Linklaters

next>>

EU SIU strategy – Market Integration Package

December 2025



The Commission has published a package of sweeping reforms: the Market Integration Package.

The MIP is aimed at reducing barriers within the EU supervisory and regulatory framework that prevent firms from realising the full potential of the EU single market. The proposals also seek to drive innovation and growth.

Although efficiencies are proposed, the MIP also gives ESMA significant supervision and enforcement powers.

Published on 4 December 2025, this set of proposals is referred to as the Market Integration Package (MIP) and forms a central part of the EU's Savings and Investment Union strategy.

The MIP amends several key EU regimes (see next page) and will have wide-ranging impacts on both European and international financial services firms. It covers topics ranging from regulatory supervision and authorisation, cross-border services, marketing, trading and settlement.

Some of the key proposals include:

> simplifications to existing EU passporting, listing and cross-border regimes to make it easier for firms to access or provide services in other EU Member States on a cross-border basis. For example, the new Pan-European Market Operator (PEMO) licensing regime should make it easier for venue operators to establish multiple trading venues across the EU under a single PEMO licence;

> reforms to limit the ability for national competent authority discretion and gold-plating, which includes converting existing EU Directives to Regulations;

> switching off outsourcing requirements for group service providers but, unhelpfully, only if the affiliate service provider is based in the EU;

> significantly enhancing ESMA's supervisory role and powers, including granting ESMA direct oversight of cryptoasset service providers, significant central counterparties and significant trading venues, and annual review powers in respect of large asset management groups;

> significant expansion of ESMA's oversight powers, including the ability to revoke cross-border passports and impose fines up to 10% of annual turnover;

> reforms aimed at supporting innovation, in particular by relaxing limits on distributed ledger technology and ensuring regimes such as CSDR are adaptable and supportive of emerging technologies.

Unlike the EU's Retail Investment Strategy, which is focused on consumer protection, the aim of the MIP reforms is to remove barriers to the EU single market, promote single supervision and make the offering of products more agile across EU borders.

Please read on for a more detailed summary.

The MIP comprises three legislative proposals.

The proposed Regulation on Further Development of Capital Market Integration and Supervision within the Union amends:

> the European Securities and Markets Authority (ESMA) Regulation;

> the European Markets Infrastructure Regulation (EMIR);

> the Markets in Financial Instruments Regulation (MiFIR);

> the Central Securities Depositories Regulation (CSDR);

> the Distributed Ledger Technology Pilot Regulation (DLTPR);

> the Markets in Crypto-Assets Regulation (MiCA); and

> the Cross-Border Distribution of Funds Regulation (CBDF).

The Regulation also makes targeted amends to the following regimes:

> the Central Counterparties Recovery and Resolution Regulation (CCPRRR);

> the Securities Financing Transactions Regulation (SFTR);

> the Credit Ratings Agency Regulation (CRAR);

> the Benchmark Regulation (BMR);

> the Simple, Transparent and Standardised (STS) Securitisation Regulation;

> the European Green Bond Regulation (EuGB Regulation); and

> the Environmental, Social and Governance (ESG) Rating Regulation.

The proposed Directive on Further Development of Capital Market Integration and Supervision amends:

> the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive;

> the Alternative Investment Fund Managers Directive (AIFMD); and

> the Markets in Financial Instruments Directive (MiFID II).

Finally, the package also includes a proposal for a Regulation replacing the Settlement Finality Directive and amending the Financial Collateral Directive (FCD).



The MIP amends the ESMA Regulation to grant ESMA significant oversight and enforcement powers – with the aim of centralising EU single market supervision within ESMA.

> **Scope and mandate:** ESMA will be granted new direct supervisory responsibilities (in place of national competent authorities) in relation to trading venues, CCPs and CSDs that are determined to be "significant", as well as cryptoasset service providers (CASPs). ESMA will also be empowered to identify and maintain a list of the largest cross-border fund management groups in the EU (those with EU-wide group net asset values above EUR 300 billion). Whilst these fund managers will remain licensed by EU NCAs, ESMA will be granted enhanced review powers in relation to their activities.

> **Consolidated supervisory powers (horizontal toolbox):** ESMA's procedural powers are consolidated into a single cross-sectoral framework, applicable to all financial market participants under ESMA's supervision other than third country CCPs recognized under EMIR. The Commission explains that it intends to preserve rights of defence, legal professional privilege and judicial protection. ESMA, however, will have powers to request information, investigate, conduct on-site inspections and impose fines. Unless otherwise provided for in other acts, fines are set at a maximum of EUR 1 million or 10% of annual turnover (or EUR 500k for natural persons). Other penalty powers will include revocation of authorisation/recognition, public censure and prohibitions. Members of management bodies may also be subject to penalties including fines, prohibitions and public censures.

> **No-action letters:** The Commission aims at broadening ESMA's ability to issue no-action letters to address significant application issues, increase clarity and reduce inconsistent application across the EU.

> **Technical standards flexibility:** The text empowers the Commission to adopt or amend RTS and ITS without ESMA drafts where ESMA has missed the deadline to provide them or to suspend technical standards where warranted due to investor protection concerns or where there are threats to the orderly functioning of the internal market for 12 months, renewable once. Firms may welcome this development to ease bottlenecks in the adoption of technical standards, although this must be balanced against the risk of RTS/ITS being adopted without ESMA input.

> **Supervisory convergence safeguards and passporting:** ESMA can require a competent authority to seek its opinion when serious supervisory failures are found (via peer review/investigation) before granting approval to financial products, services, activities or entities in that area. Where ESMA is concerned that an entity providing services under a cross-border passport has committed a significant infringement, it is empowered to suspend that passport directly or to require the relevant competent authority to suspend.

> **Cross-border enforcement of fines:** The text proposes the creation of mutual recognition and assistance in recovery mechanisms for administrative fines across borders, addressing current gaps that make cross-jurisdiction recovery complex/impossible.



> **Cooperation duty:** Under the proposal ESMA is obliged to establish "structured yet flexible" cooperation arrangements with other authorities, including to facilitate an orderly transfer of supervisory responsibilities, which may include ESMA presences in Member States. The proposal also envisages that cooperation arrangements will also cover areas that ESMA is not being allocated responsibility for, such as market surveillance for trading venues.

> **Application of Union law:** The text clarifies that ESMA must apply EU law, including national laws implementing Directives, interpreting them consistently with the Corneli judgment. These amendments expand ESMA's powers to investigate competent authorities for non-application of EU law and, in certain cases, empower ESMA to directly require financial market participants to observe EU law by adopting a decision individually addressed to that financial market participant (thereby directly requiring compliance with EU law).

> **Cross-border collaboration platforms:** The Commission proposes the establishment of platforms among competent authorities to exchange information, propose solutions and resolve disputes (with ESMA empowered to settle), with the aim of enhancing supervision of cross-border activities.

> **Funding:** The text empowers ESMA to charge supervisory fees to the firms it supervises, with details to be set by the Commission in delegated acts.

> **Governance – Executive Board model**: The proposals replace the current ESMA Management Board with an Executive Board (composed of a chair and 5 full-time independent members, having diverse supervisory experience) with five-year terms (two-year extension possible), with strict conflicts rules. The Executive Board will lead direct supervision decisions, dispute settlement, breach-of-EU-law matters, independent reviews, and prepare work programmes and budget. The new Executive Board will have one vote per member, with decisions made by simple majority and the chair having a casting vote.

> **Board of Supervisors:** The Board of Supervisors will remain ESMA's main body responsible for guidance and decision-making on regulatory matters and supervisory convergence. However, its composition is updated to include Executive Board members, with the Board of Supervisors being empowered to the Executive Board's main supervisory decisions within 10 days (or 48 hours if urgent) and the Executive Board reporting to it twice per year. This is intended to ensure balance between national specificities and EU interests.



The MIP package makes a number of changes to the EU MiFID rules, with the proposals particularly impactful for operators of EU trading venues.

Creation of a 'Pan-European Market Operator' licence

In particular, the proposals introduce a new Pan-European Market Operator (PEMO) licensing regime, which would allow operators to set up and operate multiple EU regulated markets, MTFs or OTFs under this single PEMO licence (i.e., without having to get each venue locally authorised in each EU Member State). Once a PEMO licence is obtained, the existing MiFID authorisations of individual venues will become void (as they will be covered by the operator's PEMO licence), and the PEMO is responsible for ensuring that its venues comply with applicable regulatory requirements.

This is likely to be a welcome development – however, unhelpfully the proposals are clear that in respect of non-harmonised areas (e.g. tax or rules on transparency), the law of the Member State where each venue is deemed to be situated still applies (under the supervision by that Member State's national competent authority). Firms operating under a PEMO licence will therefore still need to ensure compliance with certain local rules and still have to interface with multiple EU regulators.

Transfer of "significant" trading venue supervision to ESMA

The MIP proposes transferring supervision of significant trading venues and PEMOs from national competent authorities to ESMA.

A venue will be "significant" if it meets the following tests:

i. Union importance test (≥5% trading volume in certain financial instrument classes); and

ii. significant cross-border dimension test – i.e. it meets one of the following tests: (a) the group includes a CSD, CCP or another trading venue authorised in a different EU Member State; (b) for shares, ETFs or bonds: ≥50% of the venue's trading in that instrument class is in instruments whose "most relevant market" is supervised by a competent authority in another Member State; or (c) in respect of equity, credit, interest rate, currency or commodity derivatives: ≥50% of the venue's trading in that instrument class involves at least one counterparty located in another member state.

Alternatively, a trading venue will be considered to be significant where its trading volume in any of the specified asset classes (calculated either at entity or group level) is ≥50%.

ESMA will publish and regularly update the list of significant venues. Additionally, whilst these venues will be directly regulated by ESMA, national surveillance authorities (designated under Article 67 of MiFID II) will still retain market surveillance powers for such significant venues, including access to order data and enforcement powers in respect of transparency and transaction reporting obligations.



Harmonisation of rules applicable to trading venues across the EU

MiFID II's Directive format led to divergent national transposition and additional Member State requirements where the Directive was silent. The MIP therefore proposes moving rules relating to the authorisation and operation of trading venues from MiFID II to MiFIR, to harmonise applicable rules across the EU and remove divergent national rules. The proposals also helpfully state that regulated markets, MTFs and OTFs should be able to provide cross-border services relating to admission to trading and member access, either via branches or under freedom to provide services.

Relaxation of outsourcing rules for outsourcing to EU affiliates

The MIP significantly reduces the burden of the EU outsourcing rules, where trading venue operators outsource functions to, or otherwise rely on the resources / functions of, EU affiliates. Such relationships will no longer be regarded as outsourcings for the purposes of the MiFIR outsourcing rules - provided certain conditions are met (i.e., cooperation with competent authorities and conflicts of interest mechanisms are in place). Unhelpfully, this relaxation does not cover outsourcings to non-EU affiliates, and the relaxation appears to only be available to trading venue operators, rather than all MiFID investment firms.



Equity systematic internalisers

To strengthen price formation for retail client orders, where executing a retail client order at a better price than quoted, equity systematic internalisers will need to immediately (and in any event before execution) update their public quote to reflect the price improvement.

Separately, systematic internalisers will need to transmit their quotes for shares and ETFs that are traded on a trading venue to the CTP to enhance the consolidated tape (see above).

Post trade transparency – OTC derivatives

The MIP proposes that investment firms should not be required to trade report transactions in OTC derivatives that they conclude on third-country trading venues, provided that the third-country trading venue meets certain criteria (in particular, the venue provides post trade transparency, is authorised in its jurisdiction and is subject to supervision and enforcement by a competent authority that is a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information). ESMA is required to maintain a list of venues which meet these criteria.

This proposal codifies, in Level 1 regulation, existing ESMA guidance that post-trade transparency does not have to be given under MiFID for transactions executed on third-country venues that are subject to equivalent rules. That guidance was, however, not expressed as being asset-class specific (i.e. was not limited to OTC derivatives) – and this new proposal therefore raises questions about the validity of that broader and more helpful prior ESMA statement.

Tick sizes regime

MiFID II Article 49 already requires regulated markets to adopt tick-size regimes. The MIP transfers this requirement from MiFID II into MiFIR to ensure direct applicability and harmonisation without national transposition. A new provision also allows regulated markets to apply the same tick size as third-country venues for certain non-EEA shares or EEA shares traded on third-country venues in local/non-EEA currency, where the third-country venue is the most relevant market in terms of liquidity.

Enhancement of the consolidated tape

Under the proposed rules, CTP data for shares and ETFs will be enhanced to provide users with the five best buying and selling prices, the volumes available at those prices, and indicate the individual trading venue on which those volumes are available.

CTPs will also be required to disseminate a volume-weighted closing price (resulting from all closing auctions operated by trading venues that are data contributors) for shares and ETFs.

The rules will also require SIs to transmit pre-trade transparency data for shares and ETFs to CTPs as close to real time as possible, in accordance with requirements to be specified in RTS. ESMA will also have express investigative and supervisory powers over CTPs.



In a similar vein to the changes proposed for trading venue data, CTPs will publish data on the five best bid and offer SI quotes across the EU with the indication of the individual SI where those quotes are being offered.

Open access refinements

The MIP streamlines CCP-trading venue access rules (MiFIR Articles 35 and 36) to prevent unjustified delays, allowing CCPs/trading venues to refuse access **to each other** only where there are significant systemic risks or risks to the orderly functioning of the market (determined based on a comprehensive risk assessment). It also prohibits 'preferred clearing' arrangements so that trading-venue access cannot be restricted where counterparties choose to clear at different CCPs that have already been granted access to the same trading venue and established interoperability arrangements.

Separately, Articles 36 to 38 of MiFID II provide for rules relating to the access to market infrastructure (CCPs, CSDs, trading venues) that are redundant, given access provisions already introduced in MiFIR, CSDR and EMIR. Those provisions on access in MiFID II are therefore to be deleted.

Commodity Derivatives

The position management control and position reporting obligations on trading venues in relation to commodity derivatives (currently within Articles 57 and 58 MiFID II) were extensively revised by the EU's MiFID review. Those amendments were required to be implemented in Member States by 29 September 2025. Under the MIP proposals, those provisions will move to new MiFIR Articles (34a and 34b) with minor amendments.

For example, it is clarified that competent authorities (where not ESMA) will communicate the detail of firms' position management controls to ESMA for ESMA to summarise and publish on its website. In respect of position reporting by trading venues, existing weekly reports will need to be communicated by trading venues to ESMA (where ESMA is not the competent authority), whilst reporting relating to the daily breakdown of positions held by all persons (including clients of members/participants) will need to be provided to the national surveillance authority where ESMA is the competent authority (rather than per the requirements today, the competent authority).

Additionally, the language across Article 57 of MiFID II is clarified such that the article now only speaks to 'position limits' rather than 'position management' ('position management' sits with trading venues under MiFIR).

In respect of position reporting, the detail of what is required in the report is deleted (with the exception that it remains in the level 1 text that reports will need to differentiate between risk management trades relating to commercial activities and other positions) with the power given to ESMA to develop implementing technical standards.

Separately, to note, in March 2025 the European Commission launched a review of the functioning of the commodity derivatives market; further reform outside of the above may follow.



ESG Ratings Regulation

The amendments to the ERR streamline the supervisory and enforcement framework by aligning it with the new horizontal supervisory framework established under the ESMA Regulation (Regulation (EU) No 1095/2010). Several ERR provisions relating to ESMA supervision, including those on ESMA's investigative powers, fines, periodic penalty payments, and related decision-making processes, are deleted and instead replaced with references to new Articles 39a to 39m of the ESMA Regulation.

Specific changes include:

(i) Supervisory Powers: The specific supervisory powers in the ERR (relating to information requests, general investigations and on-site inspections) are deleted. Instead, new Art 29(2a) of the ERR confers ESMA with the powers necessary for the exercise of its functions under the ERR and ESMA Regulation, and states ESMA shall use these powers over ESG rating providers and (where specified) related parties.

(ii) Supervisory Measures: The current list of supervisory measures in Article 35 is deleted and instead cross-references the list in the ESMA Regulation.

(iii) Fines: ESMA's current fining powers are also deleted as they will now be set out in the ESMA Regulation.

As a derogation from ESMA's general fining powers in the ESMA Regulation, where the ESG rating provider is a parent or subsidiary required to prepare consolidated financial accounts, the fine will be based on the relevant total annual net turnover according to the most recent available consolidated accounts approved by the management body of the ultimate parent (this is already the case under the current ERR fines provision).

(iv) Fees: The provision on supervisory fees now cross-refers to the equivalent provision in the ESMA Regulation. There is still a provision that delegated acts will establish fees which are proportionate and appropriate to the size of ESG rating providers and the extent of their supervision, in particular when they are categorised as small ESG rating providers.

Benchmark Regulation

> The Benchmark Regulation's Articles on ESMA's powers are also deleted, as they will now be set out in the amended ESMA Regulation.

> As a derogation from ESMA's general fining powers, fines for benchmark administrators relating to failings in assuring the accuracy of input data will be limited to a maximum of EUR 250k or 2% of group turnover (or EUR 100k for natural persons).



Contacts



Peter Bevan

Partner, Financial Regulation Group, London

Tel: +44 20 7456 3776

peter.bevan@linklaters.com



Harry Eddis

Partner, Financial Regulation Group, London

Tel: +44 20 7456 3724

harry.eddis@linklaters.com



Raza Naeem

Partner, Financial Regulation Group, London

Tel: +44 20 7456 5272

raza.naeem@linklaters.com



Andreas Dehio

Partner, Financial Regulation Group, Frankfurt

Tel: +49 69 71003 583

andreas.dehio@linklaters.com



Julian Emmerich

Partner, Financial Regulation Group, Frankfurt

Tel: +49 69 71003 504

julian.emmerich@linklaters.com



Paloma Fierro

Partner, Financial Regulation Group, Madrid

Tel: +34 91399 6054

paloma.fierro@linklaters.com



Marc Perrone

Partner, Financial Regulation Group, Paris

Tel: +33 1 5643 5566

marc.perrone@linklaters.com



Ngoc-Hong Ma

Partner, Financial Regulation Group, Paris

Tel: +33 1 5643 5893

ngoc-hong.ma@linklaters.com



Anna Ferraresso

Partner, Banking – Capital Markets Practice, Milan

Tel: +39 02 88393 5257

anna.ferraresso@linklaters.com



Raoul Heinen

Partner, Investment Funds, Luxembourg

Tel: +352 2608 8331

raoul.heinen@linklaters.com



Mariken van Loopik

Partner, Financial Regulation Group, Amsterdam

Tel: +31 20 7996 312

mariken.vanloopik@linklaters.com



James Morris

Counsel, Financial Regulation Group, London

Tel: +44 20 7456 5948

james.morris@linklaters.com



Clare Whittle

Counsel, Financial Regulation Group, London

Tel: +44 20 7456 4264

clare.whittle@linklaters.com



Sherryn Buehlmann

Managing Associate, Financial Regulation Group, London

Tel: +44 20 7456 2637

sherryn.buehlmann@linklaters.com



Natasha Twumasi

Associate, Financial Regulation Group, London

Tel: +44 20 7456 2391

natasha.twumasi@linklaters.com

The proposal for a Regulation on settlement finality (**Settlement Finality Regulation – SFR**) intends to replace the current Directive 98/26/EC on settlement finality (**Settlement Finality Directive – SFD**) and to amend Directive 2002/47/EC on financial collateral arrangements (**Financial Collateral Directive – FCD**).

The SFD, adopted in 1998, regulates transfer orders, netting, and collateral arrangements in EU-designated payment and securities settlement systems as well as clearing systems, particularly in the context of insolvency situations. However, the SFD required national transposition by the EU Member States (and was also implemented in other EAA states). The European Commission's recent review and consultations revealed divergent interpretations and practices in Member States with persistent barriers to market integration and legal certainty, especially for cross-border transactions and innovations such as distributed ledger technology and third-country systems.

In order to eliminate discrepancies and to ensure aligned legislation across the EU, the EU Commission proposes to repeal the SFD and enhance legal certainty and consistency by way of replacing the SFD with an EU Regulation directly applicable in the EU Member States. The impact assessment conducted by the EU Commission considered three options, ultimately favouring the conversion of the SFD into an EU Regulation as the most balanced and effective approach. Repealing the SFD and replacing it with the SFR shall provide legal clarity for digital innovation, streamline conflict-of-law rules, and facilitate more predictable, efficient operation of EU capital markets.

Key features of the new SFR

The SFR includes a revised definition of a "**system**": Under the SFR a "system" means a formal arrangement, other than an interoperability arrangement, with common rules and standardised procedures, including, a securities settlement system, a clearing system or a payment system, which provides for the settlement, clearing or execution of transfer orders between participants.

Compared to the SFD, the SFR updates the definition set to make them compatible with distributed-ledger technology allowing DLT-based systems to benefit from settlement finality protections and privileges under the SFR as well.

The proposal also includes a revised definition of "**participant**": it is no longer restricted to certain entity types but now also covers any entity participating in a designated or registered system (a "system member"). As a corollary to this inclusion of system members, the SFR imposes certain conditions for the admission of those system members. The ability for Member States to admit an "indirect participant" as a "participant" is retained.

Under the SFD, a system must be **designated** as such under applicable law of the EU Member States and be **notified** to ESMA. The proposed regulation, in contrast to the SFD, provides that the operator of a system which is governed by the law of an EU Member State must apply for the system to be designated. The application must be addressed to the relevant designating authority (to be appointed by each EU Member State) and the SFR provides for the procedure and conditions for such designation.



Systems, that are not governed by a law of an EU Member State (third-country systems), may apply to ESMA in order to become a registered system benefitting from settlement finality and related insolvency protections. The proposal provides for the conditions and a detailed procedure for granting and refusing such registration.

One of the insolvency benefits under the SFD is that transfer orders and netting are legally enforceable and binding upon participants in a system. That privilege also applies under the SFR. The proposal explicitly lists not only transfer orders and netting but clarifies that also **close-out netting** is captured.

The SFD does not specify conditions for the moment from which a **transfer order** may not be **revoked** anymore as it simply referred to the moment defined in the rules of the relevant system. The proposed SFR is more detailed as it requires that any system, when determining the moment of irrevocability, shall take into account the moment when a transfer order entered into the system was confirmed and when processing of such order could not be revoked. For clearing systems and securities settlement systems not operated by a CSD, ESMA may develop regulatory technical standards for determining, *inter alia*, the moment of irrevocability and final settlement. The same power is granted to EBA in relation to payment systems.

Transition

Any system that was designated prior to the SFR entering into force shall continue to be designated until the earlier of it being re-designated or until five years after the SFR enters into force.

The proposed SFR also addresses the situation for transfer orders entered into a system before the SFR comes into force. Provided that the transfer order was entered into the system before the SFR comes into force, but was settled after that date, it will be deemed to be a transfer order for the purposes of and under the SFR.

Impact

We expect that both system operators as well as participants will need to reflect the new SFR in the legal assessment of their rights and obligations and will thus require comprehensive legal analysis. In addition, third-country systems will need to take action in order to ensure that they will benefit from statutory protections in relation to their participants situated in the EU.

Amendments to Financial Collateral Directive (FCD)

The changes to the FCD are minimal and only reflect that cash, financial instruments and credit claims may be issued under or recorded on **DLT**. It has been clarified that the definitions of account, registration and register include any form of electronic records thereof, including DLT-based technology as well as electronic signatures. Unfortunately, these very limited changes fall short of the wider changes foreshadowed during the consultation process.



Contacts



Burkhard Rinne

Partner, Capital Markets Practice, Frankfurt

Tel: +49 69 71003 514

burkhard.rinne@linklaters.com



Christian Storck

Partner, Capital Markets Practice, Frankfurt

Tel: +49 69 71003 531

christian.storck@linklaters.com



Jörg Fried

Partner, Capital Markets Practice, Berlin

Tel: +49 30 21496 331

joerg.fried@linklaters.com



Marc Voelcker

Counsel, Capital Markets Practice, Berlin

Tel: +49 30 21496 165

marc.voelcker@linklaters.com



Stefan Gohling

Managing Associate, Capital Markets Practice, Berlin

Tel: +49 30 21496 122

stefan.gohling@linklaters.com



Florian Baetke

Managing Associate, Capital Markets Practice, Berlin

Tel: +49 30 21496 353

florian.baetke@linklaters.com



Richard Hay

Partner, Capital Markets Practice, London

Tel: +44 20 7456 2684

richard.hay@linklaters.com



Eliane Dejardin Botelho

Partner, Capital Markets & Banking Practice, Luxembourg

Tel: +352 2608 8332

eliane.dejardin.botelho@linklaters.com



Mees Roelofs

Partner, Banking Practice, Amsterdam

Tel: +31 20 7996 289

mees.roelofs@linklaters.com



Raoul Heinen

Partner, Investment Funds, Luxembourg

Tel: +352 2608 8331

raoul.heinen@linklaters.com

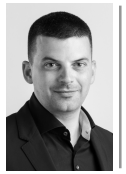


Raza Naeem

Partner, Financial Regulation Group, London

Tel: +44 20 7456 5272

raza.naeem@linklaters.com



Andreas Van Impe

Counsel, Financial Regulation Group, Brussels

Tel: +32 2501 9519

andreas.vanimpe@linklaters.com

CCPs and EMIR reforms

The MIP proposals include significant reform of the supervisory framework for Union CCPs. The Commission intends these reforms to address diverging supervisory practices among NCAs which may create an unlevel playing field for Union CCPs. The Commission cites concerns that, left unchecked, this may increase the risk of supervisory arbitrage and potentially create financial stability issues. To address these concerns, the Commission proposes that Union CCPs that are considered to be "significant" should be supervised directly by ESMA, rather than by NCAs in cooperation with ESMA and CCP colleges, as is currently the case.

Broadly, Union CCPs would be deemed to be "significant CCPs" if they have substantial clearing activity, a material cross-border dimension, or are part of a group that includes other market infrastructures supervised by ESMA.

For these purposes, a CCP would meet the substantial clearing activity requirement where it satisfies any of the following conditions:

> the average open interest of securities transactions, including securities financing transactions, exchange traded derivatives or non-financial instruments cleared by the CCP over a period of one year prior to the assessment is more than EUR 100 billion;

> the average gross notional outstanding of OTC derivatives transactions cleared by the CCP over a period of one year prior to the assessment is more than EUR 500 billion; or

> the average aggregated initial margin requirement and default fund contributions for accounts held by the CCP's clearing members, calculated on a net basis at clearing member account level, over a period of one year prior to the assessment, is more than EUR 25 billion.

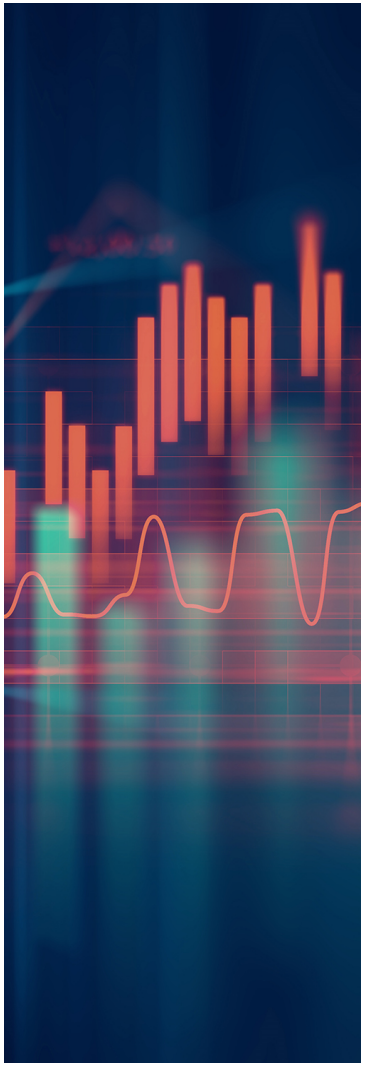
The Commission notes that, of the 14 CCPs authorised in the Union, nine would fall under the centralised supervision of ESMA on this basis.

ESMA would be required to assess authorised CCPs at least annually and would have discretion to set adaptation periods of up to six months for CCPs that qualify as significant CCPs, to allow for the transition of supervision to ESMA. ESMA would also have the power to impose fines and penalties.

The Commission is empowered to adopt a delegated act specifying the fees ESMA would charge significant CCPs for undertaking its supervisory duties.

Supervision of CCPs not treated as significant (so-called "less significant CCPs") would remain with NCAs, unless the relevant NCA elects to transfer supervision to ESMA.

Provision would be made for close cooperation arrangements between ESMA, key NCAs and central banks. Certain assessments and decisions in respect of significant CCPs would also be subject to consultation with the ECB or relevant national central bank.



Stronger cooperation with ESMA for less significant CCPs would also be required to ensure a consistent approach. ESMA would be responsible for chairing colleges for these less significant CCPs and for authorising interoperability arrangements.

Less significant CCPs would also see changes to reflect reform of the internal governance of ESMA, including the replacement of the CCP supervisory committee with a new independent executive board.

The regime for third-country CCPs, and supervision of Tier 2 CCPs, for which ESMA is already directly responsible, would be largely unchanged, with the exception of amendments to reflect changes to ESMA's internal governance.

CSDs and CSDR reforms

The package also proposes various changes affecting CSD activities. Many of these are aimed at tackling inefficiencies and fragmentation across the EU.

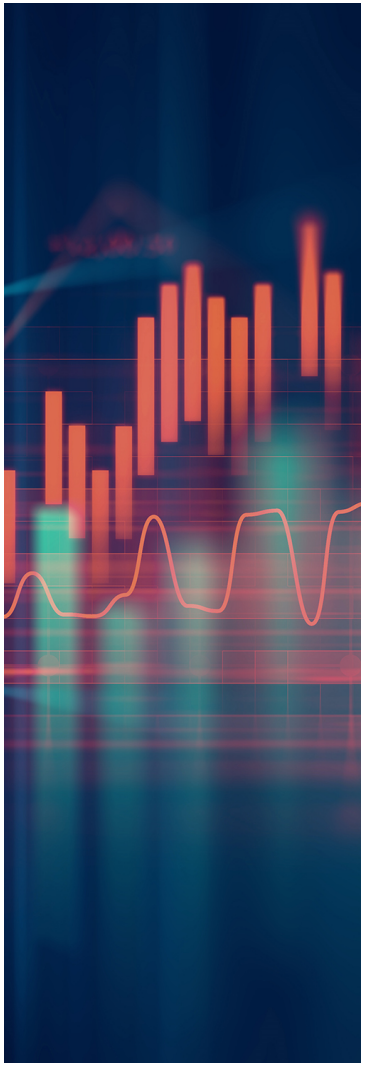
Notably, the Commission is purporting to limit the ability of Member States to impose additional national requirements on issuers beyond the requirements of CSDR, as well as to simplify the CSD passporting regime.

The proposals also seek to improve investor access to financial instruments issued across the EU, through further integration of CSD services. They do this in part by introducing the concept of a "CSD hub" and requiring other CSDs to establish reciprocal links with those hubs and CSD hubs to establish reciprocal links with each other.

There are also measures aimed at promoting the use of the Eurosystem's TARGET2-Securities (T2S) settlement platform.

As with CCPs, the proposals would also give ESMA direct supervisory authority over CSDs deemed to be "significant".

In addition, there are various changes aimed at facilitating the use of distributed ledger technologies in CSD activities, as discussed below.



Contacts



Michael Voisin

Partner, Capital Markets Practice, London

Tel: + 44 20 7456 4606

michael.voisin@linklaters.com



Sarah Willis

Counsel, Capital Markets Practice, London

Tel: +44 20 7456 5092

sarah.willis@linklaters.com



Madeleine Wanner

Counsel, Capital Markets Practice, London

Tel: +44 20 7456 4950

madeleine.wanner@linklaters.com



Burkhard Rinne

Partner, Capital Markets Practice, Frankfurt

Tel: +49 69 71003 514

burkhard.rinne@linklaters.com



Marc Voelcker

Counsel, Capital Markets Practice, Berlin

Tel: +49 30 21496 165

marc.voelcker@linklaters.com



Eliane Dejardin Botelho

Partner, Capital Markets & Banking Practice, Luxembourg

Tel: +352 2608 8332

eliane.dejardin.botelho@linklaters.com

Supervision of crypto-asset service providers

The proposals purport to bring all crypto-asset service providers (CASPs) regulated under the Markets in Crypto-assets Regulation (MiCA) under the central oversight of ESMA, regardless of scale.

Currently, CASPs are authorised, monitored and supervised by NCAs, with ESMA having certain supervisory powers in respect of CASPs deemed to be "significant". The proposals would broadly transfer all supervisory functions to ESMA, subject to a more nuanced approach for certain entities already authorised for other financial services. ESMA would also be responsible for monitoring for market abuse in crypto markets across the EU.

This is a highly controversial move. Authorities in some Member States (notably, France, Italy and Austria) have expressly called for direct supervision, citing concerns around uneven application of MiCA and regulatory arbitrage, among other things. Others have raised concerns that the proposed changes will be costly to CASPs and stifle and delay innovation in Europe. The Commission has proposed certain transitional measures aimed at mitigating some of these risks.

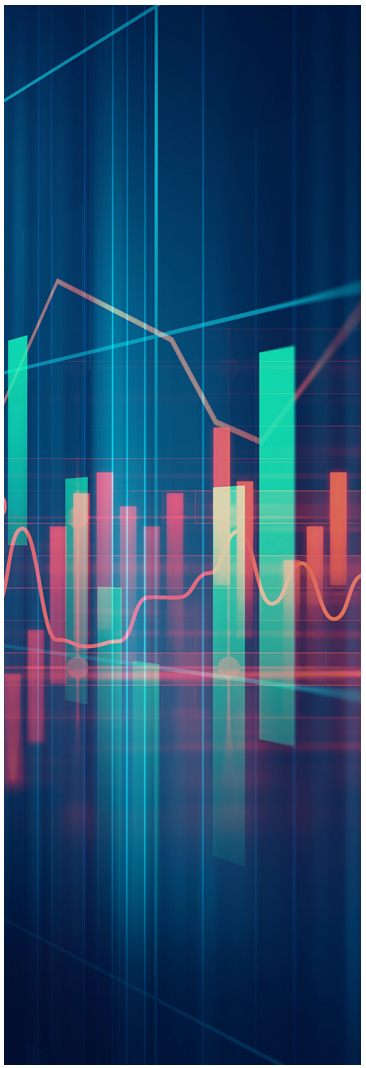
Measures to support innovation with distributed ledger technologies

The package includes various measures designed to support innovation, including with distributed ledger technologies (DLT), within the financial markets. These include changes to generally applicable regulatory frameworks as well as to the DLT Pilot Regime.

The general amends affect various provisions of EU financial services legislation. For example, various concepts and definitions, across CSDR, the new SFR and the FCD, that were drafted with account-based, bilateral, systems in mind, are now proposed to be amended explicitly to accommodate arrangements based on DLT. In some cases, the proposed changes would not materially change existing market interpretations whereas in other cases the changes could provide substantially more clarity. For example, proposed amendments to CSDR would clarify that CSDs can effect cash settlements in stablecoins in certain circumstances and that CSDs could in principle provide core services through a distributed network in a way not treated as an outsourcing.

The amendments to the DLT Pilot Regime are extensive, and aimed at broadening its scope, scale and flexibility. This is in response to widespread criticisms that the original framework was too rigid and provided insufficient long-term certainty to attract potential applicants, whether established market infrastructures or new entrants. The proposals contemplate, for example, that participants in the DLT Pilot Regime could seek exemptions (from national authorities, in consultation with ESMA) from a much wider range of EU level requirements where these are deemed to be incompatible or disproportionate with their proposed model.

The proposals also contemplate the possibility of an alternative business model that relies on a network of regulated entities providing CSD-type services on a distributed basis rather than a single operator. It is also envisaged that CSDR will be amended to allow successful participants within the DLT Pilot Regime to transition out smoothly on to a permanent legislative footing.



Contacts



Richard Hay

Partner, Capital Markets Practice, London

Tel: +44 20 7456 2684

richard.hay@linklaters.com



Sophia Le Vesconte

Counsel, Fintech Practice, London

Tel: +44 20 7456 3892

sophia.le-vesconte@linklaters.com



Harry Eddis

Partner, Financial Regulation Group, London

Tel: +44 20 7456 3724

harry.eddis@linklaters.com



Peter Bevan

Partner, Financial Regulation Group, London

Tel: +44 20 7456 3776

peter.bevan@linklaters.com



Michael Voisin

Partner, Capital Markets Practice, London

Tel: +44 20 7456 4606

michael.voisin@linklaters.com



Raoul Heinen

Partner, Investment Funds, Luxembourg

Tel: +352 2608 8331

raoul.heinen@linklaters.com



Raza Naeem

Partner, Financial Regulation Group, London

Tel: +44 20 7456 5272

raza.naeem@linklaters.com



James Morris

Counsel, Financial Regulation Group, London

Tel: +44 20 7456 5948

james.morris@linklaters.com



Andreas Van Impe

Counsel, Financial Regulation Group, Brussels

Tel: +32 2501 9519

andreas.vanimpe@linklaters.com



Eliane Dejardin Botelho

Partner, Capital Markets & Banking Practice, Luxembourg

Tel: +352 2608 8332

eliane.dejardin.botelho@linklaters.com

The Pan-European Personal Pension Product (PEPP) is a voluntary, EU-wide personal pension scheme initially established under Regulation (EU) 2019/1238. The aim of the PEPP was to provide a simple, portable, and transparent retirement savings option for individuals (not directly tied to employment) across member states of the European Union.

A PEPP is a cross-sector long-term savings personal pension product, subscribed to by a PEPP saver in view of retirement, which has no or only a very strictly limited possibility for early redemption. It can be offered by banks, asset management companies / funds, MiFID firms, IORPs or insurance undertakings.

Despite the initial ambition to create a truly portable and pan-European retirement savings product, critical hurdles have prevented the PEPP from gaining traction, including in particular:

> **Regulatory complexity**

The PEPP Regulation combines strict and extremely detailed PEPP requirements with a number of vague references to sector-specific laws, thus creating legal uncertainty.

> **High operational burden**

Mandatory requirements creating significant operational challenges and complexity have often led to the abandonment of PEPP projects before launch.

> **Stringent investment and risk management rules**

Investment rules required a predominant investment in listed securities and there were rigorous risk mitigation requirements such as a very high probability of capital preservation based on complex modelling.

> **Distribution processes**

Comprehensive, individualised advice and stringent suitability assessments, similar to those under MiFID, were mandated which, together with the cost cap (a mandatory cap of 1% of the accumulated capital per year) made the PEPP economically unattractive.

> **A lack of tax incentives**

National workplace pension solutions often benefit from employer participation and more generous tax advantages.

> **Barriers to entry and switching further dent uptake**

Current rules do not support truly cost-neutral switching of savings from existing retirement products into the PEPP.

> **Digital distribution models not yet fit for purpose**

The absence of intuitive digital onboarding restricts the appeal for younger, mobile savers who are most likely to benefit from a pan-European product.



On 20 November, the EU Commission published a "PEPP 2.0" proposal to improve the framework and make it more attractive. Some of the above challenges are being addressed in the new proposal, such as

> The cost cap – it is being replaced by a value for money (VfM) approach

> The new proposal creates a possible link between the third pillar pension savings PEPP and the workplace, allowing employers to contribute to their employees' personal PEPPs or even to offer auto-enrolment workplace PEPPs

> The proposal requires Member States to grant PEPPs at least the same tax advantages as they would grant to their local retirement savings products

> The new proposal repeals the previous requirement for each PEPP provider to also offer at least one so-called "Basic PEPP", meaning that providers may choose to only offer "tailored" PEPPs which have more liberty in designing their investment allocation

> The "Basic PEPP" itself shall have a life-cycle strategy and shall invest 95% into UCITS eligible assets and 5% into other assets

> The requirement to invest predominantly into "listed" assets has been slightly enlarged to allow assets traded on MTFs or OTFs.

While maintaining the initial cross-sector approach and many of the basic features such as portability and retirement purpose, the new proposal is perceived as a positive step into the right direction. It does, however, not (yet) address all the issues that have hindered the uptake of PEPPs.



Contacts



Silke Bernard

Partner, Investment Funds, Luxembourg

Tel: +352 2608 8223

silke.bernard@linklaters.com



Raoul Heinen

Partner, Investment Funds, Luxembourg

Tel: +352 2608 8331

raoul.heinen@linklaters.com



Marie-Christine O'Mahony

Senior Managing Associate, Investment Funds, Luxembourg

Tel: +352 2608 8245

mariechristine.omahony@linklaters.com

ESMA review of large EU asset management groups

Within 12 months of the MIP framework entering into force, ESMA will be empowered to identify and maintain a list of the largest cross-border asset management groups in the European Union (those with EU-wide group net asset values above EUR 300 billion). These managers will remain regulated by EU NCAs, but will be subject to an annual review by ESMA. It is not clear from the MIP draft, how EU-wide group net asset values will be calculated, though we expect it would capture the total AUM of funds managed by EU AIFMs and UCITS ManCos in the group.

The AIFMD and UCITS Directive will also be amended to allow ESMA to identify and address divergent, duplicative, redundant or deficient supervisory practices that hinder the cross-border operations of EU asset managers. ESMA will also gain powers to intervene where NCAs do not effectively apply Union rules and, in certain cases, to suspend a fund manager's or depositary's cross-border activities.

Switching off delegation requirements in respect of EU affiliates within groups

In practice, asset managers often operate within group structures comprised of several authorised entities across Europe. The Commission has recognised that such entities often work in an interconnected manner and may allocate management functions to other entities within the same group (such as MiFID portfolio management entities). Neither AIFMD nor the UCITS rules currently recognise the concept of a "group" of asset managers and under both regimes today, AIFMs/UCITS ManCos must maintain standalone entity-level human and technical resources, and delegations of functions to affiliates are subject to the full suite of delegation rules (including justifying the entire delegation structure on an objective basis, monitoring obligations and resource / reputational assessments).

The Commission has acknowledged this is "disproportionate and inefficient", and so to mitigate the regulatory burden (and mirroring the changes in the MiFID rules summarised previously) the Commission proposes that arrangements whereby AIFMs and UCITS ManCos rely on other regulated entities in their EU group to carry out functions/services should no longer qualify as a delegation and should not be subject to the detailed delegation rules, other than the requirement to inform the NCA of the home Member State of the AIFM/UCITS ManCo that such functions or services are performed by other entities within the EU group. It is, however, re-emphasised that the AIFM/UCITS ManCo cannot be rendered a mere "letterbox" entity. Moreover, unhelpfully, this rule only applies to delegation and resource-sharing arrangements between EU group entities, so delegations to, say, a U.S. or UK portfolio manager in the group would not benefit from this relaxation.

EU depositary passport

AIFMs and UCITS ManCos are currently mandated to appoint a depositary established in the same Member State as the fund. The Commission proposes to remove this, enabling appointment of a depositary established anywhere in the EU (by creating an "EU depositary passport"). The EU depositary passport can only be availed by duly authorised EU credit institutions and MiFID investment firms authorised to provide the ancillary service of safe-keeping and administration of financial instruments.



Harmonisation of authorisation procedures

The Commission seeks to eliminate diverging national requirements for authorisation of AIFMs and UCITS ManCos by mandating ESMA to develop RTS specifying required information and standardised formats for authorisation. The MIP also amends various provisions in both Directives to mitigate Member State-level divergence and enhance harmonisation of rules across the EU.

Streamlined process for management passports

The home Member State regulator of an EU AIFM or UCITS ManCo seeking to operate in another Member State currently has 1 month (for cross-border operations) or 2 months (if a local branch is being established) to transmit completed documentation to the host Member State regulator. The Commission intends to reduce this burden significantly – to 15 days for cross-border and 1 month for branches. In parallel, the time available to host regulators to make the necessary supervisory arrangements will also be curtailed to 1 month, and host regulators will not be permitted to goldplate requirements on managers operating under a passport in their jurisdiction.

Harmonisation of cross-border marketing rules

The provisions in AIFMD and the UCITS Directive on fund marketing will be deleted and imported to the Cross Border Distribution of Funds Regulation. These rules will be amended to optimise marketing notification and de-notification procedures and facilitate the cross-border marketing of AIFs and UCITS. We discuss this in more detail below. In addition, ESMA is granted robust powers in relation to existing or potential cross-border issues.

Simplified disclosure of white-label arrangements

AIFMs and UCITS ManCos that manage or intend to manage funds at the initiative of a third party would only be required to disclose this relationship to the competent authorities of their home Member State at the time of authorisation, and be in a position to demonstrate (upon request) that they have taken all reasonable steps to identify, prevent, manage, monitor or, where applicable, disclose conflicts of interest arising from such a relationship. This would effectively amend an upcoming rule under AIFMD II/UCITS VI (April 2026) and would mean that firms would no longer need to actively disclose detailed evidence or comply with granular reporting obligations, each time they launch a new third-party initiated fund.

UCITS investment limits

The debt securities limit for UCITS has been raised from 10% to 15% for securitisations issued in accordance with the EU Securitisation Regulation. Likewise, the 20% issuer limit for index-tracking UCITS is to be extended to capture UCITS that are managed by reference to an index that is recognised by ESMA.

Harmonisation of conduct and prudential rules

The Commission perceives that divergence across Member State rules governing conduct and prudential matters hinders the development of an integrated single market for asset managers. Therefore, ESMA will be empowered to develop guidelines to specify the content of such rules to ensure uniform application and consistent implementation of the prudential rules and conduct rules for UCITS management companies and AIFMs across the Union.



Farewell to the UCITS KIID

Under the EU PRIIPs Regulation, a PRIIPs key information document (KID) must be provided whenever a UCITS fund is offered to retail investors. However, for professional clients, UCITS ManCos have the option to provide a UCITS key investor information document (KIID) or the PRIIPs KID. In practice, maintaining a UCITS KIID requirement seems to serve no useful purpose (and most managers in practice have been using PRIIPs KIDs in the EU to discharge the UCITS obligation to provide such a document to professional investors), and its removal seeks to support the Commission's aim of simplifying the investor disclosure regime while maintaining robust investor protection.

CBDF

The MIP seeks to remove barriers to cross-border marketing of AIFs and UCITS, by harmonising rules on marketing communications and strengthen ESMA's supervisory and coordination powers through extensive amendments to the Cross-Border Distribution of Funds Regulation (CBDF).

Marketing communications:

The provisions on marketing communications in the CBDF are being rewritten and this proposal gives the Commission the ability to adopt RTS specifying the content and format of marketing communications. These rules will presumably supersede the ESMA guidelines on marketing communications.

Removal of gold-plating

This proposal seeks to remove obstacles to cross-border marketing by (i) mandating that Member States may not impose additional requirements on the content and format of AIFs' / UCITS' marketing communications; and (ii) removing the ability of Member States' competent authorities to publish national rules governing marketing requirements.

Streamlined cross-border marketing processes

> *Removal of need for prior approval*: The Commission seeks to prohibit competent authorities of host Member States from requiring notification of marketing communications as a prior condition for marketing of AIFs / UCITS in their territory. If such competent authorities have concerns about the regulatory compliance of marketing communications, they may refer these concerns to the competent authority of the home Member State and later to ESMA, if not satisfied with actions taken by the home Member State.

> *Passporting process*: Under the Commission's proposal, in order to market outside of their home Member State, the AIFM / UCITS shall notify their home Member State regulator of their intention to market in other Member States. Once the home Member State has received all required information and documentation, it shall transmit such information to the ESMA data platform (see below), at which point the UCITS / AIF may be marketed in the host Member States – thereby speeding up the process.



- *Investor disclosure*: This proposal makes it clear that where an AIF / UCITS is marketed outside of its home Member State, it shall provide the same documentation that it is required to provide to investors in its home Member State. This is a very helpful proposal to reduce the burden of compliance with host Member State marketing rules. There is, however, a new provision which appears to give host Member States the ability to supervise compliance with Article 23 disclosure requirements within their territory (in theory allowing them to refuse marketing on this basis), which is a divergence from the current rules and may impede the effectiveness of the harmonised approach that ESMA is otherwise seeking to achieve.

- *Removal of need for physical presence*: Under this proposal, neither UCITS nor AIFs would need to have a physical presence or appoint a local agent to market in a host Member State.

- *De-notification process*: This process has been simplified and importantly, the current prohibition on pre-marketing of similar AIFs for 36 months from the date of a de-notification has been removed, significantly smoothing the path for pre-marketing of successor funds.

- *Pre-marketing*: This proposal makes clear that Member States cannot impose additional requirements for pre-marketing other than those in CBDF. The detail around the current pre-marketing rules has largely been removed (including the requirement to notify the home Member State within two weeks of pre-marketing).

Increased transparency around fees and charges

This proposal requires competent authorities of host Member States to publish on ESMA's website any fees and charges they impose in relation to AIFs and UCITS marketed in their territory. Such fees must be "consistent and justified with the overall cost relating to the performance of the functions of those competent authorities". Whilst this falls short of a prohibition, it remains to be seen whether this increased scrutiny will lead to abolition of such fees and charges going forward.

Centralised ESMA data platform

Under this proposal, ESMA commits to develop a data platform within two years of entry into force of this Regulation, which would operate as a "one-stop-shop" for the cross-border marketing of AIFs and UCITS. ESMA shall charge fees in relation to the passporting and de-notification procedures.

Commission focus on non-bank financial intermediation activities

The Commission communication accompanying the MIP also indicates that the Commission is considering targeted actions for 2026 to review and enhance the existing EU framework for detecting and managing systemic risks stemming from non-bank financial intermediation activities, amid growing complexity and interconnectedness across banks and non-banks. This could potentially be quite impactful for private credit funds/fund sponsors.



Contacts



Silke Bernard

Partner, Investment Funds, Luxembourg
Tel: +352 2608 8223
silke.bernard@linklaters.com



Raza Naeem

Partner, Financial Regulation Group, London
Tel: +44 20 7456 5272
raza.naeem@linklaters.com



Rahul Manvatkar

Partner, Investment Funds, London
Tel: +44 20 7456 4392
rahul.manvatkar@linklaters.com



Markus Wollenhaupt

Partner, Investment Funds, Frankfurt
Tel: +49 69 71003 117
markus.wollenhaupt@linklaters.com



Peter Bevan

Partner, Financial Regulation Group, London
Tel: +44 20 7456 3776
peter.bevan@linklaters.com



Raoul Heinen

Partner, Investment Funds, Luxembourg
Tel: +522608 8331
raoul.heinen@linklaters.com



Emily Harmsworth

Counsel, Investment Funds, London
Tel: +44 20 7456 5315
emily.harmsworth@linklaters.com



Richard Cole

Counsel, Investment Funds, London
Tel: +44 20 7456 2154
richard.cole@linklaters.com



James Morris

Counsel, Financial Regulation Group, London
Tel: +44 20 7456 5948
james.morris@linklaters.com



Anisha Galli

Re:link Lawyer, Investment Funds, London
Tel: +44 20 7456 4155
anisha.galli@linklaters.com



Elliot Jack

Managing Associate, Financial Regulation Group, London
Tel: +44 20 7456 2139
elliot.jack@linklaters.com

Timings

Whilst the application dates are currently unclear, the following timings are anticipated:

- The *Regulation on the development of capital market integration and supervision* within the Union will enter into force on the **day following its publication** in the Official Journal of the EU. It will largely apply from **12 months after the entry into force**, with some exceptions. Implementation with a **"start-up" period from between mid-2027 and mid-2029**, followed by full-scale operation is anticipated by the Commission.

- The *Directive on the development of capital market integration and supervision within the Union* will enter into force on the **twentieth day** following its publication in the Official Journal of the EU. Implementation with a **"start-up" period from between mid-2027 and mid-2029**, followed by full-scale operation is anticipated by the Commission.

- The *Regulation on settlement finality and financial collateral arrangements* will enter into force on the **twentieth day** following its publication in the Official Journal of the EU. It will be directly applicable in all Member States. The Regulation would repeal the existing Settlement Finality Directive as soon as it enters into force but will have transitional provisions that would apply for the first five years. Implementation with a "**start-up" period in 2028**, followed by full-scale operation is anticipated by the Commission.

Next steps

The proposals must now be negotiated and approved by the European Parliament and the Council and combined into a cohesive set of reforms before they are implemented.

We expect these legislative proposals to be highly political, given their wide-ranging implications for European capital markets at all levels, so intense negotiations are therefore anticipated. Consequently, we estimate that their publication in the Official Journal of the EU could occur approximately 12-24 months from today.