the relevant assessment period by a maximum of 10 working days in total where, in their view, any of the questions is material for the assessment. ESMA shall inform the third-country system operator of the extension provided. A registering authority may take a decision on the application in the absence of the third-country system operator’s response.<br>8. During the assessment period, ESMA and the ESCB for securities settlement systems and clearing systems, and EBA and the ESCB for payments systems, shall take all appropriate measures, including convening ad hoc meetings, to ensure a convergent approach to the decisions to grant or refuse the registration of a third-country system by the registering authorities in their respective Member State.<br>9. During the assessment process, ESMA, EBA and the ESCB shall promote the regular exchange and discussion among registering authorities, to ensure cooperation of the registering authorities in the registration process of such third-country system and provide input to the registering authorities’ assessment process. | ~~of the registering authorities~~ **the coordinating authority** may reject the application.<br>5. By the end of the time limits referred to in paragraph 4, ~~each registering~~ **the coordinating** authority shall notify ~~ESMA,~~ the third-country system operator and the authorities listed in paragraph 2~~, points (a), (b) and (c),~~ whether the application is accepted or rejected.<br><br>6. After having notified the third-country system operator that the application is accepted, ~~each registering~~ **the coordinating** authority ~~that accepted the application~~ shall**, in close cooperation with the ESCB and the registering authorities referred to in Article 12,** conduct an assessment of the third-country system operator’s and the system’s compliance with the conditions for registration laid down in Article 14 within 80 working days of the notification set out in paragraph 5 (“the assessment period”).<br>7. During the assessment period, ~~any registering~~ **the coordinating** authority may submit questions to, or request complementary information from, the third-country system operator.<br>**Any registering authority may request that the coordinating authority submit questions to, or request complementary information from, the third-country system operator. The coordinating authority shall consider the request and inform the requesting registering authority whether it will act upon it.**<br>Where the third-country system operator has not responded to the questions or provided the requested information within the deadline set by ~~a requesting registering~~ **the coordinating** authority, ~~ESMA may, upon request by any of the registering authorities that accepted the~~ |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| 10. Within the assessment period, each registering authority shall decide whether to grant or refuse the registration of the third-country system. Each registering authority shall decide to grant the registration only where it is fully satisfied that the third-country system operator and the third-country system comply with the conditions laid down in Article 14.<br>11. After taking a decision referred to in paragraph 10, each registering authority shall inform, without undue delay, the third-country system operator, ESMA and the authorities listed in paragraph 2, points (a), (b) and (c) as applicable, of its decision, including a fully reasoned explanation.' | ~~application,~~ **the coordinating authority may** extend once the relevant assessment period by a maximum of ~~10~~ **20** working days in total where, in ~~their~~ **its** view, any of the questions is material for the assessment. ~~ESMA~~ **The coordinating authority** shall inform the third-country system operator of the extension provided. A registering authority may take a decision on the application in the absence of the third-country system operator's response.<br>8. ~~During the assessment period, ESMA and the ESCB for securities settlement systems and clearing systems, and EBA and the ESCB for payments systems, shall take all appropriate measures, including convening ad hoc meetings, to ensure a convergent approach to the decisions to grant or refuse the registration of a third-country system by the registering authorities in their respective Member State.~~ **The coordinating authority shall inform the registering authorities referred to in Article 12 of the outcome of the assessment conducted in accordance with paragraph 6, including, where relevant, the views expressed by the registering authorities or by the ESCB.**<br>~~9. During the assessment process, ESMA, EBA and the ESCB shall promote the regular exchange and discussion among registering authorities, to ensure cooperation of the registering authorities in the registration process of such third-country system and provide input to the registering authorities' assessment process.~~<br>**9**~~10~~. Within ~~the assessment period~~ **20 working days of the receipt of the assessment referred to in paragraph 9**, each registering authority shall decide whether to grant or refuse the registration of the third-country system. Each registering authority shall decide to grant the |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| | registration only where it is fully satisfied that the third-country system operator and the third-country system comply with the conditions laid down in Article 14.<br>~~11~~**10**. After taking a decision referred to in paragraph 10, each registering authority shall inform, without undue delay, the third-country system operator, ESMA and the authorities listed in paragraph 2~~, points (a), (b) and (c)~~ as applicable, of its decision~~, including a fully reasoned explanation~~.' |
| *Explanation*<br>*In order to avoid multiple parallel registration processes at national level, the ECB suggests that a coordinating authority (ESMA for third-country securities settlement and clearing systems; the ECB for third-country payment systems) should take responsibility for the coordination of interactions with the third-country system operator and for the assessment of its compliance with requirements under the proposed SFR. Registering authorities would remain involved throughout the process and take the final decision as regards registration in their Member State.*<br>*See paragraph 6.4 of the ECB Opinion.* | |
| Amendment 10<br>Article 14 | |
| '*Article 14*<br>*Conditions for registration*<br>A registering authority may register a third-country system in its Member State only where all of the following conditions are met:<br>(a) the system has common rules and standardised procedures for the settlement, clearing, or execution of transfer orders between the participants;<br>(b) the system is authorised or supervised in the country of its establishment or in the country under which law the third-country system is governed; | '*Article 14*<br>*Conditions for registration*<br>A registering authority may register a third-country system in its Member State only where all of the following conditions are met:<br>(a) the system has common rules and standardised procedures for the settlement, clearing, or execution of transfer orders between the participants;<br>(b) the system is authorised**,** ~~or~~ supervised **or overseen** in the country of its establishment or in the country under which law the third-country system is governed; |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| (c) the system is governed by a law that upholds the principles of settlement finality;<br>(d) the system identifies clearly in its common rules and standardised procedures all of the following moments:<br>(i) the moment of entry of a transfer order into the system referred to in Article 18(1);<br>(ii) the moment of irrevocability of a transfer order entered into the system referred to in Article 20(1);<br>(iii) the moment of final settlement of a transfer order entered into a system referred to in Article 21(1).<br>(e) the system operator of the system is adequately structured and financed;<br>(f) the system complies in all material respects with global principles of financial market infrastructures.' | (c) the system is governed by a law that upholds the principles of settlement finality;<br>(d) the system identifies clearly in its common rules and standardised procedures all of the following moments:<br>(i) the moment of entry of a transfer order into the system referred to in Article 18(1);<br>(ii) the moment of irrevocability of a transfer order entered into the system referred to in Article 20(1);<br>(iii) the moment of final settlement of a transfer order entered into a system referred to in Article 21(1).<br>(e) the system operator of the system is adequately structured and financed;<br>(f) the system complies in all material respects with ~~global principles of financial market infrastructures~~ **the internationally agreed CPSS-IOSCO principles for financial market infrastructures**.<br>**Where the system operator is a CCP recognised in accordance with Article 25 of Regulation (EU) No 648/2012 or a CSD recognised in accordance with Article 25 of Regulation (EU) No 909/2012, the system operator shall be deemed to comply with the conditions laid down in points (b), (e) and (f).**' |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| *Explanation*<br>*This amendment aims to avoid duplication of the recognition processes provided for in EMIR and CSDR for third-country CCPs and CSDs. It is also suggested that the possibility that third-country payment systems may be overseen by third-country central banks rather than supervised should be recognised. The reference to compliance with international standards should also be further clarified.*<br>*See paragraph 6.4 of the ECB Opinion.* | |
| Amendment 11<br>Article 16 | |
| ‘*Article 16*<br>*Withdrawal of registration*<br>1. A registering authority shall withdraw the registration of a registered system where any of the following conditions is met:<br>(a) the third-country system operator has obtained the registration by making false statements or by any other irregular or unlawful means;<br>(b) the third-country system operator or the system it operates, as applicable, no longer complies with the conditions set out in Article 14;<br>(c) the third-country system operator or the system it operates, as applicable, has seriously or systematically infringed the conditions for registration laid down in Article 14.<br>2. A registering authority shall only decide to withdraw the registration of a third-country system operator after it has informed ESMA and provided ESMA with all the relevant information for ESMA to be able to update its list of registered systems registered in a Member State. ESMA shall share this information with EBA, the ESCB and other registering authorities, as applicable. | ‘*Article 16*<br>*Withdrawal of registration*<br>1. A registering authority shall withdraw the registration of a registered system where any of the following conditions is met:<br>(a) the third-country system operator has obtained the registration by making false statements or by any other irregular or unlawful means;<br>(b) the third-country system operator or the system it operates, as applicable, no longer complies with the conditions set out in Article 14**, and the system operator has not taken the remedial actions requested by the coordinating authority within a set timeframe**;<br>(c) the third-country system operator or the system it operates, as applicable, has seriously or systematically infringed the conditions for registration laid down in Article 14.<br>**The coordinating authority shall immediately inform the registering authorities referred to in Article 12 when it assesses that any of the conditions referred to in the previous subparagraph is met.**<br>**Where a registering authority assesses that a third-country system operator or the system it operated no longer complies with the** |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| 3. Where one of the registering authorities, ESMA, EBA or the ESCB, as applicable, are of the opinion that the withdrawal of the registration may cause material risks to the financial stability of the Union or in a Member State, it shall inform the relevant registered authority within 10 working days of being informed of a potential withdrawal of a registration under paragraph 2 and the relevant registering authority shall convene an ad hoc meeting with the other registering authorities, ESMA, EBA and the ESCB, as applicable, to cooperate on how to mitigate the risks identified before the registering authority withdraws the registration.<br>Where the registered system is a CCP determined by ESMA to be a Tier 2 CCP under Regulation (EU) No 648/2012, the registering authority shall not withdraw the registration without the consent of ESMA.' | **conditions set out in Article 14, it shall inform the coordinating authority. The coordinating authority shall consider the registering authority's assessment and, as needed, request that the system operator take remedial action within a set timeframe.**<br>2. A registering authority ~~shall only decide~~ **that intends** to withdraw the registration of a third-country system operator ~~after it has informed ESMA and provided ESMA with all the relevant information for ESMA to be able to update its list of registered systems registered in a Member State~~ **shall inform the coordinating authority of the reasons for its assessment that a condition for withdrawal is met**. ~~ESMA~~ **The coordinating authority** shall share this information with **ESMA,** ~~EBA,~~ the ESCB and other registering authorities, as applicable.<br>3. Where one of the registering authorities, ESMA~~, EBA~~ or the ESCB, as applicable, are of the opinion that the withdrawal of the registration may cause material risks to the financial stability of the Union or in a Member State, it shall inform the relevant ~~registered~~ **registering** authority **and the coordinating authority** within 10 working days of being informed of a potential withdrawal of a registration under paragraph 2 and the ~~relevant registering~~ **coordinating** authority **shall** convene an ad hoc meeting with the other registering authorities, ESMA~~, EBA~~ and the ESCB, as applicable, to cooperate on how to mitigate the risks identified before the registering authority withdraws the registration.<br>Where the registered system is a CCP determined by ESMA to be a Tier 2 CCP under Regulation (EU) No 648/2012, the registering authority shall not withdraw the registration without the consent of ESMA.' |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| *Explanation*<br>*These amendments aim to adjust the registration withdrawal process in line with the stronger coordination envisaged in the amendments to Article 13. Additionally, it is proposed to align the condition for withdrawal under paragraph 1, point (b), with the proposal under Article 9, as the condition is otherwise very strict, overly constraining the discretion of the registering and coordinating authorities, and makes the condition under point (c) of the same paragraph redundant.*<br>*See paragraph 6.4 of the ECB Opinion.* | |
| Amendment 12<br>Article 17 | |
| ‘Article 17<br>Netting and transfer orders<br>1.Transfer orders and netting, including close-out netting, shall be legally enforceable and binding on third parties, provided that transfer orders were entered into the designated system or registered system before the moment of opening of insolvency proceedings as referred to in Article 22(1), even in the event of insolvency proceedings against any of the following:<br>(a) a participant in the designated system or registered system;<br>(b) a participant to an interoperable system to a designated system;<br>(c) the system operator of an interoperable system to a designated system, which is not a participant.<br>Transfer orders that are entered into a designated system or registered system after the moment of opening of insolvency proceedings and that are carried out within the business day, as laid down in the common rules and standardised procedures of such system, during which the opening of such proceedings | ‘Article 17<br>Netting and transfer orders<br>1.Transfer orders and netting, including close-out netting, shall be legally enforceable and binding on third parties, provided that transfer orders were entered into the designated system ~~or registered system~~ before the moment of opening of insolvency proceedings as referred to in Article 22(1), even in the event of insolvency proceedings against any of the following:<br>(a) a participant in the designated system ~~or registered system~~;<br>(b) a participant to an interoperable system to a designated system;<br>(c) the system operator of an interoperable system to a designated system, which is not a participant.<br>Transfer orders that are entered into a designated system ~~or registered system~~ after the moment of opening of insolvency proceedings and that are carried out within the business day, as laid down in the common rules and standardised procedures of such system, during which the opening of such proceedings occur, shall be legally enforceable and binding on third |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| occur, shall be legally enforceable and binding on third parties only where the system operator can prove that, at the time that such transfer orders become irrevocable, it was neither aware, nor should have been aware, of the opening of such proceedings.<br>[…]' | parties only where the system operator can prove that, at the time that such transfer orders become irrevocable, it was neither aware, nor should have been aware, of the opening of such proceedings.<br>[…]' |
| *Explanation*<br>*These amendments aim to clarify the scope of the substantive provisions of the proposed SFR as applying to operators of designated systems only. It would be more proportionate for the SFR to refrain from applying substantive EU rules to the protection of transfer orders in third-country systems, while EU authorities expect EU law to apply to EU systems, even in case of insolvency proceedings involving third-country participants.*<br>*See paragraph 6.4.2 of the ECB opinion.* | |
| Amendment 13<br>Article 19 | |
| 'Article 19<br>Use of funds and financial instruments<br>1.The opening of insolvency proceedings against a participant or a system operator of an interoperable system shall not prevent funds or financial instruments available on the settlement account or on accounts holding collateral, including default fund contributions such as contributions to a pre-funded default fund held by a CCP in accordance with Article 42 of Regulation No 648/2012 and margins as referred to in Article 41 of Regulation No 648/2012, where applicable, of that participant or system operator from being used to fulfil that participant's obligations in the designated system, or registered system in the Member State where the participant is established, or in an interoperability arrangement on the business | 'Article 19<br>Use of funds and financial instruments<br>1.The opening of insolvency proceedings against a participant or a system operator of an interoperable **designated** system shall not prevent funds or financial instruments available on the settlement account or on accounts holding collateral, including default fund contributions such as contributions to a pre-funded default fund held by a CCP in accordance with Article 42 of Regulation No 648/2012 and margins as referred to in Article 41 of Regulation No 648/2012, where applicable, of that participant or system operator from being used to fulfil that participant's obligations in the designated system~~, or registered system in the Member State where the participant is established~~, or in an interoperability |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| day of the opening of the insolvency proceedings.<br>2.Such a participant's credit facility connected to the designated system or registered system, as applicable, shall be usable against available, existing collateral security to fulfil that participant's obligations in the designated system, or in the registered system in the Member State where the participant is established, or in an interoperability arrangement.' | arrangement on the business day of the opening of the insolvency proceedings.<br>2.Such a participant's credit facility connected to the designated system ~~or registered system, as applicable,~~ shall be usable against available, existing collateral security to fulfil that participant's obligations in the designated system~~, or in the registered system in the Member State where the participant is established~~, or in an interoperability arrangement.' |
| *Explanation*<br>*These amendments aim to clarify the scope of the substantive provisions of the proposed SFR as applying to operators of designated systems only. It would be more proportionate for the SFR to refrain from applying substantive EU rules to the protection of third-country systems, while EU authorities expect EU law to apply to EU systems, even in case of insolvency proceedings involving third-country participants.*<br>*See paragraph 6.4.2 of the ECB opinion.* | |
| Amendment 14<br>Article 21 | |
| '*Article 21*<br>*Final settlement*<br>1. Settlement shall be final when the discharge of the obligations of the parties to a transaction is completed in an unconditional and irrevocable manner as determined by the common rules and standardised procedures of each designated system, in accordance with the applicable law for transfer of ownership and other rights. A designated system that is based on DLT shall implement mechanisms guaranteeing deterministic and legally | '*Article 21*<br>*Final settlement*<br>1. Settlement shall be final when the discharge of the obligations of the parties to a transaction is completed in an unconditional and irrevocable manner ~~as determined by the common rules and standardised procedures of each designated system~~, in accordance with the applicable law for transfer of ownership and other rights **as referred to in the common rules and standardised procedures of each designated system**. A designated system that is based on |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| enforceable finality moments.<br>2. In the case of interoperable systems, each system shall determine in its own common rules and standardised procedures the moment of final settlement. Each system operator shall ensure, to the extent possible, that the rules of all interoperable systems concerned are coordinated. Unless expressly provided for by the common rules and standardised procedures of all the systems that are party to an interoperability arrangement, one system's common rules and standardised procedures on the moment of final settlement shall not be affected by any common rules or standardised procedures of the other systems with which it is interoperable.<br>3. ESMA may, in close cooperation with the ESCB, for clearing and securities settlement systems not operated by a CSD, and taking into account the specificities of different types of systems, and the mechanics of those systems, develop draft regulatory technical standards to specify the rules for determining all of the following:<br>[…]<br>(e) the moment of final settlement referred to in paragraph 1;<br>[…]<br>4. EBA may, in close cooperation with the ESCB, and taking into account the specificities of different types of payments systems and the mechanics of the systems, develop draft regulatory technical standards to specify the rules for determining all of the following:<br>[…]<br>(e) the moment of final settlement referred to in paragraph 1; | DLT shall implement **technical** mechanisms guaranteeing deterministic and **irreversible settlement, to ensure that the** ~~legally enforceable~~ finality moments **in accordance with the applicable law for transfer of ownership and other rights can be identified with certainty**.<br>~~2. In the case of interoperable systems, each system shall determine in its own common rules and standardised procedures the moment of final settlement. Each system operator shall ensure, to the extent possible, that the rules of all interoperable systems concerned are coordinated. Unless expressly provided for by the common rules and standardised procedures of all the systems that are party to an interoperability arrangement, one system's common rules and standardised procedures on the moment of final settlement shall not be affected by any common rules or standardised procedures of the other systems with which it is interoperable.~~<br>**2**~~3~~. ESMA may, in close cooperation with the ESCB, for clearing and securities settlement systems not operated by a CSD, and taking into account the specificities of different types of systems, and the mechanics of those systems, develop draft regulatory technical standards to specify the rules for determining all of the following:<br>[…]<br>(e) **facilitate system operators' compliance with the obligation to record** the moment of final settlement referred to in paragraph 1;<br>**3**~~4~~. EBA may, in close cooperation with the ESCB, and taking into account the specificities of different types of payments systems and the mechanics of the systems, develop draft |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| […]' | regulatory technical standards to specify the rules for determining all of the following:<br>[…]<br>(e) **facilitate system operators' compliance with the obligation to record** the moment of final settlement referred to in paragraph 1;<br>[…]' |
| *Explanation*<br>*It is proposed to clarify this provision to better distinguish between the requirements applicable to the technical solution used by the system operator and the legal implications for the finality moments determined by the rules of the system.*<br>*Moreover, given that laws for transfer of ownership and other rights are not harmonised across the Union (and the proposed regulation does not harmonise them), the obligations imposed upon system operators under Article 21(1) can only be construed as an obligation to faithfully record the applicable national law provisions, the obligation under Article 21(2) is impossible to comply with. Additionally, ESMA's RTS can only facilitate compliance with this obligation to record the moment of final settlement, not define the final settlement moments under Article 21(1).*<br>*See paragraph 6.8 of the ECB opinion.* | |
| Amendment 15<br>Article 24 | |
| 'Article 24<br>Law governing the rights and obligations of participants<br>In the event of insolvency proceedings being opened against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system.' | 'Article 24<br>Law governing the rights and obligations of participants<br>In the event of insolvency proceedings being opened against a participant in a **designated** system **or in a registered system**, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system.' |
| *Explanation* | |

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| *This amendment aims to clarify the scope of the governing law provision of the proposed SFR as applying to both designated and registered systems.*<br>*See paragraph 6.4.2 of the ECB opinion.* | |
| Amendment 16<br>Article 30 | |
| ‘Article 30<br>Repeal<br>1. Directive 98/26/EC is repealed with effect from [OP insert date = date of entry into force of this Regulation].<br>2. References to Directive 98/26/EC shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex 1 to this Regulation.’ | ‘Article 30<br>Repeal<br>1. Directive 98/26/EC is repealed with effect from [OP insert date = **12 months after ~~date of~~** entry into force of this Regulation].<br>2. References to Directive 98/26/EC shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex 1 to this Regulation.’ |
| *Explanation*<br>*Member States should take all necessary measures to adjust their national laws, in a timely manner, to comply with the proposed SFR. This is necessary to ensure legal certainty and compatibility between the proposed SFR and national insolvency and banking legislation. To accommodate such adjustments, the ECB recommends that the date of application of the proposed SFR, and repeal of the SFD, should be one year after the date of adoption. This reflects similar solutions under other Union financial services legislation, where regulations have replaced directives[18]. Other provisions of the proposed SFR may also need to be adjusted to refer to the date of application of the Regulation, in particular the provisions on transitional provisions (Article 28), review (Article 29) and amendments to Directive 2002/47/EC (Article 31).*<br>*See paragraph 6.1 of the ECB Opinion.* | |
| Amendment 17<br>Article 32 | |
| ‘Article 32<br>Entry into force | ‘Article 32<br>Entry into force |

18 See, for example, Articles 37 and 39 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1 ELI: http://data.europa.eu/eli/reg/2014/596/oj).

| Text proposed by the Commission | Amendments proposed by the ECB[17] |
|---|---|
| This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.' | **1.** This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European ~~**Communities**~~ **Union**.<br>**2. It shall apply from [OP insert date = 12 months after entry into force of this Regulation].**' |
| *Explanation*<br>*See paragraph 6.1 of the ECB Opinion and Amendment 16.* | |

**Technical working document (3/3)**

**produced in connection with ECB Opinion [CON/2026/13][19]**

**Drafting proposals in relation to the proposed amendments to Directive 2009/65/EC (UCITS Directive) and Directive 2011/61/EU (AIFM Directive) (the proposed master directive)**

| Text proposed by the Commission | Amendments proposed by the ECB[20] |
|---|---|
| Amendment 1<br>Recital 11 of the proposed master directive | |
| '(11) To recognise the inherently diversified nature and regulatory requirements of securitisations and to allow greater flexibility for UCITS to invest in those products, it is necessary to increase the current 10% limit on debt securities issued by a single entity to 15% for UCITS investing in securitisations issued in accordance with Regulation (EU) 2017/2402.' | '(11) To recognise the inherently diversified nature and regulatory requirements of securitisations and to allow greater flexibility for UCITS to invest in those products, it is necessary to increase the current 10% limit on debt securities issued by a single entity to ~~15%~~ **20%** for UCITS investing in securitisations issued in accordance with Regulation (EU) 2017/2402.' |
| *Explanation*<br>*The ECB recommends increasing the limits for simple, transparent and standardised (STS) securitisation to further support investor participation in the market. See paragraph 8.3 of the ECB Opinion and Amendment 4.* | |
| Amendment 2<br>Recital 14 of the proposed master directive | |
| '(14) To enhance the efficiency of large asset management groups in structuring their operations and remove barriers to their cross-border activity, it is essential to establish a permanent supervisory framework whereby ESMA, in cooperation with the relevant competent authorities, carries out reviews of the largest asset management groups at least on an | '(14) To enhance the efficiency of large asset management groups in structuring their operations and remove barriers to their cross-border activity, it is essential to establish a permanent supervisory framework whereby ESMA, in cooperation with the relevant competent authorities, carries out reviews of the largest asset management groups at least on an |

19 This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published on EUR-Lex alongside the opinion itself.

20 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

| Text proposed by the Commission | Amendments proposed by the ECB[20] |
| --- | --- |
| annual basis to effectively identify and address divergent, duplicative, redundant, or deficient supervisory practices in specific cases. Such annual reviews should be confined to the analysis of data, information and documentation already available to ESMA and national competent authorities through existing reporting channels. This review should aim to remove any obstacle to the functioning of the Single Market for large asset management groups and facilitate their cross-border operations. This framework should therefore not be understood as a mandate for ESMA to develop new group level risk models or new supervisory approaches that do not already derive from Directive 2009/65/EC and Directive 2011/61/EU but instead as an arrangement to enhance supervisory efficiencies for groups of management companies and AIFMs. The scope of this review should be confined to the requirements applicable to management companies and AIFMs within EU groups and is therefore not intended to include any requirements on authorisation or supervision of the investment funds that are managed by those management companies and AIFMs. It is also appropriate and proportional to concentrate these efforts on the largest asset management groups in the EU, where operational and supervisory synergies can be achieved most effectively. ESMA should identify these groups based on the significant size of their market presence and impact within the Union, as measured by their net asset values and the extent of their cross-border operations and activities.' | annual basis to effectively identify and address divergent, duplicative, redundant, or deficient supervisory practices in specific cases. Such annual reviews should be confined to the analysis of data, information and documentation already available to ESMA and national competent authorities through existing reporting channels. This review should aim to remove any obstacle to the functioning of the Single Market for large asset management groups and facilitate their cross-border operations**, as well as identify risks to investor protection, financial stability, or the integrity of the market. ESMA should carry out the review on a more frequent basis in the event of justified concerns in respect of risks to investor protection, financial stability, or the integrity of the market**. This framework should ~~therefore~~ not be understood as a mandate for ESMA to develop new group level risk models or new supervisory approaches that do not already derive from Directive 2009/65/EC and Directive 2011/61/EU but instead as an arrangement to enhance supervisory efficiencies for groups of management companies and AIFMs. The scope of this review should be confined to the requirements applicable to management companies and AIFMs within EU groups and is therefore not intended to include any requirements on authorisation or supervision of the investment funds that are managed by those management companies and AIFMs. It is also appropriate and proportional to concentrate these efforts on the largest asset management groups in the EU, where operational and supervisory synergies can be achieved most effectively. ESMA should identify these groups based on the significant size of their market presence and impact within the Union, as |

| Text proposed by the Commission | Amendments proposed by the ECB[20] |
|---|---|
| | measured by their net asset values and the extent of their cross-border operations and activities.' |
| | *Explanation*<br>*The ECB recommends clarifications to ensure that annual reviews take place on a more frequent basis in the event of justified concerns pertaining to ESMA's responsibilities for the protection of investors, the stability of the financial system or the integrity of the market.*<br>*This clarification reflects ESMA's objective under Article 1(5) of the ESMA Regulation to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses by, inter alia, ensuring the integrity, transparency, efficiency and orderly functioning of financial markets, and enhancing customer and investor protection.*<br>*While the annual reviews primarily aim at removing obstacles to the functioning of the Single Market for large asset management groups and facilitating their cross-border operations, specific events that could jeopardise the functioning of the internal market, the integrity of financial markets, financial stability or investor protection would warrant the triggering of more regular assessments, in line with ESMA's objective and competences under the ESMA Regulation.*<br>*In that respect, this clarification seeks to highlight the complementarity of annual reviews with ESMA's supervisory convergence tools and powers, to address risks to the integrity of financial markets, financial stability or investor protection. Examples include ESMA's new power to address supervisory failures under Article 17aa, as introduced by the proposed master regulation.*<br>*See paragraph 8.4 of the ECB Opinion and Amendments 5, 6, 8 and 9.* |
| Amendment 3<br>Article 1, point (15), of the proposed master directive<br>(Article 20a(3) of the UCITS Directive) | |
| '(15) in Article 20a, paragraph 3 is amended as follows:<br>(a) the first subparagraph is replaced by the following:<br>"The competent authorities of the UCITS home Member State shall ensure that all information gathered under this Article in respect of all UCITS that they supervise is made available to other relevant competent authorities, ESMA, EBA, EIOPA and the European Systemic Risk Board | '(15) in Article 20a, paragraph 3 is amended as follows:<br>(a) the first subparagraph is replaced by the following:<br>"The competent authorities of the UCITS home Member State shall ensure that all information gathered under this Article in respect of all UCITS that they supervise is made available to other relevant competent authorities, ESMA, EBA, EIOPA**,** ~~and~~ the European Systemic Risk Board |

| Text proposed by the Commission | Amendments proposed by the ECB[20] |
|---|---|
| (ESRB), whenever necessary for the purpose of carrying out their duties, by means of the procedures set out in Article 101.";<br>(b) the third subparagraph is replaced by the following:<br>"The competent authorities of the UCITS home Member State or of the management company's home Member State shall, without delay, provide information by means of the procedures set out in Article 101, and bilaterally to the competent authorities of other Member States directly concerned, if a management company under their responsibility, or a UCITS managed by that management company, potentially constitutes an important source of counterparty risk to a credit institution or other systemically relevant institutions in other Member States, or to the stability of the financial system in another Member State.";' | (ESRB), **and the members of the European System of Central Banks,** whenever necessary for the purpose of carrying out their duties **in accordance with Union or national law**, by means of the procedures set out in Article 101.";<br>**(b) the second subparagraph is deleted;**<br>(**c~~b~~**) the third subparagraph is replaced by the following:<br>"The competent authorities of the UCITS home Member State or of the management company's home Member State shall, without delay, provide information by means of the procedures set out in Article 101, and bilaterally to the competent authorities of other Member States directly concerned, if a management company under their responsibility, or a UCITS managed by that management company, potentially constitutes an important source of counterparty risk to a credit institution or other systemically relevant institutions in other Member States, or to the stability of the financial system in another Member State.";' |
| *Explanation*<br>*It is suggested to clarify the provision in the UCITS Directive concerning the exchange of information between authorities, in order to clarify and improve access for the ECB and other relevant members of the ESCB, which will enable them to fulfil their tasks, including those under the Treaty, of defining and implementing monetary policy and contributing to the stability of the financial system. The relevance of data from the asset management sector for the tasks of the ESCB was explained in respect of detailed data on the AIF sector in ECB opinion CON/2022/26. Such explanations apply mutatis mutandis to UCITS data.*<br>*The current drafting of Article 20a(3), second subparagraph, states that the competent authorities of the UCITS home Member State 'shall ensure that all information gathered under this Article in respect of all UCITS that they supervise is made available, for statistical purposes only, to the ESCB'. This drafting was introduced to the UCITS Directive by Directive (EU) 2024/927 of the European Parliament and of the Council[21]. While, in principle, this wording does facilitate exchange of* | |

21 Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory

| Text proposed by the Commission | Amendments proposed by the ECB[20] |
|---|---|
| *information with the ECB and other members of the ESCB, the reference to 'statistical purposes only', coupled with the differentiated treatment of the members of the ESCB as compared to other Union bodies and national competent authorities, may lead to unintended consequences. In particular, this phrasing may lead to confusion or diverging interpretations by competent authorities and could thus result in unnecessary restrictions being placed on the information shared with the members of the ESCB and how that information can be utilised. In particular, this may impede efforts by the members of the ESCB to analyse funds' exposures, risks and interconnections with other financial entities on a cross-border basis and to assess the financial stability risks of funds cross-investing in each other's shares on a cross-border basis within the Union.*<br>*See paragraph 8.6 of the ECB Opinion.* | |
| Amendment 4<br>Article 1, point (27)(a), of the proposed master directive<br>(Article 56(2) of the UCITS Directive) | |
| '(a) in paragraph 2, the following subparagraph is added:<br>"2.<br>[…]<br>By way of derogation from the first subparagraph, point (b), a UCITS may acquire no more than 15% of the securitisations issued in accordance with Regulation (EU) 2017/2402 by a single issuing body.";' | '(a) in paragraph 2, the following subparagraph is added:<br>"2.<br>[…]<br>By way of derogation from the first subparagraph, point (b), a UCITS may acquire no more than ~~15%~~ **20%** of the securitisations issued in accordance with Regulation (EU) 2017/2402 by a single issuing body.";' |
| *Explanation*<br>*The ECB welcomes the increased limit for UCITS investing in securitisations by a single issuing body as it could support investor participation in the securitisation market. The amendment would increase the existing limit of 10 % to a higher limit of 15 % The ECB notes that the existing limit of 10 % may be constraining the interest of UCITS in securitisations, given the small size of securitisation issuances. This is because the maximum investment by UCITS in individual issuances may be uneconomical, given the comparatively high due diligence costs associated with such investment relative to other assets. Thus, the ECB suggests a further increase of this limit to, for example, 20 %.*<br>*That said, the ECB emphasises that this limit should not be entirely removed, or increased excessively, as it serves important policy goals, such as maintaining appropriate safeguards for* | |

reporting, the provision of depositary and custody services and loan origination by alternative investment funds (OJ L, 2024/927, 26.3.2024, ELI: http://data.europa.eu/eli/dir/2024/927/oj).

| Text proposed by the Commission | Amendments proposed by the ECB[20] |
|---|---|
| *adequate risk management and investor protection, especially for retail investors. These policy goals also include preventing a single UCITS from becoming a dominant investor capable of influencing an issuer's decisions. While securitisations – by shifting investor rights to a separate special purpose vehicle and a defined collateral pool – do not expose the originator to influence by its investors in the same way as a normal corporate issuer would, excessive concentration of investments by UCITS in single issuing bodies still entails the risk of UCITS exerting disproportionate influence on debt restructuring in the event of distress of those issuing bodies, which could harm the broader universe of investors. Furthermore, these limits are also intended to prevent individual UCITS from becoming the dominant market for each individual securitisation issuance and to ensure that the UCITS does not own such a large portion of an issuance that the position becomes illiquid, as UCITS should only invest in liquid instruments.*<br>*See paragraph 8.3 of the ECB Opinion and Amendment 1.* | |
| Amendment 5<br>Article 1, point (47), of the proposed master directive<br>(Article 110b(3) of the UCITS Directive) | |
| '(47) the following Articles 110b to 110d are inserted:<br>*"Article 110b*<br>[…]<br>3. ESMA shall, in cooperation with the competent authorities of the home Member States of the management companies and, where relevant, the competent authorities of the home Member States of the AIFMs that are part of the EU group, carry out at least annually a review of each EU group identified pursuant to paragraph 1.<br>During the review referred to in the first subparagraph, ESMA shall assess the supervisory approaches in the application of the requirements of this Directive and of Directive 2011/61/EU that are taken by the competent authorities of the management companies and, where relevant, AIFMs within each EU group. For the purpose of that review, ESMA shall use a methodology that ensures comparability and consistency of those supervisory approaches. | '(47) the following Articles 110b to 110d are inserted:<br>*"Article 110b*<br>[…]<br>3. ESMA shall, in cooperation with the competent authorities of the home Member States of the management companies and, where relevant, the competent authorities of the home Member States of the AIFMs that are part of the EU group, carry out at least annually a review of each EU group identified pursuant to paragraph 1.<br>**ESMA shall carry out the review referred to in the first subparagraph on a more frequent basis in the event of justified concerns in respect of investor protection, financial stability or the integrity of the market.**<br>During the review referred to in the first subparagraph, ESMA shall assess the supervisory approaches in the application of the requirements of this Directive and of Directive 2011/61/EU that are taken by the competent |

| Text proposed by the Commission | Amendments proposed by the ECB[20] |
|---|---|
| […]";' | authorities of the management companies and, where relevant, AIFMs within each EU group. For the purpose of that review, ESMA shall use a methodology that ensures comparability and consistency of those supervisory approaches.<br>[…]";' |
| *Explanation*<br>*See paragraph 8.4 of the ECB Opinion and Amendments 2, 6, 8 and 9.* | |
| Amendment 6<br>Article 1, point (47), of the proposed master directive<br>(Article 110b(6) of the UCITS Directive) | |
| '(47) the following Articles 110b to 110d are inserted:<br>*"Article 110b*<br>[…]<br>6. Following each review, as referred to in paragraph 3, ESMA shall, after having consulted the competent authorities of the home Member States of the management companies and, where relevant, those of the home Member States of the AIFMs within the EU group, conclude on whether it identified any diverging, duplicative, redundant or deficient supervisory approaches.<br>ESMA shall include the findings referred to in the first subparagraph in a review report, issued by the Executive Board which shall be addressed to the competent authorities of the home Member States of the management companies and, where relevant, those of the home Member States of the AIFMs within the EU group.<br>[…]";' | '(47) the following Articles 110b to 110d are inserted:<br>*"Article 110b*<br>[…]<br>6. Following each review, as referred to in paragraph 3, ESMA shall, after having consulted the competent authorities of the home Member States of the management companies and, where relevant, those of the home Member States of the AIFMs within the EU group, conclude on whether it identified any diverging, duplicative, redundant or deficient supervisory approaches, **in particular those that could jeopardise the functioning of the internal market, the integrity of financial markets, financial stability or investor protection.**<br>ESMA shall include the findings referred to in the first subparagraph in a review report, issued by the Executive Board which shall be addressed to the competent authorities of the home Member States of the management companies and, where relevant, those of the home Member States of the AIFMs within the EU group. |

| Text proposed by the Commission | Amendments proposed by the ECB[20] |
|---|---|
| | […]";' |
| *Explanation*<br>*See paragraph 8.4 of the ECB Opinion and Amendments 2, 5, 8 and 9.* | |
| Amendment 7<br>Article 2, point (12a), of the proposed master directive (new)<br>(Article 25(2) of the AIFM Directive) | |
| No text. | **'(12a) in Article 25(2), the first and second subparagraphs are replaced by the following:**<br>**"2. The competent authorities of the home Member State of the AIFM shall ensure that all information gathered under Article 24 in respect of all AIFMs that they supervise and the information gathered under Article 7 is made available to other relevant competent authorities, ESMA, EBA, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council(*) (known collectively as "European Supervisory Authorities" or "ESAs"), the ESRB, and the members of the ESCB, whenever necessary for the purpose of carrying out their duties in accordance with Union or national law, by means of the procedures set out in Article 50.**<br>**(*) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48)."';'** |
| *Explanation* | |

| Text proposed by the Commission | Amendments proposed by the ECB[20] |
|---|---|
| *It is suggested to clarify the provision in the AIFM Directive concerning the exchange of information between authorities, in order to clarify and improve access for the ECB and other relevant members of the ESCB, to enable them to fulfil their tasks, including those under the Treaty, of defining and implementing monetary policy and contributing to the stability of the financial system. See ECB Opinion CON/2022/26.*<br>*The current drafting of Article 25(2), second subparagraph, states that the competent authorities of the home Member State of the AIFM 'shall ensure that all information gathered under Article 24 in respect of all AIFMs that they supervise is made available, for statistical purposes only, to the ESCB'. This drafting was introduced to the AIFM Directive by Directive (EU) 2024/927. While, in principle, this wording does facilitate exchange of information with the ECB and other members of the ESCB, the reference to 'statistical purposes only', coupled with the different treatment of the members of the ESCB compared to other Union bodies and national competent authorities, may lead to unintended consequences. In particular, this phrasing may lead to confusion or diverging interpretations by competent authorities and could thus result in unnecessary restrictions being placed on the information shared with the members of the ESCB and how that information can be utilised. This may impede efforts by the members of the ESCB to analyse funds' exposures, risks and interconnections with other financial entities on a cross-border basis and assess the financial stability risks of funds cross-investing in each other's shares on a cross-border basis within the Union.*<br>*See paragraph 8.6 of the ECB Opinion and Amendment 3.* | |
| Amendment 8<br>Article 2, point (21), of the proposed master directive<br>(Article 47a(3) of the AIFM Directive) | |
| '(21) the following Articles 47a to 47c are inserted:<br>"*Article 47a*<br>[…]<br>3. ESMA shall, in cooperation with the competent authorities of the home Member States of the AIFMs and, where relevant, the competent authorities of the home Member States of the management companies that are part of the EU group, carry out at least annually a review of each EU group identified pursuant to paragraph 1. | '(21) the following Articles 47a to 47c are inserted:<br>"*Article 47a*<br>[…]<br>3. ESMA shall, in cooperation with the competent authorities of the home Member States of the AIFMs and, where relevant, the competent authorities of the home Member States of the management companies that are part of the EU group, carry out at least annually a review of each EU group identified pursuant to paragraph 1. |

| Text proposed by the Commission | Amendments proposed by the ECB[20] |
|---|---|
| During the review referred to in the first subparagraph, ESMA shall assess the supervisory approaches in the application of the requirements of this Directive and of Directive 2009/65/EC that are taken by the competent authorities of the AIFMs and, where relevant, management companies within each EU group. For the purpose of that review, ESMA shall use a methodology that ensures comparability and consistency of those supervisory approaches.<br>[…]";' | **ESMA shall carry out the review referred to in the first subparagraph on a more frequent basis in the event of justified concerns in respect of investor protection, financial stability or the integrity of the market.**<br>During the review referred to in the first subparagraph, ESMA shall assess the supervisory approaches in the application of the requirements of this Directive and of Directive 2009/65/EC that are taken by the competent authorities of the AIFMs and, where relevant, management companies within each EU group. For the purpose of that review, ESMA shall use a methodology that ensures comparability and consistency of those supervisory approaches.<br>[…]";' |
| *Explanation*<br>*See paragraph 8.4 of the ECB Opinion and Amendments 2, 5, 6 and 9.* | |
| Amendment 9<br>Article 2, point (21), of the proposed master directive<br>(Article 47a(6) of the AIFM Directive) | |
| '(21) the following Articles 47a to 47c are inserted:<br>"*Article 47a*<br>[…]<br>6. Following each review, as referred to in paragraph 3, ESMA shall, after having consulted the competent authorities of the home Member States of the AIFMs and, where relevant, those of the home Member States of the management companies within the EU group, conclude on whether it identified any diverging, duplicative, redundant or deficient supervisory approaches. | '(21) the following Articles 47a to 47c are inserted:<br>"*Article 47a*<br>[…]<br>6. Following each review, as referred to in paragraph 3, ESMA shall, after having consulted the competent authorities of the home Member States of the AIFMs and, where relevant, those of the home Member States of the management companies within the EU group, conclude on whether it identified any diverging, duplicative, redundant or deficient supervisory approaches**, in particular those that could jeopardise the** |

| Text proposed by the Commission | Amendments proposed by the ECB[20] |
|---|---|
| ESMA shall include the findings referred to in the first subparagraph in a review report, issued by the Executive Board which shall be addressed to the competent authorities of the home Member States of the AIFMs and, where relevant, those of the home Member States of the management companies within the EU group.<br>[…]";' | **functioning of the internal market, the integrity of financial markets, financial stability or investor protection**.<br>ESMA shall include the findings referred to in the first subparagraph in a review report, issued by the Executive Board which shall be addressed to the competent authorities of the home Member States of the AIFMs and, where relevant, those of the home Member States of the management companies within the EU group.<br>[…]";' |
| *Explanation*<br>*See paragraph 8.4 of the ECB Opinion and Amendments 2, 5, 6 and 8.* | |