From design to delivery – five enablers for effective European supervision

Introduction

European capital markets are on the verge of a major transformation, following a push by the Draghi and Letta reports to contribute better to the funding of the EU's strategic objectives. Under the proposed legislation, the Market Integration and Supervision Package (MISP), ESMA evolves from a primarily policy-driven institution into a genuine European supervisor - a shift from design and convergence to execution. Single supervision, where appropriate, is a precondition for genuine market integration: it delivers consistent outcomes across the EU, removes duplicative compliance burdens for cross-border firms, and allows supervisory resources to be deployed where they have the greatest impact. The case for centralisation rests on these benefits being realised in practice. The AFM and the AMF strongly support this transformation. The question is not whether to centralise, but how to do it well.

Supervision should be risk-based, cost-conscious and adaptive - keeping pace with the latest market developments. This calls for a data-driven supervisory approach and an efficient division of labour between the central supervisor and all relevant NCAs. It also calls for a supervisor that engages constructively with the sector, accommodating innovation and adjusting its methods as new risks and business models emerge. In this way, independent supervision will earn the support of supervised entities and society at large.

The MISP offers a rare opportunity to get this right. The AFM and the AMF welcome the Commission's proposal as a significant step forward, and have identified five enablers that support how centralisation will deliver on its promise: 1) **risk-based and adaptive supervision** - a shared supervisory philosophy focused on impact rather than formal compliance; 2) **proportionate and transparent funding** - cost discipline, predictability and fair NCA reimbursement; 3) **independent and accountable governance** - institutional design and cooperation that hold in practice; 4) **data centralisation** - the shared data infrastructure that is the backbone of central supervision in practice; and 5) **effective enforcement** - legally robust arrangements that ensure effective enforcement and deliver consistent outcomes across Member States.

Enabler 1 – Risk-based and adaptive supervision: maximising impact with limited sources

ESMA's transformation into the prime European supervisor is a shift from design to delivery. This transition builds on ESMA's existing strengths in policy development, convergence and coordination, as well as on its existing supervisory experience over entities such as credit rating agencies and third-country central counterparties, but requires more than new powers and resources alone. It also requires a shared supervisory philosophy that guides how priorities are set and resources allocated in practice. The shift in emphasis from policy design to supervision demands different modes of working: operational decisions under pressure, sustained engagement with supervised entities, and continuous judgement about where impact is greatest. While formal reforms are the parameters of this transition, getting it right involves a shift in supervisory resources and mindset. This philosophy should be risk-based, adaptive, and focused on maximising impact.

Supervisory attention must be directed towards the biggest risks to orderly markets, investor protection, and financial stability. This risk-based approach maximises the positive impact of supervision. In practice, this means focusing on results rather than process, outcome over output, deploying enforcement resources efficiently, including from a cost-efficiency perspective, and influencing market conduct through dialogue and informal measures where possible. A formalistic compliance approach risks absorbing disproportionate resources without materially improving outcomes. Risk-based supervision combines entity-level oversight with a broader market-wide perspective. It prioritises supervisory effort by risk and draws on the centralised data infrastructure described under Enabler 4. Attention to conduct and culture within supervised entities complements this approach. These principles should be embedded in ESMA's supervisory culture and operational framework from the outset.

Supervision must also be adaptive. European capital markets are undergoing rapid change, driven by technological innovation, new market structures and shifting investor behaviour. Supervision should keep pace: engage early and constructively with the market and accommodate innovation, use supervisory and sector technology (suptech) to understand new business models, and adjust supervisory methods and priorities as risks evolve. An adaptive, innovation accommodating supervisor is better placed to identify emerging risks at an early stage and to maintain credible oversight of markets that do not stand still.

Enabler 2 – Proportionate and transparent funding: *substantiated costs, predictability and fair reimbursement*

Harmonised supervision should contribute to the Savings and Investments Union (SIU) objective of a well-functioning EU-wide capital market and should not impede this objective through disproportionate costs. The MISP rests on the premise that harmonised supervision will generate benefits - reduced duplicative compliance costs, deeper capital markets, enhanced competition and better consumer outcomes - that ultimately outweigh the investment required. The aim should be a clear cost framework which is cost neutral at least in the steady state (as a minimum it shouldn't increase the costs), proportionate and capped. Mechanisms to ensure control over cost development should be considered, while preserving the resourcing ESMA needs to perform its new tasks effectively and for NCAs to perform their remaining tasks in the centralised model. Cost consciousness reinforces the discipline of focusing supervisory attention and resources where they deliver the greatest impact.

It is important to recognise that NCA participation in ESMA-led supervision entails real resource implications and should be sustainable over time, adequate and transparent. The overall cost framework should therefore encompass all supervisory functions and the entire cost chain, including NCA-level costs not reflected in the ESMA budget (which will be reimbursed to ESMA for assistance provided as foreseen under Article 8a of the proposed amendments to the ESMA Regulation in the MISP or invoiced to the market directly for certain tasks such as MAR supervision), while accounting for ongoing overlaps, coordination requirements and divergences between NCAs in the way supervisory costs are levied. Thorough assessment and substantiation of the future funding related delegated acts and agreements are important, given that these acts will determine key technical elements such as the calculation methodology, fee structures and payment modalities, and fees to be covered by reimbursement of costs borne by NCAs. These aspects will in turn influence the (perceived) cost proportionality.

Clear safeguards against uncontrolled future cost growth should be embedded in the framework. The following could be considered: (i) the integrated periodic independent third party review set out under Enabler 3, covering resourcing and cost development against supervisory impact delivered; (ii) binding rules on full and timely reimbursement of NCAs for tasks which still need to be performed in a centralised system on behalf of ESMA and tasks that remain at NCA level, to prevent uncompensated capacity demands on national authorities; and (iii) transparency on how ESMA's resourcing decisions affect national supervisory capacity. Together, these mechanisms could provide the predictability and control that Member States and the budgetary authority need, while preserving the resourcing ESMA requires to perform its new tasks effectively.

Enabler 3 – Independent, transparent and accountable governance: institutional design and cooperation that hold in practice

ESMA's independence must be safeguarded not only in formal terms, but also in institutional design. Terms should be sufficiently long to insulate Executive Board members from political cycles, in line with the longer-term horizons applied at comparable supervisory institutions (the ECB applies eight-year non-renewable terms for Executive Board members). Of course, the term length should not preclude Executive Board Members being held accountable for their performance.

Appointments must be strictly merit-based. Selection must take into account broad supervisory and administrative experience, market knowledge and integrity. Any room in the legal texts for making appointments based on national interests, party affiliations or other political considerations should be minimised as much as possible. Moreover, it may be considered to not replace all Executive Board members at the same time. This contributes to a more careful transition of power and helps the retention of knowledge and experience. For instance, this might include different start times or varying term lengths for the first slate of Executive Board members.

Operational cooperation between ESMA and national supervisors should combine entity-level supervision with a broader thematic, market-wide perspective. Effective arrangements require an explicit and unambiguous division of roles and responsibilities across the full supervisory cycle, interoperable data systems, adequate reimbursement standards, and a framework over the transition and steady state phases that allow the scope of centralisation to evolve over time, with a clearly defined timeline and end-state to prevent open-ended transitional arrangements. Explicit coordination mechanisms and a designated lead supervisor are also needed to prevent gaps or duplication in the supervision of multi-licensed entities. Regardless of the operational modalities, ESMA should be the decision-maker.

Accountability requires periodic review. The review should cover the Executive Board's powers, the non-objection procedure, the effectiveness of ESMA-NCA cooperation, and the quality and impact of supervision delivered under the centralised model. It should be carried out at specific intervals (e.g., every five years) by an independent organization, and embedded in the decision model as included in the amended art. 63 and further of the ESMA Regulation. ESMA's independence also requires budgetary autonomy and would benefit from an integrated third-party independent review. Its funding should be shielded from short-term political decision-making, while subject to the cost discipline set out under Enabler 2. This combination - autonomy in day-to-day resourcing, discipline in overall cost development - protects ESMA from both political capture and unchecked expansion.

Enabler 4 – Data centralisation: the backbone of harmonised supervision

Data centralisation, underpinned by thorough cost-benefit analyses, is essential for the effective functioning of the broader MISP. Centralised well-defined supervisory datasets at ESMA should therefore be a priority in the implementation of the MISP, as they will be the backbone of ESMA's new supervisory role and NCAs' national surveillance functions. A centralised data architecture will significantly improve efficiency, data quality and cross-border cooperation. Supported by sovereign modern analytical tools, it enables more consistent, risk-based and scalable supervision across the EU, and facilitates timely and effective data sharing. This, in turn, is essential for other elements of the MISP to operate as intended, particularly those involving the centralisation of supervisory processes at ESMA. Over time, once the new infrastructure is fully operational, data centralisation will also reduce administrative burdens for market participants by streamlining reporting and eliminating duplicative national requirements.

Continuous and guaranteed NCA access (real time) to ESMA's central databases is essential to safeguard effective national supervision. As ESMA becomes the primary data holder across multiple regimes, NCAs must have uninterrupted access to supervisory-critical information (24/7, real time). This could be clarified further in the legislative text, to ensure the access to supervisory data is not dependent on ESMA's internal prioritization. This is fundamental to maintaining national responsibilities for market-abuse monitoring and more generally to conduct effective supervision, risk detection and to avoid duplication of supervisory surveys and data requests.

Harmonised data formats and EU-level templates will reduce fragmentation and improve supervisory outcomes. By giving ESMA the mandate to define formats, data quality rules and interoperability requirements across major regulations, the MISP ensures consistency and quality of EU supervisory datasets. Basic validation and quality checks on supervisory data should be performed on a central datahub, therefore reducing the burden for NCAs and improving the usability of the data for NCAs. Furthermore, the need for a common data dictionary will increase as NCAs will all use the data gathered centrally, and common understanding becomes increasingly important. Where possible, harmonisation of data formats and dictionaries should extend to the frameworks used by the other European Supervisory Authorities and the Single Supervisory Mechanism, to support the supervision of multi-licensed entities and cross-sectoral risk detection.

Enabler 5 – Effective enforcement: a precondition for credible central supervision

Robust enforcement is essential for effective central supervision. To ensure that centralised supervision is credibly enforceable, the AFM and the AMF propose that the Council and European Parliament include more explicit legal foundations and frameworks for enforcement in the Level 1 text of the MISP, which can be further elaborated in Level 2. These frameworks and foundations should include: (i) a Level 1 framework containing a clear allocation of enforcement roles and responsibilities and a robust framework for cooperation and coordination with NCAs and other relevant national authorities; (ii) a mandate for Level 2 measures providing operational detail for consistent cross-border outcomes; (iii) cooperation arrangements that embed national legal expertise in ESMA's procedures; and (iv) a transitional clause ensuring enforcement continuity during the phased transfer of supervisory responsibilities to ESMA. The text of the current proposal does not address these topics with sufficient detail. While these topics may appear operational, they require a political choice about fundamental design questions regarding, among others, the allocation of enforcement responsibilities between ESMA and NCAs, and the role that ESMA and the NCAs have vis-à-vis local law enforcement agencies. These topics should therefore be addressed timely and at the appropriate level.

Effective enforcement is a precondition for credible and robust centralised supervision. ESMA's expanded supervisory mandate under the MISP must be matched by enforcement arrangements that are legally robust, operationally effective and capable of delivering consistent and cost-efficient outcomes across Member States. Enforcement deserves the same attention in MISP negotiations - technical and political - as supervisory powers and governance.

The MISP's introduction of a single horizontal enforcement toolbox, detailed infringement lists and a reformed governance structure through the Executive Board are positive steps. The effectiveness of these enforcement powers however requires not only compatibility of ESMA measures with European law and ECJ jurisprudence, but also compatibility of the execution of these measures (e.g. the collection of fines) with national administrative law and jurisprudence.

Centralised supervision creates an interplay between European and national supervisory responsibilities. A clear allocation of enforcement responsibilities between ESMA and NCAs is vital to prevent supervisory vacuums and duplicate enforcement roles, for example where an entity subject to ESMA supervision is also subject to national market abuse rules, where entities hold multiple licences resulting in parallel ESMA and NCA supervision, or during transitional periods. ESMA and NCAs should coordinate and align supervisory practices, in order to ensure a level playing field between ESMA and NCA supervised entities, and to ensure regulatory convergence for entities subject to parallel ESMA and NCA supervision (e.g. due to dual licences).

The effective combat against illegal and fraudulent or criminal activities requires a clear allocation of responsibilities and effective cooperation and coordination with NCAs and relevant national and European authorities. A clear allocation of responsibilities between ESMA and NCAs is necessary to ensure effective intervention against illegal market operators (i.e. parties operating without a required licence). The potential concurrence of illegal activities on the one hand and fraudulent or criminal activities on the other hand requires close cooperation and coordination between ESMA, NCAs and other relevant authorities such as public prosecutors, tax authorities, Financial Intelligence Units and national surveillance authorities. These cooperation arrangements should contribute to the efficiency of supervisory intervention through information exchange, mutual support and coordination of intervention measures.