ISDA Safe, Efficient Markets

ISDA MISP Comments - EP Draft Reports

ISDA welcomes the opportunity to comment on the European Parliament's (EP) draft reports by MEP Markus Ferber ('Master Regulation') and MEP Eero Heinäluoma ('Master Directive') on the Market Integration and Supervision Package (MISP), published on 12 June 2026, ahead of the 16 July 2026 deadline for amendments in the ECON Committee.

ISDA has provided comments on the MEP Crosetto report on the Settlement Finality Regulation (SFR) in separate papers.

<u>**Executive Summary**</u>

ISDA supports amendments that improve the competitiveness of EU capital markets, reduce unnecessary implementation burdens and preserve international alignment.

We welcome the amendments (AMs) proposed by Markus Ferber in the Master Regulation that would introduce a *secondary* competitiveness mandate for ESMA, embed competitiveness analysis in the development of technical standards, make ESMA's no-action relief framework more usable, and establish the foundations for more integrated supervisory data architecture under a "report only once" principle. These amendments align with the objectives of simplification, supervisory convergence and the development of deeper, more competitive EU capital markets.

However, certain proposals provoke concern

The deletion of the Ancillary Activity Exemption (AAE) in MiFID, as proposed by rapporteur Heinäluoma, would contradict the findings of the Commission's recently published MIFID Article 90 and Gas Market Task Force reports, which concluded that the current AAE is fit for purpose and that deleting it would damage the competitiveness of EU firms. ISDA shares the concern of many participants in non-equity markets – in particular energy markets – regarding rapporteur Ferber's amendment proposing reintroduction of MiFIR pre-trade transparency for 'hybrid trading systems'. This amendment would – if it achieved the stated ambition of the rapporteur in tabling it - stifle hedging of large and bespoke transactions on trading venues (making them more complex and expensive). We recall that buyside firms had given clear feedback to ESMA in the years prior to the last (2024) revision of MiFIR that pre-trade transparency is of little value to them.

Further reflection is needed to ensure significant benefits result from reforms to EMIR transaction reporting

The intention to reduce the EMIR reporting burden by removing dual sided reporting is welcome, although ISDA notes that rapporteur Ferber supports expanded mandatory delegated reporting rather than true single-sided reporting. While ISDA continues to believe that true single-sided reporting would be the optimal approach for reform of derivatives reporting in terms of burden reduction, we consider that expanded mandatory delegated reporting can provide meaningful reduction of burden provided certain conditions are met. In particular, ESMA should be given scope to define the details of this regime, including the hierarchy of who is responsible for reporting for different counterparty relationships, and to largely remove reconciliation requirements for both counterparties. Furthermore, the scope of mandatory delegated reporting should be as broad as possible, encompassing OTC Derivatives (OTCDs) and Exchange Traded Derivatives (ETDs), and applying to the widest possible set of counterparties. In general, the principle must be that the outcome is burden reduction across all market participants and not the transfer of burden to certain sectors.

1. **Competitiveness mandate for ESMA (ESMA Regulation)**

We welcome the MEP Ferber's AMs that would embed competitiveness and international attractiveness in ESMA's mandate.

Ferber AMs 5, 50, 51, 56, 59, 78 and 79 would introduce and operationalise a *secondary* competitiveness objective for ESMA. In particular, AM 50 would require ESMA, subject to the primacy of its core objectives, to have particular regard to the competitiveness and international attractiveness of Union capital markets.

A *secondary* competitiveness mandate would not displace financial stability, market integrity or investor protection, or any other primary objective. It would however require ESMA to *consider* how draft technical standards (Level 2) or regulatory guidance (Level 3) affect the competitiveness and attractiveness of EU capital markets. Whilst ESMA is not a legislator, ESMA's advice and the provision of draft Level 2 legislation to the European Commission are critical determinants of compliance burdens for firms in the EU.

We therefore support AMs 56 and 57 which embed the competitiveness mandate in relation to the development of Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS).

We further agree that ESMA should add a competitiveness chapter in its annual report, to ensure accountability and outline potential areas for improvement. However, we think the criteria metrics suggested in AM 78 may create an unnecessary burden for ESMA.

- ***We support Ferber AMs 5, 50, 51, 56, 59.***
- ***The Annual report chapter on competitiveness should be streamlined.***

2. **No-action letters and sequencing of implementation dates (ESMA Regulation)**

We support AMs that would make ESMA's no-action relief framework more usable. However, we think the current ESMA Article 9a powers need to be complemented by a power for the EC to disapply EU law on a temporary basis. The co-legislator should also ensure that EU law only becomes applicable after Level 2 legislation has been finalised (and ideally allowing a reasonable timeframe for implementation before it is effective).

Ferber AM 2 and AMs 53 to 55 would remove the restrictive "urgent and unforeseen" conditionality from Article 9a and add a condition linked to disproportionate implementation burden or material competitive disadvantage for Union firms relative to firms in third countries.

However, the AMs may not address the fundamental shortcoming in current Article 9a: the (in)ability of ESMA to disapply EU law on a temporary basis and do so in a timely fashion, in many important cases. One key hurdle relates to instances where calls for no-action relief relate to obligations under Level 1 legislation, agreed between the European Parliament and the Council. ESMA may not be legally able ('Meroni doctrine') to disapply EU law. Therefore, we recommend supplementing Article 9a of the ESMA Regulation by giving the European Commission a power to suspend legislative requirements on a time-limited basis by adopting Level 2 acts, making use of urgency procedures.

This would address a weakness in the current EU framework. ESMA has often had to rely on supervisory statements rather than a truly effective no-action relief tool, while full legal certainty has remained elusive where issues arise from Level 1 requirements or delayed Level 2 measures.

When Level 1 obligations apply before relevant Level 2 standards, guidance, reporting formats or operational specifications have been adopted, it is problematic, with market participants having to contemplate the prospect of having to implement EU regulatory requirements twice - once to comply with high-level Level 1 texts and a second time to comply according to the detailed provisions adopted following the technical rulemaking process. The objective should be the introduction of better sequencing of Level 1 and Level 2 application dates wherever technical standards are necessary for effective compliance.

- ***ISDA supports Ferber AMs 2, 53, 54 and 55.***
- ***Article 9a should be supplemented with a power for the EC to temporarily suspend EU requirements.***
- ***Introduce appropriate sequencing of application dates of Level 1 and Level 2 legislation.***

3. Breach of Union law and supervisory failure tools (ESMA Regulation)

ISDA supports stronger supervisory convergence across the Union, provided that escalation tools are targeted and procedurally sound.

Ferber AM 63 would restore a two-month deadline for ESMA to provide recommendations in breach of Union law cases. Ferber AMs 64 and 65 would strengthen safeguards around the proposed supervisory failure provisions by requiring an assessment of serious and demonstrable risk to market integrity, financial stability or investor protection, and by aligning corrective action with Board of Appeal procedures. It should be noted that ISDA is not aware of any breach of union law or ‘supervisory failures’ with respect to supervision of market participants in derivatives markets.

Divergent supervisory interpretations can undermine the single market and impose unnecessary costs on cross-border firms. However, EU-level corrective tools, particularly where they may ultimately result in measures such as the suspension of cross-border service provision under Article 17aaa of the EC proposal, should only be used where clear and evidence-based non-compliance of a firm *and* a supervisory failure has been identified and where there is a material risk to market integrity, financial stability or investor protection. Any measures used in this context should be proportionate to the risk posed to these core objectives.

4. Transparency and hybrid trading systems (MiFIR)

We oppose the creation of a definition of “hybrid trading system” and the extension of pre-trade transparency under MiFIR Article 8a(2) to prices advertised on such systems as it could have significant negative consequences for liquidity provisions more broadly.

Ferber AM 106 introduces a definition of “hybrid trading system” and AMs 112 and 113 aim to expand pre-trade transparency to these systems. The stated objective appears to be to capture certain block exchange-traded derivatives (ETD) activity and discourage use of specific trading protocols to avoid pre-trade transparency.

However, this drafting is flawed, as AM 112 seeks to amend Article 8a(2), which addresses OTC derivatives offered for trading on MTFs and OTFs. Block ETD trades are not formalised on MTFs or OTFs, so these amendments would not capture the trades they seek to include in the scope of pre-trade transparency.

Instead, they would capture pre-arranged trades in non-ETD instruments such as interest rate and credit default swaps, that are agreed through a request-for-quote protocol and formalised through what are known as process trades.

The MiFIR Review concluded that trading systems other than central limit order books and periodic auction trading systems 'in particular voice trading and request-for-quote systems [which] provide requestors with tailor-made quotes… have marginal informational value to other market participants' - a view expressed by buyside firms to ESMA when it was reviewing MiFIR prior to the EC proposals that led to the 2024 revision of MiFIR.[2]

We also encourage MEPs to extend the relief proposed by the EC for OTC derivatives from post-trade transparency for trades executed at third country trading venues to other asset classes, and to trades in all asset classes executed by third country branches of EU firms with non-EU counterparties and made public on third country APAs.

- ***We oppose Ferber AMs 106, 112 and 113***
- ***We ask MEPs to extend the relief provided in the EC proposal in relation to Post Trade Transparency for trades executed on non-EU venues by amending Article 8 and 8a***

5. Transaction reporting (EMIR)

We welcome the rapporteur's recognition that EMIR dual-sided reporting has created a significant operational burden.

ISDA continues to favour true single-sided reporting as the alternative that would most significantly reduce reporting costs and administrative workload in alignment with the European Union's simplification and burden reduction agenda, and that would enhance consistency with other global reporting regimes. The same criteria that would ensure data quality following the removal of reconciliations under expanded mandatory delegated reporting, as identified in ESMA's Final Report on the Call for Evidence on a comprehensive approach for the simplification of financial transaction reporting[1] (published on 2 July), could equally apply to single-sided reporting.

We note that – like ESMA in its Final Report - the rapporteur (in AMs 14, 91 and 92) supports expansion of mandatory delegated reporting (which currently applies to trades that are reportable under EMIR between financial counterparties and non-financial corporates that are not subject to clearing) in place of the current dual-sided reporting regime as a means towards burden reduction in reporting. While ISDA agrees that material benefits can be achieved through the expansion of mandatory delegated reporting, industry reservations regarding this approach remain that without certain conditions being applied, the reporting burden may not be materially reduced.

[1] Final Report on the Call for Evidence on a comprehensive approach for the simplification of financial transaction reporting

Concerns about limited burden reduction relate to, for example: the burden should reconciliation requirements remain in place, and should legal liability remain with delegating counterparties; any need for counterparties to negotiate and maintain agreements for which counterparty should report, particularly where FCs transact with FCs; for reporting firms, managing additional connections to delegating counterparties should those counterparties be required to provide data to the reporting party on a trade-by-trade basis. We observe that expansion of mandatory delegated reporting could also result in the reporting party being required to send errors and omissions notifications to an increased number of NCAs (though the ESMA report recognised the need to simplify the reporting errors and omissions regime in EMIR). We also note that EU entities transacting with third country counterparties (many of whom offer voluntary reporting services) would not benefit from the expansion of mandatory delegated reporting for these transactions and suggest that consideration is given to allowing the continuation of voluntary delegated reporting for cross-border trading relationships.

Accordingly, if meaningful burden reduction is to be achieved through the expansion of mandatory delegated reporting, the following conditions should apply:

- Mandatory delegated reporting should be applied to the widest possible scope of entities (including all financial and non-financial counterparties) and instruments (including both OTC and exchange-traded derivatives).
- Responsibility and legal liability should lie with the reporting party, apart from the small set of static data the delegating party provides to the reporting party.
- Trade by trade reconciliations at a data element level should not be required, and there should be no obligation on the delegating party to check or validate reports of its transactions, or to transmit data to the reporting party on a trade-by-trade basis.
- The waterfall of reporting hierarchy should be mandated to be determined in Level 2.

As such, on the AMs proposed by the rapporteur on derivatives reporting (14 and 15, 90-92):

- ***We would support AM 14's extension of mandatory delegated reporting to 'all derivative contracts' (i.e. to all counterparty pairs and to ETDs as well as OTC derivative contracts).***
- ***We would only partially support AM 91, as at present this contradicts AM 14 by restricting the expansion of mandatory delegated reporting to OTC derivative contracts that involve financial counterparties transacting with financial counterparties. This AM therefore excludes both ETDs and transactions involving non-financial counterparties that meet the conditions referred to in the second subparagraph of EMIR Article 10(1) (known as NFC+ counterparties).***
- We would support a mandate for ESMA to develop RTS on mandatory delegated reporting, including on criteria for specifying the reporting counterparty. ***However, we would only partially support AM 92 (we believe that it should be left to ESMA to define the reporting hierarchy for different counterparty relationships, but the second half of this amendment specifies who the reporting parties would be in cleared and uncleared transactions).***

In respect of intragroup transaction reporting, we support further simplification for NFC intragroup transactions. Intragroup transactions within non-financial groups are typically used to consolidate and allocate hedging internally and do not create additional market-facing risk where external hedges are already reported. A proportionate exemption or simplified parent-level notification process could preserve supervisory visibility while reducing unnecessary administrative costs.

- ***We broadly support AMs 15 and 90, but would suggest (as ESMA does in its Final Report on the simplification of transaction reporting) that the exemption should apply immediately after notification (rather than three months after notification).***

6. Eligible collateral and tokenised assets (EMIR)

We welcome the intention underpinning Ferber AMs 16, 85 and 103 to 105 specifying that DLT financial instruments and central bank money in tokenised form may be treated as eligible collateral on the same terms as their non-tokenised equivalents, provided they satisfy the same liquidity, credit risk and market risk conditions. However, we are concerned that prescribing only these forms of tokenised collateral as eligible at this point may impede recognition of other forms of digital instruments (such as for example EMT under MiCA) as collateral as markets mature.

7. Ancillary Activity Exemption (MiFID)

We are concerned by the proposed deletion of the Ancillary Activity Exemption (AAE) in MiFID Article 2 by Heinäluoma AM 97. The rapporteur does not provide any justification for this proposal, neither with his amendment nor in the report's explanatory statement. Two recent European Commission reports (reviewing commodity markets under MiFID and by the Gas Market Task Force) found that there is no evidence that warrants deletion of the AAE, or even further review. In fact, the MiFID Article 90 review stated that altering its scope 'may have significant and far-reaching consequences, potentially impacting the competitiveness of EU firms' and recognised that commodity derivatives are essential tools for market participants to hedge exposures in underlying commodity markets.

Removing the AAE exemption would subject a wide range of non-financial firms to a MiFID investment firm regime which was not designed for them, with significant cost and operational consequences. It would also reduce hedging activity and liquidity in EU commodity derivatives markets.

- ***We oppose Heinäluoma AM 97***

8. DLT infrastructure industry group and interoperability (DLT pilot regime)

We support the amendments that emphasise that DLT market infrastructure interoperability solutions should emerge primarily from industry-driven processes. Ferber AM 38 states that interoperability solutions should emerge primarily from industry-driven processes rather than prescriptive regulatory mandates.

Ferber AM 179 would make formation of an industry group optional rather than mandatory. This approach aims to reflect the early stage of DLT market infrastructure development.

Contacts

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