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NSA position paper on the EU Market Integration and Supervision Package (MISP)

The Nordic securities association (NSA) is a collaboration between trade associations representing the interests of investment firms and banks conducting securities business on the Nordic capital markets.¹

The NSA welcomes the European Commission's (Commission) Market Integration and Supervision Package (MISP), which forms a central pillar of the EU's Savings and Investment Union (SIU). The NSA fully agrees that the EU needs stronger capital markets to finance innovation, industrial transformation, entrepreneurship and long-term economic growth. Well-functioning capital markets are essential if Europe is to improve productivity, strengthen its resilience and global competitiveness.

At the same time, it is important to recognize that well-functioning capital markets already exist in some Member States and to ensure that new regulatory initiatives at EU level do not undermine those markets. The key role of EU regulation should be to provide a stable harmonized legal framework that removes unwanted barriers, ensuring genuine competition both within EU and towards third countries, facilitating cross-border activities whilst still leaving room for local specificities that take the needs of different types of issuers and investors into account. In this context, it is worth underlining that the success of MISP should not be measured by the number of agreed amendments to EU legislation or the speed of the negotiations but by its contribution to reaching the SIU policy objectives. During the MISP legislative process it is therefore important that co-legislators continuously ask themselves the question: *Does this proposal contribute to increasing the EU's ability to efficiently mobilize private capital into productive investment?*

Below you find the NSA's key points on the MISP package, including some proposals for amendments to the legal texts in appendices.

General comments

The NSA generally supports the overall SIU agenda. However, we are concerned about the speed of the negotiations of the MISP dossier. MISP is a very comprehensive and technically complex legal package that could have a fundamental impact on the core infrastructure and functionality of EU capital markets. It is therefore of outmost importance to ensure that all changes to the current regime are evidence-based and that the co-legislators are given sufficient time to analyse the effects of the proposals. Otherwise, MISP could introduce new risks and more complexity into the EU financial system, which would be counterproductive.

¹ NSA is composed of Finance Denmark (Finans Danmark), Finance Finland (Finanssiala ry), the Norwegian Securities Markets Association (Verdipapirforetakenes Forbund) and the Swedish Securities Markets Association (Föreningen Svensk Värdepappersmarknad). NSA is registered in the European Parliament Transparency Register with number 622921012417-15.

The NSA urges co-legislators to be very cautious in re-opening issues in the context of MISP that have been recently negotiated and agreed in other dossiers. Regulation is a key driver of costs and constant changes to the EU framework and creates legal uncertainty and contributes to making EU capital markets less attractive to issuers, investors and financial institutions.

It is important to consider that the financial markets are currently undergoing an immense technological shift. The distinction between “traditional” and “non-traditional” capital markets are likely to become more and more blurred in the future. It is therefore of outmost importance to ensure that MISP remains technology neutral, allowing EU infrastructure providers and financial institutions to innovate and stay competitive in the years to come with the overall fundamental rule in mind: “Same business, same risk, same rules”.

Supervision

As noted above, the NSA represents the interest of sell-side investment firms and banks, which are not directly impacted by the Commission’s proposals for centralized supervision. However, our members are indirectly impacted, as market participants and users of capital market infrastructures such as trading venues, CSDs and CCPs.

The NSA is generally in favour of centralized supervision of significant capital market infrastructures, which can help remove cross-border barriers and improve market integration. Having said that, it is important to ensure that a shift towards EU-level supervision does in fact lead to efficiency gains, not increased complexity and higher costs for market participants. In particular, it should be ensured that the division of competence between ESMA and national competent authorities (NCA) is clear and proportionate. For example, double reporting should be avoided.

It is also important to have a clear allocation of responsibilities between ESMA and the national competent authorities, because NCAs have the local expertise in local market structures, company law, taxation and account structures. It is also important to ensure that a distinction between significant and less significant financial market infrastructures does not add unnecessary regulatory complexity.

Moreover, it is important to ensure effective competition and to prevent abuses of market power, particularly in infrastructure activities where natural-monopoly characteristics or high barriers to entry, limit competitive pressures. It is also important that central supervision does not give the significant infrastructure providers a competitive advantage compared to smaller players that will remain under national supervision. Nordic experience shows that local ecosystems play a central role in financing regional economies and SMEs. In order to ensure effective supervision, skills and expertise relating to local markets must continue to exist in the Member States and also be developed at central EU level (e.g. as regards national laws applicable to local infrastructures such as tax and corporate rules).

Supervision of Significant Trading Venues

The NSA supports the Commission's proposal that significant trading venues and those operating on a cross border-basis are directly supervised by ESMA. We also strongly support that NCAs should continue to be in control of market surveillance (e.g. market abuse and trading halts) for capital markets operated or situated in their Member State. It is the local competent authorities that have the best knowledge of how local markets and investors behave and can react quickly when needed.

Supervision of CASPs

Considering the above-mentioned technological developments, the NSA considers that the structure of the supervisory framework should be the same for "traditional" and "non-traditional" market players. In other words, the same approach regarding division of supervisory competences should be taken for CASPs as for trading venues i.e. only significant and/or cross border CASPs should be subject to ESMA's supervision and market surveillance of crypto markets should be the task of NSAs.

Supervision of CSDs

The NSA acknowledges that centralised supervision of CSDs could lead to pooling of relevant competences and more clarity regarding the competent authority's decisions. It could also bring about a more level playing field in terms of competition between different CSDs. Considering the current low level of competition, where the role of the CSD to a large extent is that of a natural monopoly, we encourage the legislator to keep the fair competition aspect in mind when deciding on the future supervision framework for CSDs. If the intention of the EU legislator is to centralise the supervision of the vast majority of CSDs, we question the value of the proposed grouping of CSDs into significant and less significant CSDs and the regulatory complexity this entails. The NSA proposes that the grouping of CSDs into significant and less significant CSDs is deleted from MISP.

Supervision of asset managers

The NSA strongly opposes the proposals in the MEP Heinäluoma's draft report which extend ESMA's direct supervision to asset managers. In our view, this proposal creates unwarranted layers of supervisory complexity that could be harmful to EU's competitiveness. Both UCITS and AIFMD are EU directives by design, and effective supervision therefore requires in- depth knowledge of national legal frameworks, distribution systems and investor behaviour. This competence would be very difficult to transfer to EU-level. A better way of improving supervision in the asset management area could be through introducing an enhanced supervisory college model.

The master regulation

The ESMA regulation (1095/2010)

Competitiveness mandate

The NSA supports the introduction of competitiveness as a secondary objective for ESMA when drafting level 2 and level 3 regulations. It should be a part of ESMA's regular process to analyse how new or amended technical standards and guidelines affect the competitiveness of EU financial actors



e.g. in the cost-benefit analysis. For the sake of clarity, we propose that a principle to this effect should be added to the ESMA regulation.

No-action letters

The NSA welcomes the proposal by the Commission to introduce increased possibilities for ESMA to issue so-called no action letters. However, we find the current proposed wording to be too restrictive and that several amendments are needed in order to make this tool a success. First of all, the “urgent and unforeseen” threshold should be deleted from article 9a. It is important to ensure that ESMA is able to act whenever significant issues arise, not only in exceptional emergencies. The grounds for the use of no-action letters needs to be more flexible and include implementation problems resulting from e.g. too tight implementation deadlines or misalignment between level 1 and level 2. In addition, the NSA proposes that the Commission should be granted powers to temporarily pause, in specific and well-defined circumstances, the application of level 1 requirements.

Q&As

The NSA opposes the Commission’s proposal to delete the ESMA’s powers to publish Q&As (article 16a of the ESMA regulation). In our opinion, Q&As are very useful tools for both market participants and national supervisory authorities as they allow them to get ESMA’s (non-binding) view on the interpretation of level 1 or level 2 regulations. Without a Q&A mechanism, or a similar tool, both market participants and the NCAs risk losing a critical tool for supervisory convergence and direct engagement with ESMA, thereby undermining regulatory harmonization and legal certainty, mostly on technical and operational matters. Therefore, the NSA proposes to re-insert article 16a into the ESMA regulation.

Having said that, the NSA considers that ESMA’s level 3 toolbox could be streamlined. During recent years, ESMA has used a growing number of different tools to communicate its interpretations and guidance to the market, i.e. reports, opinions, public statements, recommendations, letters and supervisory briefings etc. This has increased regulatory complexity and compliance risks.

New supervisory tools (Articles 17 aa and 17 aaa)

The NSA agrees that it is important to have robust and effective supervisory tools to address the problem of non-compliant NCAs. However, we oppose the proposed new articles 17 aa and 17 aaa of the ESMA regulation which we believe to be both unproportional and unclear from a legal perspective. Deficiencies in supervision by an NCA do not automatically mean lack of compliance by the market participants subject to NCA supervision, and there is no correlation between deficiencies in supervision and the quality of the products and services offered (article 17 aa). Moreover, ESMA’s suspension of cross-border services is comparable to a temporary withdrawal of authorisation. This is a supervisory tool that goes far beyond the existing powers of NCAs to impose sanctions which is not proportional (article 17aaa). Also, since there are other tools which ESMA can use to address these problems (such as articles 17, 29 and 30 of the ESMA regulation), the NSA considers that both article 17 aa and article 17 aaa should be deleted.

Data collection from infrastructure providers, etc.

Many of the financial sector infrastructure companies are natural monopolies where (part of) their business is either very difficult or not possible to expose to competition. The NSA proposes to strengthen ESMA's role in collecting data from infrastructure providers under its supervision, relating to e.g. fees and terms and conditions. Where such data gives rise to concerns or indications of potential anti-competitive conduct, ESMA shall cooperate with the relevant competition authorities (at EU and/or national level, as appropriate).

Please see our drafting comments regarding the ESMA regulation in Appendix A.

MiFIR (600/2014)

Systematic internalisers

Systematic internalisers (SIs) fulfil an important function as liquidity providers on EU capital markets, providing investors with alternative ways of execution. As regards the question of level playing field with trading venues, the NSA wants to underline that it is already clear from the existing MiFID II/MiFIR framework that SI's must engage in bilateral trading at risk on own account. If there exists SIs that provide orderbook-like services and carry out multilateral trading today, they are in breach of the rules. This is an enforcement issue and does not require additional amendments to MiFIR.

Since SIs are bilateral risktakers, the NSA also questions the rationale behind the proposal to require SIs to provide five best bids and offers to the consolidated tape. Since not all clients have access to SIs there is a risk that this data will be misleading. To include SI data could be detrimental to data quality of the CT. We therefore propose that article 22 a (1) MiFIR is deleted.

Consolidated tape – pre trade

The NSA considers that it is not reasonable from an operational or cost perspective to make changes to the consolidated tape regime in the middle of ongoing implementation of MiFID II/MiFIR review. Since it cannot be excluded that once the consolidated tape has been launched, other areas of improvements are identified, it is more cost-efficient to wait for a review. In order to have sufficient time to collect data and experience from the consolidated tape, the NSA considers that ESMA's report on CT for shares and ETFs should be published in 2029 (not in 2027). It is important that ESMA collects users' experience through a call for evidence.

In the opinion of the NSA, consolidated pre-trade data can be useful from a transparency and valuation perspective, in particular for certain clients. However, the consolidated data will never be able to replace the primary data that investment firms/banks need for the execution of client orders, which is purchased directly from the source, i.e. the trading venues. The reason for this is that since the consolidated tape data is aggregated it will always be published with a delay (latency). Therefore, the data will be "too old" for investment firms/banks to use when deciding where to send a client order for execution. As a consequence, there can be no – direct or indirect - legal requirements for

investment firms/banks to use the consolidated tape data for trading or to prove best execution. In order to increase legal certainty, NSA suggests that this point is clarified in a new recital.

Cost of Market Data

The increasing cost of market data has for a long time been a major concern for the NSA. In our view, the new RTS on Reasonable Commercial Basis (RCB) which are applicable from 23 August 2026 may not sufficiently address situations where trading venues possess significant market power in relation to certain categories of proprietary market data. Such market power may allow prices to depart materially from competitive levels and may facilitate cross-subsidisation between services.² In order to tackle this problem, the NSA considers that market data costs shall be closely monitored by ESMA and proposes that a new provision to this effect is added to MiFIR.

Closing auctions

The closing auctions performed by the incumbent exchanges have gained significant market share over the past few years. The closing prices from these exchanges are the official closing prices which are used for various purposes and KPIs and there is no alternative source. Hence, the incumbent exchanges hold monopoly over the closing auction which often is reflected in higher fees for trading in the closing auction than for continuous trading. The NSA appreciates that the Commission aims to address this problem in MISP through the proposed volume-weighted closing price. However, this will not solve the problem since the volume-weighted closing price would not be tradable. Instead, the NSA therefore proposes a new rule requiring primary exchanges to open access to their closing auctions to other trading venues, either through links or direct participation from other trading venues that trade the listed shares (with contributing venues being credited for the market share they bring to the auction). This requirement would in the NSA's view strengthen competition and resilience while preserving the reliability of the closing price benchmark. If that is not possible, at least the Commission's proposal relating to volume-weighted closing price should be deleted, and the current wording in MiFIR article 2(1) point 36b shall be kept.

Please see our drafting comments regarding MiFIR in Appendix B.

CSDR (909/2014)

The hub-and-spoke model

The Commission has proposed provisions introducing the concept of CSD Hubs into CSDR and mandating reciprocal links between CSD Hubs, and for CSDs that are not hubs to establish reciprocal links with a CSD hub. The NSA does not support the Commission's proposal for a hub-and-spoke model. We are in favour of further post trade integration within the EU, but do not believe that the proposed hub-and-spoke model is an effective way to achieve this. The proposed model would make

² [Market integration package - Finance - European Commission](#) including the [Study on consolidation and reducing fragmentation in trading and post-trading infrastructures in Europe - Publications Office of the EU](#) page 156. The study refers to the upcoming RTS on RCB and does not reflect further on the problems.

all securities available in all CSDs, which would mean that CSDs would have to adapt their systems and processes to handle the new securities. This would create unnecessary and disproportionate obligations for CSDs and their participants by requiring links and settlement access that may not reflect market demand or commercial relevance. Mandatory CSD links may increase cost for banks, custodians, issuers and ultimately investors without any clear benefit. For example, all banks and investment firms (not only those that provide e.g. global custody services) would need to develop internal systems that can handle corporate actions for all EU securities, meaning that they need to have specific knowledge of local tax and corporate law in other countries.

A better way to further the post-trade integration would be to continue the work on reducing the identified barriers to integration in securities post-trade services, especially the barriers for CSDs to compete on investor CSD services, irrespectively of the issuer CSD.³ the proposed hub-and-spoke model The opening of links should in our opinion be based on market demand, not due to a mechanical regulatory obligation.

If the issuer is given the possibility to freely designate a CSD as proposed in MISP, there should not be a need for the proposed provisions regarding CSD links until other barriers for CSDs to compete on investor CSD services, irrespectively of issuer CSD, are solved. Already today, the issuers pick the geographical market where they see the best market opportunities and where there are potential investors, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

Measures to prevent settlement fails

In the Commission's proposed amendments to article 6 there are requirements for CSDs – and for participants – to have fully automated processing of settlement instructions. While we appreciate the benefits of automation generally, we would like to recommend caution when it comes to detailed and far-reaching requirements in this area, especially in relation to the client facing parts of the institutions. Drawing from the Nordic experience, with a relatively broad investor base compared to other EU markets, including a high level of retail participation and many smaller asset managers, we would like to highlight the importance of striking a balance between requirements for automation and applying efficient manual processes, in order to avoid creating barriers that impede the market development. Introducing requirements of automatic processes between financial institutions and their clients would lead to higher barriers to entry or remain on the market for smaller, professional clients such as smaller asset managers. This could hamper the development at EU level towards a broader investor base, without any real improvement in the quality of the information and communication, which would not be in line with the overarching purpose of the SIU to increase cross-

³ See the Advisory Group on Market Infrastructures for Securities and Collateral's report on Remaining barriers to integration in securities post-trade services – issues and recommendations, September 2025: [Remaining barriers to integration in securities post-trade services – issues and recommendations](#)



border investments within the EU, to improve the attractiveness of the EU as an investment destination and to encourage investments in securities issued by companies within the EU.

The Commission's proposal includes a mandate for ESMA to develop draft regulatory technical standards. When developing such standards, ESMA should consider existing international standards for messages, including the ISO standards for Settlement Allegement.

Internalised settlement

According to the proposed new paragraph 9 in article 34 in CSDR, settlement internalisers would be required to disclose the prices and fees associated with the services they provide to their clients and differentiate between the prices pertaining to settlement in and outside a securities settlement system. The NSA does not see merit in imposing this requirement and propose that it is deleted from MISP.

Internalised settlement is a normal commercial service offered by financial institutions to its clients, typically as an integrated element of a broader custody service, rather than as a standalone service. It should therefore not be treated as equivalent to the core settlement services operated by CSDs. CSD settlement is an infrastructure service provided through a securities settlement system, whereas internalised settlement is a custody-related client service carried out within a financial institution's account structure. Furthermore, internalised settlement covers a wide range of different processes, that can vary depending on the financial institution's business model and service offering, as well as on the specific technical set-up and account structure within each financial institution. For example, for retail banks internalised settlement could stem from transactions due to inheritance or divorce, where the nature of the transaction is completely different from internalised settlement stemming from e.g. triparty collateral management. Before any regulatory amendments are made in this area, the different use cases for internalised settlement should be considered, as well as the difference in nature between CSD settlement and internalised settlement.

Moreover, we see limited value in requiring a like-for-like pricing distinction between CSD settlement and internalised settlement, as the two services are different in nature, function and regulatory context. Client pricing transparency is already addressed through banking and investment services regulation; adding such requirements in CSDR would create unnecessary and confusing overlaps. Requiring a separate breakdown of fees would also increase the operational complexity without providing meaningful transparency to clients and could result in misleading comparisons between CSD core settlement services and internal processing activities that form part of the custody chain.

CSD ancillary services and competitive neutrality

The NSA considers that the regulatory framework should maintain a clear distinction between CSD core services and ancillary services. Where CSDs provide ancillary services in competition with other financial market participants, the framework should ensure competitive neutrality and avoid regulatory advantages linked to the CSD's role as infrastructure provider.

Protection of securities of participants and those of their clients

As regards the protection of securities of participants and those of their clients, a participant shall offer its clients at least the choice between omnibus client segregation and individual client segregation and a CSD shall keep records and accounts that enable both types of segregation (article 38 CSDR). In the Nordic countries, there are mixed securities account systems with a higher level of individual client segregation than in other EU member states. In some Nordic countries, individual client segregation is mandated by law for certain types of investors, which are obliged to safekeep their financial instruments in an account registered in the name of the beneficial owner at the top tier CSD securities account level. In the Commission's proposal, the definition of "omnibus client segregation" is moved from article 38 to the list of definitions in article 2, while the definition of "individual client segregation" is kept in article 38. Since the CSDR provides for both types of client segregation and to avoid any confusion, we think that both definitions should either be included in the list of definitions in article 2 or be kept in article 38.

Please see our drafting comments regarding the CSDR in Appendix C.

The settlement finality regulation and the financial collateral directive (2002/47/EC)

The NSA welcomes a review and modernisation of the settlement finality provisions, which are currently found in the settlement finality directive (98/26/EG) (SFD), to make sure that they are still fit for purpose and to, as far as possible, make them technology neutral and e.g. ensure that they work well for DLT infrastructures.

Conflict of laws

It is a priority for the NSA that the provisions regarding applicable law and conflict of laws are clear. It is essential that the rights to collateral security is protected – for all types of financial instruments, held either at a CSD securities account or at a custody account – and that the provisions on how to determine the applicable law in all of the relevant directives and regulations are clear. The phrase "legally recorded on a register, account or centralised deposit system" should be clarified. The same wording is also used in the corresponding article in the SFD (article 9(2)) and has been subject to discussions, since it is not clear from the wording when and where the collateral security is considered to be legally recorded and what is meant by the word account in that context.⁴ The wording used should be neutral as regards the means for creating the right, and the *requirement in rem*, i.e. the action that is required for protection against creditors, e.g. registration or a notice of assignment of claim. In the Nordic countries, the formal requirement for making a claim effective against third parties is in many cases, including for securities held in a custody account, a notice of assignment of claim, not a registration in a system.

⁴ See e.g. the Commission's Communication COM(2018) 89 on the applicable law to the proprietary effects of transactions in securities, [EUR-Lex - 52018DC0089 - EN - EUR-Lex](#)

Scope of netting

It needs to be clarified that SFR does not pre-empt Member States from maintaining or introducing netting protections that go beyond the SFR's minimum, including protection of bilateral close out netting outside designated/registered systems and without a financial collateral arrangement. This would help preserve the legal certainty currently provided under national regimes.

Moreover, the Commission's proposed wording seems to imply that close out netting protection is contingent on the existence of financial collateral. This would not reflect market practice, where close out netting is a core contractual risk management tool, even in the absence of collateral (e.g. in derivatives). The SFR should adopt an autonomous, technology neutral definition of close out netting that is not contingent on a financial collateral arrangement and that protects master netting agreements regardless of the template used.

Third country systems

The NSA supports a harmonisation of the requirements for registration of third-country systems. From a Nordic perspective, we have good practical experience with registration of third country systems under the current, national regimes that extend the protection of the SFD to third-country systems. Hence, we would like to propose that the wording of the provisions in the regulation gives the same level of protection as under existing national regimes.

The financial collateral directive

The Commission has only proposed a few, minor amendments in the financial collateral directive (FCD). The NSA would welcome a review of additional provisions in the FCD. Specifically, the conflict of laws provisions should be clarified in coordination with the conflict of laws rules in the SFR and, as regards the scope of the directive, the legislator should consider also including natural persons in the list of collateral takers and providers in article 1(2).

Please see our drafting comments regarding the SFR and the FCD in Appendix D.

Appendix A – The NSA’s proposed amendments in the MISP master regulation Article 1: amendments in the ESMA regulation, Regulation (EU) No 1095/2010

The comments include the Commission’s proposal and, where relevant, the European Parliament’s Rapporteur’s draft report.

[Recital 5 ESMA-regulation]

Text proposed by the Commission

For that purpose, ESMA should be given additional competences, and its governance and funding framework should be reinforced to promote transparent, accountable and efficient decision-making at Union level and to ensure that ESMA has sufficient resources to fulfil its expanded responsibilities. The transfer of direct supervisory powers to ESMA in relation to significant entities in the field of market infrastructure and to crypto-asset service providers (CASPs), together with enhanced supervisory convergence tools, should contribute to a more integrated, competitive and resilient capital market that delivers better outcomes for investors, firms and the broader economy.

NSA proposed amendments

For that purpose, ESMA should be given additional competences, and its governance and funding framework should be reinforced to promote transparent, accountable and efficient decision-making at Union level and to ensure that ESMA has sufficient resources to fulfil its expanded responsibilities. The transfer of direct supervisory powers to ESMA in relation to significant entities in the field of market infrastructure and to crypto-asset service providers, together with enhanced supervisory convergence tools, should contribute to a more integrated, competitive and resilient capital market that delivers better outcomes for investors, firms and the broader economy. ***ESMA shall, in the process of drafting technical standards, guidelines, questions and answers as well as other supervisory convergence tools, under this Regulation have particular regard to the competition within EU, the competitiveness and international attractiveness of Union capital markets, and should consider the impact of its actions on the ability of Union firms to compete both within the EU and globally, consistent with its primary objectives of investor protection, market integrity, market efficiency and financial stability.***

Justification

The NSA supports proposal in EP Draft Report (AM 50) that it should be explicitly stated in the ESMA-regulation that ESMA should have particular regard to the competitiveness and international attractiveness of Union capital markets. In our view this secondary objective makes most sense in relation to the development of technical standards, guidelines and questions and answers, i.e. not when exercising direct supervision against financial actors. (See also proposal for amendment of articles 10.1 and 15.1 below.)

Article 1 – paragraph 1 – point 1 – point b a (new)

[Article 1 – paragraph 5 a (new) ESMA-regulation]

Text proposed by the Commission

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NSA's proposed amendments

5a. Subject to the primacy of the objectives set out in paragraph 5, the Authority shall, in the process of drafting technical standards, guidelines, questions and answers as well as other supervisory convergency tools, under this Regulation and the legislative acts referred to in paragraph 2, have particular regard to the competitiveness and international attractiveness of Union capital markets and to the impact of its actions on the ability of Union financial market participants to compete with counterparts established within EU and in third countries.

Justification

The NSA supports proposal in EP Draft Report (AM 50) that it should be explicitly stated in the ESMA-regulation that ESMA should have particular regard to the competitiveness and international attractiveness of Union capital markets. In our view this secondary objective makes most sense in relation to the development of technical standards, guidelines and questions and answers, i.e. not when exercising direct supervision against financial actors. (See also proposal for amendment of articles 10.1 and 15.1 below.)

Article 1 – paragraph 1 – point 8 – point a – point 1

[Article 9a – paragraph 1 – introductory part ESMA-regulation]

Text proposed by the Commission

The Authority shall take the measures referred to in paragraph 2 of this Article **only in urgent and unforeseen circumstances** when it considers that the application of one of the legislative acts referred to in Article 1(2), or of any delegated or implementing acts based on those legislative acts, is liable to raise significant issues, for one of the following reasons:

NSA's proposed amendments

The Authority shall take the measures referred to in paragraph 2 of this Article when it considers that the application of one of the legislative acts referred to in Article 1(2), or of any delegated or implementing acts based on those legislative acts, is liable to raise significant issues, for one of the following reasons:

Justification

The NSA agrees with the EP Draft Report (AM 53) that the “urgent and unforeseen” threshold is excessively restrictive. Implementation difficulties are often not foreseeable yet acute. It is important to ensure that ESMA should be able to act whenever significant issues arise for market participants, not only in exceptional emergencies.

Article 1 – paragraph 1 – point 8 – point b

[Article 9a, paragraph 2, subparagraph 2 ESMA-regulation]

Text proposed by the Commission

In the cases referred to in paragraph 1, points (a), (b), (d) and (e), the Authority shall provide the Commission with an opinion on any action it considers appropriate, **in the form of a new legislative proposal or a proposal for a new delegated or implementing act**, and on the urgency that, in the Authority's judgment, is attached to the issue. The Authority shall make its opinion public.;

NSA's proposed amendments

In the cases referred to in paragraph 1, points (a), (b), (d) and (e), the Authority shall provide the Commission with an opinion on any action it considers appropriate and on the urgency that, in the Authority's judgment, is attached to the issue. The Authority shall make its opinion public. **Based on the Authority's opinion or on its own initiative, the Commission may suspend the application of Level 1 provisions.**

Justification

The NSA questions why an opinion should always result in a new legislative proposal, delegated act, etc. It may also for instance be the case ESMA needs to issue a ‘no-action letter’ stating that no supervisory measures should be prioritized in a certain area due to specific circumstances. It is important not to limit ESMA’s mandate and ability to issue relief in acute circumstances.

The NSA welcomes the new proposals under articles 10 and 15 of the ESMA Regulation that empower the Commission to suspend the application of RTS/ITS on its own initiative via a Delegated Act or an Implementing Act. However, these amendments address the application of Level 2 rules, but they do not address the underlying obligations stemming from the Level 1 legislative text. To remedy this, we propose including a possibility for the Commission to suspend the application of Level 1 in article 9a.

Article 1 – paragraph 1 – point 9 – point a (new)

[Article 10 paragraph 1 subparagraph 3 ESMA-regulation]

Text proposed by the Commission

Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and shall analyse the potential related costs and benefits, unless such consultations and analyses are highly disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the advice of the Securities and Markets Stakeholder Group referred to in Article 37.

NSA proposed amendments

Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and shall analyse the potential related costs and benefits, ***including the impact on the international competitiveness of Union market participants and Union capital markets, taking into account equivalent or comparable regulatory requirements in relevant third-country jurisdictions***, unless such consultations and analyses are highly disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the advice of

the Securities and Markets Stakeholder Group referred to in Article 37. ***The Authority shall publish the results of the competitiveness assessment as part of its consultation documentation.***

Justification

The NSA supports proposals in EP Draft Report (AM 56 and AM 59) to introduce competitiveness assessment as a mandatory part of the cost-benefit analysis when drafting regulatory and implementing technical standards and that this analysis should be made public.

Article 1 – paragraph 1 – point 10 – point -a (new)

[Article 15 – paragraph 1 – subparagraph 2 ESMA-regulation]

Text proposed by the Commission

Before submitting draft implementing technical standards to the Commission, the Authority shall conduct open public consultations and shall analyse the potential related costs and benefits, unless such consultations and analyses are **highly** disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the **advice** of the Securities and Markets Stakeholder Group referred to in Article 37.

NSA's proposed amendments

Before submitting draft implementing technical standards to the Commission, the Authority shall conduct open public consultations and shall analyse the potential related costs and benefits, ***including the impact on the international competitiveness of Union market participants and Union capital markets, taking into account equivalent or comparable regulatory requirements in relevant third-country jurisdictions***, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the ***opinion*** of the Securities and Markets Stakeholder Group referred to in Article 37. ***The Authority shall publish the results of the competitiveness assessment as part of its consultation documentation.***

Justification

The NSA supports proposals in EP Draft Report (AM 56 and AM 59) to introduce competitiveness assessment as a mandatory part of the cost-benefit analysis when drafting regulatory and implementing technical standards and that this analysis should be made public.

Article 1 – paragraph 1 – point 11

[Article 16b ESMA-regulation]

Text proposed by the Commission

NSA's proposed amendments

Deleted

1. Without prejudice to paragraph 5 of this Article, questions relating to the practical application or implementation of the provisions of legislative acts referred to in Article 1(2), associated delegated and implementing acts, and guidelines and recommendations, adopted pursuant to those legislative acts, may be submitted by any natural or legal person, including competent authorities and Union institutions and bodies, to the Authority in any official language of the Union. Before submitting a question to the Authority, financial market participants shall consider whether to address the question in the first place to their competent authority. Before publishing answers to admissible questions, the Authority may seek further clarification on questions asked by the natural or legal person referred to in this paragraph.

2. Answers by the Authority to questions as referred to in paragraph 1 shall be non-binding. Answers shall be made available at least in the language in which the question was submitted.

3. The Authority shall establish and maintain a web-based tool available on its website for the submission of questions and the timely publication of all questions received as well as all answers to all admissible questions pursuant to paragraph 1, unless such publication is in conflict with the legitimate interest of those persons or would involve risks to the stability of the financial system. The Authority may reject questions it does not intend to answer. Rejected questions shall be published by the Authority on its website for a period of two months.

4. Three voting members of the Board of Supervisors may request the Board of Supervisors to decide pursuant to Article 44 whether to address the issue of the admissible question referred to in paragraph 1 of this Article in guidelines pursuant to Article 16, to request advice from the Stakeholder Group referred to in Article 37, to review questions and answers at appropriate intervals, to conduct open public consultations or to analyse potential related costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter. When involving the Stakeholder Group referred to in Article 37, a duty of confidentiality shall apply.

5. The Authority shall forward questions that require the interpretation of Union law to the Commission. The Authority shall publish any answers provided by the Commission.

Justification

The Commission's removal of the legal basis (article 16b of the ESMA Regulation) for ESMA to issue Q&As without an explanation in MISP raises several concerns. It would deprive ESMA of a structured mechanism to issue Q&As that have proven to be a key tool for ESMA to provide clarifications on practical industry questions of application and interpretation of Level 2 requirements. Without a Q&A mechanism, or a similar tool, both market participants and NCAs risk losing a critical tool for supervisory convergence and direct engagement with ESMA, thereby undermining regulatory harmonization and legal certainty, mostly on technical and operational matters.

Article 1 – paragraph 1 – point 13

[Article 17aa – paragraph 1 – subparagraph 1 ESMA-regulation]

Text proposed by the Commission

NSA's proposed amendments

Where a peer review or an inquiry under Article 22(4) reveals that a competent authority **may be** failing to effectively supervise market participants in the sector subject to the peer review or inquiry, and that such supervisory failure **could jeopardize** the integrity of financial markets, financial stability or investor protection, the Authority may require a competent authority to seek its opinion before granting approval to financial products, services, activities or entities in that sector.

Deleted

Justification

Deficiencies in supervision do not automatically mean lack of compliance by market participants subject to NCA supervision, and there is no correlation between deficiencies in supervision and the quality of the products and services offered. Against this background, the NSA proposes to delete article 17 aa.

Article 1 – paragraph 1 – point 14

[Article 17 (aaa) first paragraph 1-7 ESMA-regulation]

Text proposed by the Commission

NSA's proposed amendments

1. Where the Authority has reasonable grounds for considering that an entity authorised under Union law that provides the services or activities, for which it is authorised, on a cross-border basis has committed a serious infringement of the obligations set out in this Regulation or any Union act referred to in Article 1(2) or obligations set out in the provisions adopted pursuant to Union law referred to in Article 1(2) that could jeopardise the integrity of financial markets, financial stability or investor protection, it shall refer those findings to the competent authority that has granted the authorisation to that entity. The competent authority shall provide the Authority with clear, accurate and complete information that demonstrate the absence of the alleged infringement, or, where the competent authority agrees with the findings of the Authority, sets out the measures already adopted by that competent authority to stop the infringement. That information shall be provided within a reasonable timeline set by the Authority.

Deleted

2. Where, despite the information provided by the competent authority pursuant to paragraph 1, the Authority continues to have reasonable grounds for considering that the infringement persists, the Authority shall, within 10 working days from the receipt of the information pursuant to paragraph 1 or from the expiry of the period referred to in that paragraph, take a decision requiring that competent authority to order the relevant entity to

suspend the provision of services or activities on a cross-border basis.

3. Where the relevant competent authority does not comply with the decision referred to in paragraph 2 within 2 working days, the Authority shall adopt within 5 working days a decision requiring the relevant entity to suspend its provision of services or activities on a cross-border basis. The Authority shall simultaneously inform the competent authority referred to in paragraph 1 as well as all other competent authorities of the Member States where the entity provided its services or activities of that decision. Those competent authorities shall take all appropriate measures to ensure that the decision of the Authority is applied within their respective territories.

4. Where the relevant entity has adopted all the necessary corrective measures to stop the infringement, it shall provide to the Authority and to its competent authority the necessary information to assess the effectiveness of those measures.

5. The Authority shall within 15 working days from the receipt of the information referred to in paragraph 4 assess, in consultation with the competent authority that has granted the authorisation to the entity, the effectiveness of the corrective measures, as well as notify to the relevant entity and all relevant competent authorities whether the corrective measures are sufficient, in which case it shall revoke its earlier decision addressed to the relevant entity. Upon receipt of that notification by the Authority, the relevant entity may resume the provision of its

cross-border services and activities in the Union.

6. To carry out the tasks conferred on the Authority pursuant to this Article, the Authority may address a duly justified and reasoned request for information to any financial market participant, national competent authority or any other relevant person.

7. The provisions set out in this Article shall not apply to cases where the Authority is the competent authority of an entity.’;

Justification

Suspension of cross-border services is a powerful tool that can be compared to a temporary withdrawal of authorisation and appears legally uncertain. In fact, the Commission’s proposal implies that ESMA is given powers that go beyond the current NCA powers to impose sanctions (but not suspend services). Suspension of cross-border services can cause significant damage to affected market participants and their clients. Given the lack of proportionality and the intrusive powers given to ESMA, NSA therefore proposes to delete article 17 aaa.

Article 1 – paragraph 1 – point 23 a (New)

[Article 33(3a) ESMA-regulation (New)]

Text proposed by the Commission

NSA’s proposed amendments

Where the data collected in accordance with Article 35(2a) gives rise to concerns or indications of potential anti-competitive conduct, ESMA shall cooperate with the relevant competition authorities (at EU and/or national level, as appropriate)

Justification

The NSA proposes to strengthen ESMA's role in collecting data from infrastructure providers under its supervision (trading venues, CSD and CCP) relating to e.g. fees and terms and conditions. In order to ensure that there is no abuse of market power, ESMA shall be under obligation to collaborate with the relevant competition authorities (at EU- and/or national level, as appropriate).

Article 1 – paragraph 1 – point 24 a (New)

[Article 35 (2) (a) ESMA-regulation (New)]

Text proposed by the Commission

NSA's proposed amendments

The Authority must every second year collect information from trading venues, CCPs, CSDs and other information providers under its supervision on the content of and development in fees, fee structures, terms and conditions including participation agreements.

Justification

The NSA proposes to strengthen ESMA's role in collecting data from infrastructure providers under its supervision (trading venues, CSD and CCP) relating to e.g. fees and terms and conditions. In order to ensure that there is no abuse of market power, ESMA shall be under obligation to collaborate with the relevant competition authorities (at EU- and/or national level, as appropriate).

Appendix B – The NSA’s proposed amendments in the MISP master regulation Article 3: amendments in MiFIR, Regulation (EU) No 600/2014

The comments include the Commission’s proposal and, where relevant, the European Parliament’s Rapporteur’s draft report.

Recital (new)

Text proposed by the Commission

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NSA’s proposed amendments

By providing information on pricing conditions across EU venues, consolidated tapes empower users to make better informed decisions and can also improve competition by driving trading to trading venues with better prices and better liquidity. However, as stated in recital 17 to Regulation (EU) 2024/791, there is no obligation for market participants to use the core market data provided by the consolidated tape. Market participants remain free to use data from other sources for trading and best execution purposes, provided such data is deemed reliable and accurate.

Justification

The consolidated tape data may be of value from a transparency and valuation perspective for some clients. However, from a legal certainty perspective it should be clear that no mandatory consumption of the data applies for the market participants. In fact, due to latency, the consolidated data will not be able to replace the primary data that investment firms need for the execution of customer orders, and which is purchased directly from the source, i.e. the trading venues. For the avoidance of doubt, this principle should be re-stated in a recital.

Recital 28

Text proposed by the Commission

The closing price of the trading day is essential for equity markets as it provides a

NSA’s proposed amendments

The closing price of the trading day is essential for equity markets as it provides a

key reference price, typically used for the valuation of funds, ETFs and benchmarks. Most times, the closing price is derived from the closing auction that takes place on the trading venue where the securities were first admitted to trading (the 'primary exchange'). The proportion of equity volumes traded at the closing auction has increased significantly over time. However, competition in the closing auction segment remains limited, with primary exchange closing auctions still capturing the largest share of closing auction trading. In addition, that situation raises resilience concerns, as incidents, including outages, on the primary exchanges may have a direct impact on the capacity of market participants to value their assets. To foster competition in the closing price segment and to ensure that market participants can rely on a closing price that is alternative to the closing auction price produced by the primary exchange, it is necessary to require the provider of the consolidated tape for shares and ETFs to disseminate a volume-weighted closing price resulting from all closing auctions operated by trading venues that are data contributors. ESMA should issue recommendations to specify the methodology that the consolidated tape should apply to determine the volume-weighted closing price.

key reference price, typically used for the valuation of funds, ETFs and benchmarks. Most times, the closing price is derived from the closing auction that takes place on the trading venue where the securities were first admitted to trading (the 'primary exchange'). The proportion of equity volumes traded at the closing auction has increased significantly over time. However, competition in the closing auction segment remains limited, with primary exchange closing auctions still capturing the largest share of closing auction trading. In addition, that situation raises resilience concerns, as incidents, including outages, on the primary exchanges may have a direct impact on the capacity of market participants to value their assets. To foster competition in the closing price segment and to ensure that market participants can rely on ~~the~~ a closing price. **The primary exchanges are required to provide access from other trading venues trading shares and ETFs issued at the primary exchange, allowing these trading venues to participate in the closing auction either via a link or as participant. The trading venue in question must be credited with the market share it contributes with. The primary exchange shall treat other trading venues in a non-discriminatory way and ESMA shall in cooperation with relevant competition authorities ensure that the fees and terms & conditions associated with trading, connectivity, market data etc. is fair and reasonable and in accordance with other relevant provisions. Trading venues, including primary exchange, cannot claim IP rights on market data.** ~~that is alternative to the closing auction price produced by the primary exchange, it is necessary to require the provider of the consolidated tape for shares and ETFs to disseminate a volume-weighted closing price resulting from all closing auctions operated by trading venues~~

~~that are data contributors. ESMA should issue recommendations to specify the methodology that the consolidated tape should apply to determine the volume-weighted closing price.~~

Justification

NSA appreciates that the Commission aims to address this problem in MISP through the proposed volume-weighted closing price. However, this will not solve this issue since the volume-weighted closing price would not be tradable. The NSA therefore proposes that primary exchanges should be required to open their closing auctions to other trading venues, either through links or direct participation from other trading venues trading the listed shares with contributing venues being credited for the market share they bring to the auction. This would strengthen competition and resilience while preserving the reliability of the closing price benchmark. If that is not possible, at least the Commission's proposal for volume-weighted closing price should be deleted.

Article 3 – paragraph 1 – point 2 – point a – point xiii

[Article 2 – paragraph 1 – point 36b MiFIR]

Text proposed by the Commission

NSA's proposed amendments

'(36b) 'core market data' means:

Deleted

(a) all of the following data on a given share or ETF at any given timestamp:

(i) for continuous order books, the five best bids and offers with their corresponding volume;

(ii) for auction trading systems, the price at which the trading algorithm would be best satisfied and the volume potentially executed at that price by participants in that system;

(iia) for systematic internalisers, the five best bid and offer quotes published pursuant to Article 14 with their corresponding volume;

(iii) the transaction price and volume executed at that price;

(iiia) the volume-weighted closing price resulting from all closing auctions operated by trading venues that are data contributors;

(iv) for transactions, the type of trading system and the applicable waivers and deferrals;

(v) the market identifier code uniquely identifying the trading venue and, for other execution venues, the identifier code identifying the type of execution venue;

(vi) the standardised instrument identifier that applies across execution venues;

(vii) the timestamp information on the following, as applicable:

(1) the execution of the transaction and any amendment thereto;

(2) the entry of the five best bids and offers into the order book;

(3) the indication, in an auction trading system, of the prices or volumes,

(4) the publication by the trading venues of the elements listed in points (1), (2) and

(3);

(5) the entry of the five best bid and offer quotes by the systematic internaliser;

(6) the dissemination of core market data;

(b) all of the following data on a given bond or OTC derivative at any given timestamp:

(i) the transaction price and quantity or size executed at that price;

(ii) the market identifier code uniquely identifying the trading venue and, for other execution venues, the identifier code identifying the type of execution venue;

(iii) for bonds, the standardised instrument identifier that applies across execution venues;

(iv) for OTC derivatives, the identifying reference data as referred to in Article 27(1), second subparagraph;

(v) the timestamp information on the following:

(1) the execution of the transaction and any amendment thereto;

(2) the publication of the transaction by the trading venues;

(3) the dissemination of core market data;

(vi) the type of trading system and the applicable waivers and deferrals;'

Justification

The NSA considers that it is premature to amend the rules applicable to the consolidated tape for shares and ETF:s. Therefore, we believe that the current wording in article 2(1) point 36b MiFIR, as amended by regulation (EU) 2024/791, shall be kept. We agree with the EP Draft Report (AM 107) that it is not reasonable from an operational or cost perspective to make changes to the CT-regime in the middle of ongoing implementation. Also, it cannot be excluded that once the consolidated tape has been launched, other areas of regulatory improvements are identified, and it is therefore more cost-efficient to wait for the review. In consequence, also Commission's proposal for article 22a (1) MiFIR should be deleted (see below).

Article 8 a (new) MiFIR

Text proposed by the Commission

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NSA's proposed amendments

Access to closing auction

Trading venues trading shares and ETF issued on a Regulated market shall be allowed to access and participate in the Regulated Markets closing auction in the instruments the trading venue offer trading.

The trading venue shall be credited with the market share it deliver to the closing auction.

Justification

NSA appreciates that the Commission aims to address this problem in MISP through the proposed volume-weighted closing price. However, this will not solve this issue since the volume-weighted closing price would not be tradable. As an alternative solution, the NSA proposes that primary exchanges should be required to open their closing auctions to other trading venues, either through links or direct participation from other trading venues trading the listed shares with contributing venues being credited for the market share they bring to the auction. This would strengthen competition and resilience while preserving the reliability of the closing price benchmark. If that is not possible, at least the Commission's proposal for volume-weighted closing price should be deleted.

Article 13 (4) MiFIR

Text proposed by the Commission

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NSA's proposed amendments

ESMA shall, every two years ***in cooperation with both the national competition authorities as well as the European competition authorities publicly consult on***, monitor and assess the developments in the cost of ***market data, margins as well as terms & conditions associated with access to and usage of market data*** and shall, where appropriate, update those draft regulatory technical standards on the basis of its assessment.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by xx

First assessment of the development in market data costs shall at the latest be initiated by December 2027.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first and second subparagraphs in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Justification

The increasing cost of market data has for a long time been a major concern for the NSA. In our view, the new RTS on Reasonable Commercial Basis (RCB) which are applicable from 23 August 2026 may not sufficiently address situations where trading venues possess significant market power in relation to certain categories of proprietary market data. Such market power may allow prices to depart materially from competitive levels and may facilitate cross-subsidisation between services.⁵ In order to tackle this problem, the NSA considers that market data costs shall be closely monitored by ESMA and proposes that a new provision to this effect is added to MiFIR.

Article 3 – paragraph 1 – point 15

[Article 22 a first paragraph MiFIR]

Text proposed by the Commission

NSA's proposed amendments

<i>Systematic internalisers shall, with regard to shares and ETFs that are traded on a trading venue, transmit to the data centre of the CTP, as close to real time as technically possible, the data required pursuant to Article 14(1), in accordance with the requirements specified in the regulatory technical standards adopted pursuant to Article 22b(3), point (d). Those data shall be transmitted in a harmonised format, through a high-quality transmission protocol.';</i>	<i>Deleted</i>
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Justification

The NSA has for a long time stressed the problems with latency and poor data quality on the CT. Since all providers of data will have different latency to the CT there is large risk that there will be poor data and crossing prices i.e. bids are higher than offers and vice versa because pre-trade data quotes and order data are arriving at different times. We also question the rationale behind the proposal to require SIs to provide five best bids and offers to the CT (see above). Since not all clients have access to SIs there is a risk that this data will be misleading to clients. In fact, it could even be detrimental to data quality of the CT

⁵ [Market integration package - Finance - European Commission](#) including the [Study on consolidation and reducing fragmentation in trading and post-trading infrastructures in Europe - Publications Office of the EU](#) page 156. The study refers to the upcoming RTS on RCB and does not reflect further on the problems.

and article 22 a should therefore be removed. See also proposal relating to article 2 – paragraph 1 – point 36b.

Article 3 – paragraph 1 – point 39 – point a

[Article 52 – paragraph 14 MiFIR]

Text proposed by the Commission

14. By 30 June **2028**, ESMA, in close cooperation with the expert stakeholder group established pursuant to Article 22b(2), shall assess the market demand for the consolidated tape for shares and ETFs, the impact of that consolidated tape on the functioning, attractiveness and international competitiveness of Union markets and firms, and whether the consolidated tape has delivered on its aim to decrease information asymmetries between market participants and to make the Union a more attractive location to invest. ESMA shall report to the Commission on the appropriateness of adding additional features to the consolidated tape. On the basis of that report, the Commission shall submit, where appropriate, a legislative proposal to the European Parliament and the Council.’;

NSA’s proposal for amendments

14. By 30 June **2029**, ESMA, in close cooperation with the expert stakeholder group established pursuant to Article 22b(2) **and following a public call for evidence**, shall assess the market demand for the consolidated tape for shares and ETFs, the impact of that consolidated tape on the functioning, attractiveness and international competitiveness of Union markets and firms, and whether the consolidated tape has delivered on its aim to decrease information asymmetries between market participants and to make the Union a more attractive location to invest. ESMA shall report to the Commission on the appropriateness of adding additional features to the consolidated tape. On the basis of that report, the Commission shall submit, where appropriate, a legislative proposal to the European Parliament and the Council.

Justification

In order to have sufficient time to collect data and experience from the consolidated tape for equities, ESMA’s report on CT for shares and ETFs should be published in 2029. It is important to ensure that any proposals for amendments are evidence-based and preceded by a call for evidence which also take the user perspective into consideration. In addition to cooperation with the stakeholder group established pursuant to article 22b (2), it is therefore appropriate that ESMA collects users experience from the consolidated tape data by a call for evidence.

Appendix C – The NSA’s proposed amendments in the MISP master regulation Article 4: amendments in CSDR, Regulation (EU) No 909/2014

The comments include the Commission’s proposal and, where relevant, the European Parliament’s Rapporteur’s draft report.

Recital 60

Text proposed by the Commission

NSA’s proposed amendment

Regulation (EU) No 909/2014 sets out rules for the establishment and the maintenance of link arrangements set up between CSDs. To foster the provision of cross-border services, the access to another CSD in the Union via a standard link should be facilitated and the related process simplified. In addition, with the aim of fostering further integration of Union capital markets, CSDs should be required to establish a minimum number of bilateral links. To ensure proportionality, the number of links a CSD should be required to establish should depend on the significance of the CSD.

Deleted

Justification

The provision proposed by the Commission would lead to costly development for the market actors, including the issuers, and we question the value of the proposed regulatory requirements in this area. If the issuer is given the possibility to freely designate a CSD, there should not be a need for the proposed provisions regarding CSD links until other barriers for CSDs to compete on investor CSD services, irrespectively of issuer CSD, are solved. Already today, the issuers pick the geographical market where they see the best market opportunities and where there are potential investors, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

New recital (102 a)

Text proposed by the Commission

NSA’s proposed amendment

It is essential for financial markets to maintain a clear distinction between the CSDs’ provision of core CSD services and ancillary CSD services. To ensure a level playing field between CSDs providing ancillary services and other market actors providing the same kind of services,

CSDs' core activities ('notary service'; 'central maintenance service'; 'settlement service') should be considered as functionally separated from their ancillary services. It is essential for the competitive landscape of European financial markets to put all market actors at arm's length and to guarantee a level playing field between CSDs' providing ancillary services and other financial market participants providing the same kind of services. Mechanisms should be put in place to ensure that CSDs are not using market powers [gained through their core services] to unfairly support their ancillary services.

Justification

It is essential for the competitive landscape of European financial markets to guarantee a level playing field between CSDs providing ancillary services and other financial market participants that provide the same kind of services, such as custodian banks, data service providers or technology service providers.

Article 4 – paragraph 1 – point 2 – point (t)

[Article 2 – paragraph 1 – point 54 CSDR]

Text proposed by the Commission

NSA's proposed amendment

'omnibus client segregation' means an arrangement where a CSD keeps records and accounts that enable any participant to that CSD to hold in one securities account the securities that belong to different clients of that participant.

Deleted

Justification

As regards the protection of securities of participants and those of their clients, a participant shall offer its clients at least the choice between omnibus client segregation and individual client segregation and a CSD shall keep records and accounts that enable both types of segregation (article 38). In the Commission's proposal, the definition of "omnibus client segregation" is moved from article 38 to the list of definitions in article 2, while the definition of "individual client segregation" is kept in article 38. Since the CSDR provides for both types of client segregation (recital 42 in CSDR states that the one that is believed to be appropriate to the clients' needs should

be chosen) and to avoid any confusion, both definitions should be kept in article 38. Alternatively, both definitions could be included in the list of definitions in article 2.

Article 4 – paragraph 1 – point 4 – point (c)

[Article 6 – paragraph 4 – second sentence CSDR]

Text proposed by the Commission

CSDs and participants shall put in place measures to **ensure that the processing of settlement instructions is fully automated**. CSDs shall require participants to settle their transactions on the intended settlement date **and to put in place measures ensuring that requirement**.

NSA's proposed amendment

For each securities settlement system it operates, a CSD shall put in place measures to **encourage and incentivise the timely settlement of transactions by its participants**. CSDs shall require participants to settle their transactions on the intended settlement date.

Justification

In general, there are benefits with automation, but to avoid unintended consequences, detailed requirements for automation should be avoided, especially in relation to the client facing parts of the institutions. Introducing requirements of automatic processes between financial institutions and their clients would lead to higher barriers to entry or remain on the market for smaller, professional clients such as smaller asset managers. This could hamper the development towards a broader investor base, without any real improvement in the quality of the information and communication.

Banks and investment firms should be able to have dialogues through non-automated channels with their clients, both from a client relation perspective and because some situations are handled more efficiently that way. The need for non-automated communication applies to both professional and retail clients.

We propose to keep the present text in the second sentence in article 6 – paragraph 4.

Article 4 – paragraph 1 – point 4 – point (d)

[Article 6 – paragraph 5 – second subparagraph CSDR]

Text proposed by the Commission

When developing the details of the measures referred to in the first subparagraph, ESMA shall take into account the technology used by CSDs, such as DLT. When developing the details of the measures and procedures referred to in point

NSA's proposed amendment

When developing the details of the measures referred to in the first subparagraph, ESMA shall take into account **existing international standards for messages**. **ESMA shall also take into account** the technology used by CSDs, such

(a)(iii) of the first subparagraph, ESMA shall consider any aspects relevant for cross-border transactions.

as DLT. When developing the details of the measures and procedures referred to in point (a)(iii) of the first subparagraph, ESMA shall consider any aspects relevant for cross-border transactions.

Justification

Settlement allegation messages (see the definition of settlement mismatch message in article 2(1) point (52)) are already used in a standardised manner, as ISO messages, which should be taken into account if technical standards are developed.

Article 4 – paragraph 1 – points 8-12

[Articles 10-11c CSDR]

The NSA supports the Rapporteur’s proposed amendment in these article (and any corresponding amendments throughout the text), to delete the grouping of CSDs into significant and less significant CSDs (AMs 130-139, 141-142).

Justification

The practical result of the Commission’s proposed grouping of CSDs into significant and less significant CSDs would be that most of the CSDs within the EU (at least those that are part of one of the groups of companies that provide financial market infrastructure services in more than one member state) would be considered significant CSDs, and hence subject to ESMA super-vision rather than supervision by an NCA. According to the Commission’s Q&A on the market integration and supervision package, 15 CSDs would fall under centralised supervision by ESMA, based on the criteria set in the proposal. In addition, member states may designate ESMA as the competent authority for one or more less significant CSDs established in their territory (article 10(2) in CSDR). If the intention of the EU legislator is to centralise the super-vision for the vast majority of CSDs, we question the value of the proposed grouping of CSDs into significant and less significant CSDs and the regulatory complexity this entails.

Article 4 – paragraph 1 – point 35

[Article 34 – paragraph 9 CSDR]

Text proposed by the Commission

NSA’s proposed amendment

Settlement internalisers shall disclose to their clients the prices and fees

Deleted.

associated with the services they provide and shall differentiate between the prices pertaining to settlement in and outside a securities settlement system. They shall disclose the prices and fees of each service provided separately, including discounts, rebates and the conditions to benefit from those reductions.

Justification

What information banks and investment firms should give their clients regarding prices and fees is already regulated in the legal acts that govern the organisation and conduct of banks and investment firms. CSDR, on the other hand, applies primarily to the activities of CSDs and hence lays down requirements on the organisation and conduct of CSDs, not banks and investment firms. Moreover, there is limited value for clients in differentiating the pricing structure as per the Commission's proposal, since internalised settlement is an integrated component of a broader custody offering rather than a stand-alone service. The requirement would increase the operational complexity without providing meaningful transparency to clients.

Article 4 – paragraph 1 – point 37 – point (a)

[Article 38 – paragraph 3 CSDR]

Text proposed by the Commission

A CSD shall keep records and accounts that enable **omnibus client segregation**. Where a CSD is operating its core services using DLT, and where the CSD enables all participants and their clients to have individual client segregation as defined in paragraph 4, such CSD may, in derogation to the first sentence, opt not to offer omnibus client segregation. ***This provision is without prejudice to the obligations of the CSD to comply with the requirements set out in Article 48a for at least one of the security settlement systems it operates.***

NSA's proposed amendment

A CSD shall keep records and accounts that enable **any participant to hold in one securities account the securities that belong to different clients of that participant ('omnibus client segregation')**. Where a CSD is operating its core services using DLT, and where the CSD enables all participants and their clients to have individual client segregation as defined in paragraph 4, such CSD may, in derogation to the first sentence, opt not to offer omnibus client segregation.

Justification

As regards the protection of securities of participants and those of their clients, a participant shall offer its clients at least the choice between omnibus client segregation and individual client segregation and a CSD shall keep records and accounts that enable both types of segregation (article 38). In the Commission's proposal, the definition of "omnibus client segregation" is moved

from article 38 to the list of definitions in article 2, while the definition of “individual client segregation” is kept in article 38. Since the CSDR provides for both types of client segregation (recital 42 in CSDR states that the one that is believed to be appropriate to the clients’ needs should be chosen) and to avoid any confusion, both definitions should be kept in article 38. Alternatively, both definitions could be included in the list of definitions in article 2.

Article 4 – paragraph 1 – point 42 – point (a)

[Article 48 – paragraph 1 – new subparagraph CSDR]

Text proposed by the Commission

NSA’s proposed amendment

CSDs intending to establish an interoperable link shall provide the risk assessment referred to in the first subparagraph to their respective competent authorities in the application for authorisation of such interoperable link to be submitted by each of the concerned CSDs in accordance with the procedure laid down in Article 48b.

Deleted

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

The provision proposed by the Commission would lead to costly development for the market actors, including the issuers, and we question the value of the proposed regulatory requirements in this area. If the issuer is given the possibility to freely designate a CSD, there should not be a need for the proposed provisions regarding CSD links until other barriers for CSDs to compete on investor CSD services, irrespectively of issuer CSD, are solved. Already today, the issuers pick the geographical market where they see the best market opportunities and where there are potential investors, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

Article 4 – paragraph 1 – point 42 – point (c)

[Article 48 – new paragraphs 2a, 2b, 2c and 2d CSDR]

Text proposed by the Commission

NSA’s proposed amendment

2a. Interoperable links of CSDs that outsource some of their services related to those interoperable links to a public entity as referred to in Article 30(5) and CSD links that are not interoperable links shall not be subject to authorisation but shall be notified by the CSDs to their competent and relevant

Deleted

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

authorities prior to their implementation, by providing all relevant information that allows those authorities to assess compliance with the requirements provided in this Article.

2b. The competent authority of the requesting CSD shall require that CSD to discontinue a CSD link that has been notified when that link does not fulfil the requirements provided for in this Article and thereby would threaten the smooth and orderly functioning of the financial markets or cause systemic risk. Where a competent authority requires the CSD to discontinue a CSD link, it shall follow the procedure laid down in Article 20(2) and (3).

2c. An authorised CSD may establish a CSD link with a third-country CSD. In that case, it shall comply with the conditions and procedure provided in this Article. The information provided by the requesting CSD shall allow the competent authority to evaluate whether such links fulfil the requirements provided in this Article or the requirements that are equivalent to those provided in this Article.

2d. An authorised CSD intending to establish an interoperable link with a third-country CSD shall submit an application for authorisation to its competent authority, as required under Article 19. The competent authority shall refuse to authorise such a CSD link only where it would threaten the smooth and orderly functioning of the financial markets or cause systemic risks.

Justification

The provision proposed by the Commission would lead to costly development for the market actors, including the issuers, and we question the value of the proposed regulatory requirements in this area. If the issuer is given the possibility to freely designate a CSD, there should not be a need for the proposed provisions regarding CSD links until other barriers for CSDs to compete on investor CSD services, irrespectively of issuer CSD, are solved. Already today, the issuers pick the geographical market where they see the best market opportunities and where there are potential investors, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

Article 4 – paragraph 1 – point 43

[Article 48a CSDR]

Text proposed by the Commission

NSA's proposed amendment

CSD connectivity

Deleted

1. Where a significant CSD fulfils the criteria laid down in Article 11a(1) and is not part of a group of CSDs, or it is the only significant CSD within a group that fulfils the criteria of Article 11a(1), such CSD shall be considered a CSD hub.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Where two or more significant CSDs within a group fulfil the criteria of Article 11a(1), the group shall, without undue delay, appoint one of those CSDs as its CSD hub and notify ESMA via the central database.

ESMA shall disclose in the register referred to in Article 21, the CSD hubs, without undue delay.

2. Every CSD hub shall establish and maintain a bilateral link with each of the other CSD hubs.

3. Every CSD that is not a CSD hub shall establish and maintain a bilateral link with a CSD hub.

4. Paragraphs 2 and 3 shall not apply to a DLT SS or a DLT TSS operated by a CSD as defined respectively in Article (2), points (7) and (10), of Regulation (EU) 2022/858.

5. CSDs involved in a bilateral link referred to in paragraphs 2 or 3, as applicable, shall ensure that all financial instruments issued in each of the CSDs involved are available for settlement through that bilateral link.

6. Receiving CSDs in links composing the bilateral link established pursuant to paragraphs 2 or 3, as applicable, may charge a reasonable commercial fee to the requesting CSDs, to recover the costs incurred by the establishment and the use of those links from the requesting CSDs.

7. CSDs shall comply with the obligations set out in paragraphs 2 or 3, as applicable, at the latest by [OP enter date = 18 months after entry into force of this amending Regulation].

8. Where ESMA determines that a CSD previously considered to be a CSD hub failed to meet the criteria laid down in Article 11a(1) for three consecutive years, all of the following shall apply: (a) that CSD shall no longer be considered a CSD hub and ESMA shall notify the CSD concerned of such determination; (b) ESMA shall remove the CSD, without undue delay, from the register referred to in paragraph 1; (c) ESMA shall notify all CSDs that have established bilateral links with that CSD pursuant to paragraphs 2 or 3, and their competent authorities; (d) the CSDs referred to in point (c) of this paragraph shall have 18 months to re-establish their compliance with the requirements set out in paragraphs 2 or 3, with another CSD hub.

9. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to amend the conditions under which a CSD shall be subject to the obligations set out in paragraphs 2 and 3.

The Commission shall consider the appropriateness of making any such changes. Where amending such conditions the Commission shall take into account the cross-border relevance of the CSDs established in the Union and the risks they pose to the financial stability of the Union.

Justification

The provision proposed by the Commission would lead to costly development for the market actors, including the issuers, and we question the value of the proposed regulatory requirements in this area. If the issuer is given the possibility to freely designate a CSD, there should not be a need for the proposed provisions regarding CSD links until other barriers for CSDs to compete on investor CSD services, irrespectively of issuer CSD, are solved. Already today, the issuers pick the geographical market where they see the best market opportunities and where there are potential investors, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

Article 4 – paragraph 1 – point 43

[Article 48b CSDR]

Text proposed by the Commission

NSA's proposed amendment

Procedure to authorise interoperable links

Deleted

Authorised CSDs shall submit an application for authorisation to ESMA where they intend to establish an interoperable link.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

2. Applications to establish each of the standard and interoperable links composing the bilateral links referred to in Article 48a(2) and (3) shall be submitted by both receiving and requesting CSDs and treated as a single application. By way of derogation from the first sentence, where one of the standard and interoperable links that is to compose the mandatory bilateral link between two CSDs pursuant to Article 48a(2) and (3) has already been established, only an application for authorisation of the missing standard and interoperable link that is to compose the bilateral link shall be submitted to ESMA. Once ESMA has authorised the missing links, the requirements referred to in Article 48a(2) or (3), as applicable, shall be considered to be fulfilled.

3. The application shall be immediately shared with the respective registered recipients referred to in Article 21a for both CSDs involved in the intended interoperable link and, where applicable, the respective colleges referred to in Article 24a of both CSDs involved in the intended link.

The applicant CSDs shall include in the application all documents and information necessary to demonstrate that they will have established, at the time of the authorisation of the interoperable link, all the necessary arrangements to meet their obligations as laid down in this Regulation in respect of such interoperable link.

4. During the period specified in paragraph 6, ESMA and the relevant authorities may request

the applicant CSDs to provide additional documents or information where such documents or information are needed to assess the applicant CSDs' compliance with the relevant requirements laid down in this Regulation in respect of the interoperable link they intend to establish. ESMA may take a decision on the application in the absence of the CSDs' response.

5. During the period specified in paragraph 6, ESMA shall conduct a risk assessment of the applicant CSDs' compliance with the relevant requirements laid down in this Regulation in respect of the interoperable link they intend to establish and shall, for both applicant CSDs involved, consult the relevant authorities, the college referred to in Article 24a, where applicable, and the competent authority on whether the interoperable link the applicant CSDs intend to establish complies with the requirements laid down in this Regulation and on any potential risks that may arise as a consequence of such interoperable link.

6. Within three months from the acknowledgement of receipt of the application referred to in Article 21a(2), ESMA shall adopt its decision and transmit it to the respective registered recipients referred to in Article 21a for both CSDs involved in the interoperable link, the respective colleges referred to in Article 24a of both CSDs involved in the interoperable link, where applicable, and the applicant CSDs. The decision shall include a fully reasoned explanation of whether the authorisation has been granted or refused.

Without prejudice to paragraph 4, ESMA shall refuse to authorise an interoperable link only where the link would threaten the smooth and orderly functioning of the financial markets or cause systemic risk.';

Justification

The provision proposed by the Commission would lead to costly development for the market actors, including the issuers, and we question the value of the proposed regulatory requirements in this area. If the issuer is given the possibility to freely designate a CSD, there should not be a need for the proposed provisions regarding CSD links until other barriers for CSDs to compete on investor CSD services, irrespectively of issuer CSD, are solved. Already today, the issuers pick the geographical market where they see the best market opportunities and where there are potential investors, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand. Moreover, the proposed time schedule in article 48b will be difficult to keep for CSDs that are not (yet) connected to T2S.

Article 4 – paragraph 1 – point 46

[Article 51a CSDR]

Text proposed by the Commission

NSA's proposed amendment

Relayed links

Deleted

***'1. Where a CSD requests a CSD hub to be the third party to a relayed link with a CSD established in the Union, the CSD-hub and the receiving CSD shall reject such a request only on the basis of risks considerations. The CSD hub and the receiving CSD shall not deny a request on the grounds of loss of market share.
2. The CSD hub acting as the third party in a relayed link and the receiving CSD may charge a reasonable commercial fee to the requesting CSD to recover the costs incurred by the establishment and the use of the links referred to in paragraph 1.***

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

The provision proposed by the Commission would lead to costly development for the market actors, including the issuers, and we question the value of the proposed regulatory requirements in this area. If the issuer is given the possibility to freely designate a CSD, there should not be a need for the proposed provisions regarding CSD links until other barriers for CSDs to compete on investor CSD services, irrespectively of issuer CSD, are solved. Already today, the issuers pick the geographical market where they see the best market opportunities and where there are potential investors, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

Article 4 – paragraph 1 – point 47 – point (a)

[Article 52 – paragraph 1 CSDR]

Text proposed by the Commission

When a CSD submits a request for access to another CSD pursuant to **Articles 48a(2) and (3)**, 50 and 51, the receiving CSD shall treat the request promptly and shall provide a response to the requesting CSD within three months. If the receiving CSD agrees to the request, the CSD link shall be implemented within a reasonable timeframe, which shall be no longer than 12 months.’;

NSA’s proposed amendment

When a CSD submits a request for access to another CSD pursuant to Articles 50 and 51, the receiving CSD shall treat the request promptly and shall provide a response to the requesting CSD within three months. If the receiving CSD agrees to the request, the CSD link shall be implemented within a reasonable timeframe, which shall be no longer than 12 months.

Justification

The provision proposed by the Commission would lead to costly development for the market actors, including the issuers, and we question the value of the proposed regulatory requirements in this area. If the issuer is given the possibility to freely designate a CSD, there should not be a need for the proposed provisions regarding CSD links until other barriers for CSDs to compete on investor CSD services, irrespectively of issuer CSD, are solved. Already today, the issuers pick the geographical market where they see the best market opportunities and where there are potential investors, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

We propose to keep the present text in the paragraph.

Article 4 – paragraph 1 – point 47 – point (b) – point (i)

[Article 52 – paragraph 2 – the third subparagraph CSDR]

Text proposed by the Commission

In case of a refusal **to grant access through a link not referred to in Article 48a(2) or (3)**, the requesting CSD has the right to complain via the central database to the competent authority of the CSD that has refused access.

NSA’s proposed amendment

In the case of a refusal, the requesting CSD has the right to complain to the competent authority of the CSD that has refused access.

Justification

The provision proposed by the Commission would lead to costly development for the market actors, including the issuers, and we question the value of the proposed regulatory requirements in this area. If the issuer is given the possibility to freely designate a CSD, there should not be a need for

the proposed provisions regarding CSD links until other barriers for CSDs to compete on investor CSD services, irrespective of issuer CSD, are solved. Already today, the issuers pick the geographical market where they see the best market opportunities and where there are potential investors, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

We propose to keep the present text in the subparagraph.

Article 4 – paragraph 1 – point 47 – point (c)

[Article 52 – paragraph 2a CSDR]

Text proposed by the Commission

NSA's proposed amendment

In case of refusal to grant access through a link referred to in Article 48a (2) or (3), the receiving CSD shall provide a duly justified refusal via the central database to ESMA and to the requesting CSD. The refusal shall be based on a comprehensive risk assessment. Within 30 working days from the notification of the refusal to ESMA and to the requesting CSD, the receiving CSD and the requesting CSD shall provide ESMA, via the central database, with their proposed measures to mitigate the risks underlying the refusal. Within 90 working days from receipt by ESMA of the complete submission of proposed measures by the receiving and requesting CSDs, ESMA, in cooperation with the competent authority of the CSD not considered to be a CSD hub, where applicable, and taking into account those proposed measures, shall identify necessary measures to be taken to mitigate the risks underlying the refusal and shall issue an order, via the central database, to the receiving or requesting CSDs, as applicable, to adopt those necessary measures and set up the link referred to in Articles 48a(2) or (3), as applicable, by a certain date.

Deleted

Justification

The provision proposed by the Commission would lead to costly development for the market actors, including the issuers, and we question the value of the proposed regulatory requirements in this

area. If the issuer is given the possibility to freely designate a CSD, there should not be a need for the proposed provisions regarding CSD links until other barriers for CSDs to compete on investor CSD services, irrespectively of issuer CSD, are solved. Already today, the issuers pick the geographical market where they see the best market opportunities and where there are potential investors, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

Appendix D – The NSA’s proposed amendments in the MISP settlement finality regulation and Article 31: amendments to the financial collateral directive (2002/47/EC)

The comments include the Commission’s proposal and, where relevant, the European Parliament’s Rapporteur’s draft report.

The proposed settlement finality regulation

Recital 5

Text proposed by the Commission

To ensure that provisions imposing obligations on systems, their operators and their participants are applied in a uniform manner throughout the Union, thereby facilitating market integration and cross-border transactions, and ensuring greater legal certainty, it is appropriate and necessary to repeal Directive 98/26/EC and replace it with a Regulation.

NSA’s proposed amendment

To ensure that provisions imposing obligations on systems, their operators and their participants are applied in a uniform manner throughout the Union, thereby facilitating market integration and cross-border transactions, and ensuring greater legal certainty, it is appropriate and necessary to repeal Directive 98/26/EC and replace it with a Regulation. **Market arrangements which fall outside the scope of this Regulation, should remain subject to dedicated national legal settlement finality requirements where they exist.**

Justification

If only designated or registered systems qualified for protection, a large category of bilateral arrangements would fall outside the scope, despite being economically and legally equivalent to system-based netting. This would have very negative effects in various European markets. Legal certainty may decrease instead of increasing, particularly for OTC derivatives and bespoke financing structures. It should be clarified that the regulation’s scope extends only to designated settlement systems.

Recital 20

Text proposed by the Commission

It is necessary to provide a conflict of laws rule regarding the rights of holders of collateral security in order to ensure that the law of the Member State where the collateral security was validly created in a register, account or

NSA’s proposed amendment

It is necessary to provide a conflict of laws rule regarding the rights of holders of collateral security in order to ensure that the law of the Member State where the collateral security was validly created in a register, account or

centralised deposit system, determines also the validity and enforceability of that collateral security against the system, the system operator, and against any other person claiming directly or indirectly through it. That rule should **only** apply to a register, account or centralised deposit system which evidences the existence of proprietary rights in or for the delivery or transfer of the collateral security concerned.

centralised deposit system, determines also the validity and enforceability of that collateral security against the system, the system operator, and against any other person claiming directly or indirectly through it. That rule should apply to a register, account or centralised deposit system – **at the top tier level as well as throughout the custody chain** – which evidences the existence of proprietary rights in or for the delivery or transfer of the collateral security concerned.

Justification

It is essential that the rights to collateral security is protected – for all types of financial instruments, held either at a CSD securities account or at a custody account – and that the provisions on how to determine the applicable law in all of the relevant directives and regulations are clear. It should be clarified that both accounts at the top-tier CSD level and custody accounts provided by banks and investment firms are covered by regulatory protection.

Article 1 – paragraph 2

Text proposed by the Commission

This Regulation also lays down requirements for the registration of third-country systems in one or several Member States in order to enable institutions established in those Member States, which participate in those third-country systems, to benefit from the extension of the insolvency protection provided for in Articles 17, 19, 22(1), 23, 24 and 25(1) **to transfer orders entered into in such third-country systems.**

In the case of an insolvency of a member of such a system, **transfer orders entered by that member shall be protected where both** the following conditions are met:

NSA's proposed amendment

This Regulation also lays down requirements for the registration of third-country systems in one or several Member States in order to enable institutions established in those Member States, which participate in those third-country systems, to benefit from the extension of the insolvency protection provided for in Articles 17, 19, 22(1), 23, 24 and 25(1).

In the case of an insolvency of a member of such a system, **the insolvency protection provided for in Articles 17, 19, 22(1), 23, 24 and 25(1) shall apply where** the following conditions are met

Justification

According to the proposed article 1(2), the insolvency protections in the specified articles should only apply in relation to "transfer orders entered into in a registered third-country system". With this limitation, registered third-country systems would have much more limited protection against

the insolvency of their EU participants than the SFR (or the existing SFD) confers on designated (EU) systems in relation to their EU participants. Third country systems might also have more limited protection than under existing national regimes that extend the protection of SFD to third-country systems. This could have negative effects on the willingness of third country systems to admit and retain EU members, which would undermine the objective of the new regime for third-country systems.

Article 12

Text proposed by the Commission

Each of the registering authorities in any of the Member States in which a member **participating** in a third-country system is established may decide to register such a third-country system in accordance with the procedure set out in Article 13, provided that the member is an institution as defined in Article 2(1), points (10)(a)(i) to (iv), or Article 2(1), point (10)(b). Each of those registering authorities shall assess the application for registration of the third-country system.

NSA's proposed amendment

Each of the registering authorities in any of the Member States in which a member **that participates or intends to participate** in a third-country system is established may decide to register such a third-country system in accordance with the procedure set out in Article 13, provided that the member is an institution as defined in Article 2(1), points (10)(a)(i) to (iv), or Article 2(1), point (10)(b). Each of those registering authorities shall assess the application for registration of the third-country system.

Justification

It should also be clarified that a third country system can be registered where that system has admitted or intends to admit a member established in that Member State, to allow for a registration before a member is admitted, since the registration is likely to be a precondition for the admittance.

Article 17

Text proposed by the Commission

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:

NSA's proposed amendment

Transfer orders and 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:

(a) a participant in the designated system or registered system;
(b) a participant to an interoperable system to a designated system;
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(c) the system operator of an interoperable system to a designated system, which is not a participant.

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 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.

2. No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings, as provided for in Article 22(1), shall lead to the unwinding of netting, **or the disapplication of closeout netting provisions as referred to in Article 2(1), point (n), of Directive 2002/47/EC of the European Parliament and of the Council.**

(a) a participant in the designated system or registered system;
(b) a participant to an interoperable system to a designated system;
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(c) the system operator of an interoperable system to a designated system, which is not a participant.

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 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.

2. No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings, as provided for in Article 22(1), shall lead to the unwinding of netting.

Justification

The Commission's SFR wording risks implying that close-out netting protection is contingent on the existence of financial collateral. This would not reflect market practice, where close-out netting is a core contractual risk-management tool even in the absence of collateral (e.g. in derivatives). Close-out netting should be left outside the scope of the Regulation.

Article 25 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The rights of participants, system operators, a central bank of a Member State, the European Central Bank and of any nominee, agent or third party acting on their behalf with respect to the financial instruments, including rights in those financial instruments, which are provided as collateral security that is **legally recorded on a register**, including where recorded on a distributed ledger, account or centralised deposit system located in a Member State, shall be governed by the law of that Member State.

NSA's proposed amendment

The rights of participants, system operators, a central bank of a Member State, the European Central Bank and of any nominee, agent or third party acting on their behalf with respect to the financial instruments, including rights in those financial instruments, which are provided as collateral security that is **validly created**, including where recorded on a distributed ledger, account or centralised deposit system located in a Member State, shall be governed by the law of that Member State.

Justification

It is essential that the rights to collateral security is protected – for all types of financial instruments, held either at a CSD securities account or at a custody account – and that the provisions on how to determine the applicable law in all of the relevant directives and regulations are clear. The phrase “legally recorded on a register, account or centralised deposit system”, which is used in the corresponding article in the Settlement Finality Directive (article 9(2)), has been subject to discussions since it is not clear from the wording when and where the collateral security is considered to be legally recorded and what is meant by the word account in that context. The Term “validly created”, which is used in the proposed recital 20 in SFR, is more appropriate than “legally recorded”, since it neutral as regards the means for creating the right, and requirement in rem, i.e. the action that is required for protection against creditors, e.g. registration or a notice of assignment of claim. In the Nordic countries, the formal requirement for making a claim effective against third parties is in many cases, including for securities held in a custody account, a notice of assignment of claim, not a registration in a system.

Article 25 – paragraph 2 – subparagraph 2

Text proposed by the Commission

For the purposes of the first subparagraph, the location of a register, account or centralised deposit held at a legal entity shall be the Member State where that **entity has its registered** office.

NSA's proposed amendment

For the purposes of the first subparagraph, the location of a register, account or centralised deposit held at a **branch or office in a Member State of a** legal entity shall be the Member State where that **branch or office is located**.

Justification

The NSA agrees with the Rapporteur's proposed amendment to this paragraph (AM 26). The proposed amendment, together with the proposed amendment in FCD article 9 (1), would be a welcome clarification that the applicable law is the law of the Member State where the branch or office from which the account is provided to the client, is located.

Article 28 – paragraph 1

Text proposed by the Commission

1. By way of derogation from Article 3, a system designated under Directive 98/26/EC prior to [**OP insert date** = entry into force of this Regulation] shall **continue to** be designated for the purposes of this Regulation until **it** is re-designated under that Article or until [**OP insert date**= 5 years after the entry into force of this Regulation], whichever is earlier. **In the meantime, the Member State law on the designation of a system shall continue to apply.**

NSA's proposed amendment

1. By way of derogation from Article 3, a system designated under Directive 98/26/EC prior to [**date of** entry into force of this Regulation] shall be **considered as** designated for the purposes of this Regulation:
(a) until **the system** is re-designated under that Article or until [5 years after the entry into force of this Regulation], whichever is earlier, **or**
(b) if the system operator applies for designation of **that** system **under Article 3 before [5 years after the entry into force of this Regulation] and the application is still pending on that date, until the system is re-designated under that Article, a decision has been made rejecting the application or the application is withdrawn.**

Justification

The NSA agrees with the Rapporteur's proposed amendment to this paragraph (AM 28). Already designated or registered systems should continue to benefit from the protections conferred by the SFR where the application for designation is made before the end of the five-year transitional period, even if the re-designation is not finalised by the end of that period, to make allowances for unforeseen delays.

Article 28 – paragraph 2

Text proposed by the Commission

2. By way of derogation from Article 12, a third-country system to which a Member State has extended the protections granted under Directive 98/26/EC prior to

NSA's proposed amendment

2. By way of derogation from Article 12, a third-country system to which a Member State has extended **one or more of** the protections granted under Directive

[**OP insert date** = entry into force of this Regulation] shall be considered as registered in that Member State for the purposes of this Regulation until **it** is registered in accordance with that Article in that same Member State or until [**OP insert date** = 5 years after the **date of** entry into force of this Regulation], whichever is earlier.

98/26/EC **or has applied similar protections** prior to [entry into force of this Regulation] shall be considered as registered in that Member State for the purposes of this Regulation:
(a) until **the system** is registered in accordance with that Article in that same Member State or until [5 years after the entry into force of this Regulation], whichever is earlier, **or**
(b) if the system operator applies for registration of the system under Article 12 in that same Member State before [5 years after the entry into force of this Regulation] and the application is still pending on that date, until the system is registered in accordance with that Article in that Member State, a decision has been made rejecting the application or the application has been withdrawn.

Justification

The NSA agrees with the Rapporteur's proposed amendment to this paragraph (AM 29). Already designated or registered systems should continue to benefit from the protections conferred by the SFR where the application for designation is made before the end of the five-year transitional period, even if the re-designation is not finalised by the end of that period, to make allowances for unforeseen delays.

Article 31, amendments to the financial collateral directive (2002/47/EC)

Article 31 – paragraph 1 – new point

[Article 1 – paragraph 2 – point (e) FCD]

Present text (no amendments by COM)

a person **other than a natural person**, including unincorporated firms **and** partnerships, provided that the other party is an institution as defined in points (a) to (d).

NSA's proposed amendment

a person, including unincorporated firms, partnerships **and natural persons**, provided that the other party is an institution as defined in points (a) to (d).

Justification

Since there are natural persons that enter into agreements regarding financial collateral arrangements, it is appropriate to include them in the list of collateral takers and providers, to

facilitate getting the necessary legal opinions and lower capital requirement under the capital requirement regulation (575/20132/EU). This would reduce the capital cost, and hence the fees/rates for the natural persons (consumers) that enter into agreements regarding financial collateral arrangements.

Article 31 – paragraph 1 – point 2 a (new)

[Article 9 – paragraph 1 -subparagraph 1 a (new) FCD]

Text proposed by the Commission

NSA's proposed amendment

***(2a) in Article 9(1), the following subparagraph is added:
'For the purpose of the first subparagraph, the location of an account held at a branch or office of a legal entity shall be the country where that branch or office is located'.***

Justification

The NSA agrees with the Rapporteur's proposed new paragraph (AM 32). The proposed amendment, together with the proposed amendment in SFR article 25(2), would be a welcome clarification that the applicable law is the law of the Member State where the branch or office from which the account is provided to the client, is located.