7 May 2026

EAPB Views on the Markets Infrastructure Package

Introduction

The European Association of Public Banks (EAPB) welcomes the opportunity to comment on the Markets Infrastructure Package (MIP) tabled by the European Commission under the Savings and Investments Union agenda. The package touches on several files that are relevant for EAPB members in their capacity as issuers, investors and, where applicable, providers of custody and depositary services: the review of the Distributed Ledger Technology (DLT) Pilot Regime, targeted amendments to the Central Securities Depositories Regulation (CSDR), changes to Markets in Crypto-Assets Regulation (MiCAR), the introduction of an EU Depositary Passport, and a substantive reform of the European Securities and Markets Authority (ESMA) Regulation.

Taken as a whole, **EAPB supports the broad direction of the proposal.** Our comments below are intended as a constructive contribution to the calibration of the final texts and are structured to highlight, for each file, the points where we welcome the Commission's approach and the points where we consider adjustments necessary.

1. DLT Pilot Regime

Where we support the proposal

EAPB welcomes the substantive upgrades proposed to the DLT Pilot Regime. In particular, the uplift of the per-infrastructure ceiling from EUR 6 billion to EUR 100 billion, the removal of the EUR 500 million market-capitalisation limit on tokenised equities, and the extension of scope to all Markets in Financial Instruments Directive II (MiFID II) instruments and their derivatives are all developments that should enable DLT projects to reach a size compatible with institutional participation and with meaningful liquidity formation. We also support the extension of Article 4 so that, alongside investment firms and Central Securities Depositories (CSDs), authorised Crypto-Asset Service Providers (CASPs) may operate a DLT Trading Venue (TV) or a DLT Trading and Settlement System (TSS), subject to proportionate MiFID, Markets in Financial Instruments Regulation (MiFIR) and CSDR requirements.

The introduction of the "DLT Notary" and "DLT Account Keeper" roles under Article 10a is a welcome clarification of the functional architecture. Allowing regulated markets, CSDs, investment firms, credit institutions and CASPs to take up these roles provides the flexibility that the regime needs, and the alignment with CSDR Title III offers a reasonable supervisory baseline. For these adjustments to deliver their intended effect, they should apply as soon as possible upon entry into force.

Making the regime permanent

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EAPB is in line with the proposals currently on the table as regards the Pilot Regime. In particular, we share the view that the Pilot Regime should be made permanent in order to encourage its adoption and reduce the risk of a "post-regime" transition. A temporary architecture is inherently inconsistent with the multi-year horizons of institutional issuers and infrastructure operators; absent permanence, market participants face continued uncertainty over the legal continuity of instruments issued under the regime. The Commission's approach of evolving the Pilot into a standing framework, running in parallel with existing CSDR and MiFIR rules, is therefore the right one, and we encourage the co-legislators to preserve that orientation through the legislative process.

A periodically reviewable cap

While the uplift of the per-infrastructure ceiling from EUR 6 billion to EUR 100 billion is a step in the right direction, EAPB considers that the overall usability of the DLT Pilot Regime would be better served by removing the thresholds for DLT instruments admitted to trading on a DLT market infrastructure or recorded on such an infrastructure altogether. This would allow the DLT Pilot Regime to evolve into a genuinely permanent regime, running in parallel with existing frameworks like CSDR and MiFIR. Because even though the final outcome might be the same (settlement of financial instruments) DLT takes out risks that the traditional infrastructure was designed to address, and a different regulatory treatment is therefore justified. Should the co-legislators nevertheless prefer to retain a cap, it should at a minimum be made subject to a periodic review mechanism built into Level 1, so that the parameter can be recalibrated to market conditions without reopening the underlying regulation.

Opening settlement to other assets: a currency consideration

EAPB supports allowing settlement in DLT-based cash solutions beyond central bank money, notably tokenised deposits and authorised e-money tokens (EMTs). This is a precondition for the regime to deliver its intended benefits in terms of efficiency and interoperability with traditional post-trade flows.

On this point, however, there is a key consideration that concerns the underlying currency. If settlement in stablecoins is permitted and, in practice, the only stablecoins operationally usable (in terms of liquidity, volume and network effects) are denominated in US dollars, this would pose a risk to the monetary sovereignty of the euro area. This consideration should inform how the opening is framed in the final text and should be weighed against the efficiency gains that a broader set of settlement assets would deliver.

Further adjustments

Beyond the points above, a number of additional clarifications would ensure that the regime is usable in practice, particularly for credit institutions:

- **CSDR credit restrictions.** It should be clarified that the prohibition on "clean credits" under CSDR does not apply to credit institutions operating a DLT-TSS or providing

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DLT Notary / DLT Account Keeper services under the new Article 10a. An explicit carve-out is necessary so that universal banks are not inadvertently excluded from these new functions.

- **Two-scheme restriction (Art. 10c(8)).** There is no material rationale for limiting a DLT account keeper to membership of at most two settlement schemes, and the provision should be deleted.
- **Simplified regime threshold**. The EUR 10 billion threshold for access to the simplified regime is set too low to be genuinely usable and should be raised.
- **Streamlined authorisation**. For existing regulated institutions, the authorisation process under Article 10a should avoid duplicating information already submitted under national or EU licences.

Transition to the "regular" regime

The absence of a defined bridge between the Pilot Regime and the "regular" regime is a material risk. Making the regime permanent (see above) would address that risk at its root. Should the co-legislators nevertheless retain a transitional construction, the CSDR framework should be amended to anchor a permanent authorisation category for DLT Notaries and DLT Account Keepers, in order to avoid cliff-edge effects for issuers and investors (see Section 2).

2. CSDR

Technology-neutral definitions and a durable post-pilot pathway

EAPB supports updating the definitions of "book entry" and "securities account" (Article 2(4a) and (28) of the draft CSDR) so that they cover both centralised and DLT-based electronic records. This contributes to technology neutrality and to legal certainty for tokenised instruments. The amendment is however insufficient on its own: Article 3(2) CSDR continues to tie compliance to the settlement process in full-CSDR securities settlement systems. A durable post-pilot pathway is therefore needed, built around three adjustments:

- **Permanent authorisation category.** A dedicated authorisation path for DLT-based notary and central maintenance services should be anchored in CSDR Title III. Because DLT Notaries perform core CSD functions but do not necessarily operate the settlement system, they should be subject to proportionate requirements focused on asset protection, governance and IT resilience, rather than to the full set of CSD obligations.
- **Article 3(2) CSDR compliance.** It should be made clear that the book-entry transferability requirement is fulfilled when securities are recorded with an authorised DLT Notary, reflecting the functional separation between the recording layer and the settlement layer.
- **Recognition of national regimes.** A fast-track recognition path should be provided for existing national registrar regimes (such as the German eWpG, elektronisches Wertpapiergesetz) that already demonstrate CSDR-equivalent safeguards, to avoid duplicate authorisation procedures and the market-entry barriers that would follow.

Cash penalties (Art. 7(2))

The legal and tax treatment of cash penalties is not uniform across Member States, and whether penalties are passed through or retained depends on the underlying custody structure. The practice has operated without issue for years. The proposed change would require case-by-case justification where penalties legally accrued to a participant remain with that participant, generating administrative cost without a corresponding supervisory benefit. At a minimum, the text should confirm that penalties legally accrued to the participant may remain with the participant.

Settlement internalisers' reports (Art. 9)

EAPB disagrees with the proposed extension of quarterly reporting obligations for settlement internalisers to include breakdowns by instrument type, transaction type and settlement-fail rates. The underlying risk assumptions, derived from ESMA's Report on Trends, Risks and Vulnerabilities (TRV) have been contested in industry analysis, and we would favour reassessing the evidence base before embedding new granular obligations in Level 1. The forthcoming ESMA single report on CSD and internalised settlement, expected by end-2026, should be allowed to inform the debate; any revision to Article 34 CSDR should follow, rather than precede, that exercise.

Disclosure of prices and fees (Art. 34(9))

The addition of paragraph 9 does not appear necessary. Fees and prices charged to retail clients are already disclosed as a matter of standard practice, and professional clients are typically well placed to assess the overall value of the services they receive. A mandatory routine disclosure obligation towards professional clients would generate administrative cost for limited informational benefit. Making such information available upon explicit client request would be a more proportionate calibration.

Open access (Art. 49 CSDR and Art. 34c MiFIR)

The open-access logic is consistent with the founding rationale of TARGET2-Securities (T2S). In practice, however, the proposed changes risk increasing – rather than reducing – the overall cost of the custody and settlement chain. Allowing a trading venue participant to determine where its instruments are held and to whom delivery is owed increases complexity for venues and may push operators towards more restrictive admission criteria, with potential consequences for liquidity. The question arising under Article 49 CSDR is similar, albeit on a smaller scale given the more manageable number of issuers. Set against the ongoing industry effort to absorb the move to T+1, the sequencing of further far-reaching open-access reforms deserves particular attention.

3. MiCAR

General orientation

EAPB welcomes the overall objective of strengthening supervisory convergence and market integrity under MiCAR and explicitly supports the Commission's decision not to transfer supervisory powers to ESMA where the CASP is a credit institution. Banking supervision is already centralised and harmonised, and National Competent Authorities (NCAs) have built genuine expertise in supervising crypto-asset activity since MiCAR came into force. Layering a parallel ESMA supervisory track over credit institutions would be difficult to justify on proportionality grounds.

The main difficulty in the current drafting is a mismatch: several amendments move reporting and notification obligations to ESMA while supervisory competence remains with NCAs (cf. Art. 60(61), 69, 73 and 92 of MiCAR). Without a clearer alignment between the two, the reform risks creating duplicative data flows, fragmenting oversight and generating legal uncertainty about which authority holds responsibility for follow-up.

Align ESMA and NCA responsibilities

Across several provisions – including notification and turnover data (Art. 60(6a)), changes in the management body (Art. 69), outsourcing arrangements (Art. 73) and market abuse reporting (Art. 92) – the drafting directs obligations to ESMA even where NCAs remain the competent supervisory authority. In each case, ESMA's role should be limited to situations in which it is the actual supervisory authority, and reporting or notification channels should be aligned with the allocation of supervisory competence.

Multi-issuer stablecoins

Clearer regulation of multi-issuer stablecoins is needed to ensure financial stability and legal certainty. Where an outright prohibition is not envisaged, admissibility in the EU could be made conditional on equivalent regulation in third countries, so as to prevent abusive practices that would otherwise exploit regulatory differences.

4. Depositary Passport

EAPB welcomes the Depositary Passport in principle, as an instrument capable of facilitating cross-border capital market activity and deepening the integration of the single market. Broader access to depositaries can be particularly beneficial for fund providers active in smaller markets, allowing more purposeful comparison of services and potential efficiency gains.

The passport cannot, however, be expected to deliver on its own. The depositary operates as a structural investor-protection mechanism that is tightly linked to national civil, insolvency and custody law. Comprehensive legal adjustments are therefore required beforehand: expanded access must not lower existing high protection levels; supervisory responsibilities must be

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clearly allocated where funds and depositaries no longer operate within the same legal and supervisory environment; and the current lack of clear conflict-of-law rules, particularly on transfers of ownership and securities lending. needs to be addressed, as it may otherwise become a barrier to the take-up of the passport.

5. ESMA Regulation

General orientation

Beyond its substantive content, the package introduces far-reaching changes to the European supervisory architecture – in particular the role, powers and governance of ESMA. EAPB supports the further development of European supervision, provided that it is calibrated to pan-European issues with genuine cross-border relevance and to the necessities set out in the MIP. Where only national markets are affected, NCAs should retain the lead, relying on their proximity to domestic market practice; cooperative models, including Joint Supervisory Teams, can support substantive NCA involvement in decision-making.

Any expansion of ESMA's powers should be clearly defined, predictable and legally certain, and should be set out in the ESMA Regulation and the relevant Level 1 texts. In fulfilling its duties, ESMA should also be expected to consider the competitiveness of European capital markets alongside investor protection and financial stability.

Governance and institutional balance

The investigative and intervention powers envisaged in Articles 17aa and 17aaa of the draft ESMA Regulation would create a disconnect between ESMA's decision-making authority and the accountability of national supervisors, which would continue to bear the burden of implementation, market proximity and political accountability. Supervisory convergence should not result in opaque or informal shifts of competence, and such powers should be framed accordingly.

Similarly, the proposed Executive Board – a Chair and five independent full-time members, centralising operational control and key interventions such as the suspension of cross-border distribution – would leave the Board of Supervisors with little more than a right of objection. Concentrating decision-making in the hands of a few independent members risks weakening the pluralistic legitimacy that characterises ESMA today. The extension of ESMA's mandate to a "common supervisory and enforcement culture" under Article 29 significantly broadens its role beyond supervision and would merit clear political justification and strict boundaries.

Competitiveness as a secondary objective

International competitiveness of EU firms and EU capital markets should be a guiding principle and should be manifested as a formal secondary objective of ESMA, as is already the case in comparable peer jurisdictions. In practice, each new Level 2 or Level 3 instrument should be accompanied by a structured competitiveness test covering at least: the competitiveness of

EU firms and markets (within the EU and globally); the simplification of new rules and avoidance of excessive burdens on market participants and their clients; consistency with international standards developed by recognised bodies such as International Organization of Securities Commissions (IOSCO) or Bank for International Settlements (BIS); and awareness of regulatory approaches adopted in competitor jurisdictions such as the UK and the US.

Costs, bureaucratic burdens and regulatory stability

The MIP should not, in aggregate, raise the cost of supervision – either directly for supervised entities or indirectly for their clients – and should avoid disproportionate burdens on market participants and investors. Supervision under ESMA should build on existing supervisory frameworks (including reporting and data requirements); where there is no demonstrable added value for financial stability, market integrity or investor protection, incremental IT, compliance or operational obligations should be avoided.

Regulatory stability is equally important. Level 1 texts that contain mandates for ESMA to issue Level 2 requirements should only start to apply once the related Level 2 requirements are finalised, in order to avoid the situation in which firms implement obligations whose details are still being shaped. Alongside this, any changes to ESMA's powers should take into account: sufficiently resourced supervision and targeted build-up of expertise; the implementation of a genuine "no-action letter" power in exceptional circumstances and in close cooperation with the Commission; communication with ESMA that remains as accessible as communication with NCAs is today; transparent decision-making vis-à-vis market participants, NCAs and the Commission; early engagement with industry on regulatory standards, including through secondments; recognition of the specificities of individual institutions (business models, governance, geographic footprint); avoidance of uncoordinated horizontal supervision; and simple documentation and reporting requirements.

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