

Statement

on the Commission Proposal for the Market Integration Package (MIP)

A. Introduction

The Association of International Banks in Germany e.V. (VIB) welcomes the opportunity to comment on the Market Integration Package (MIP) presented by the European Commission on 4 December 2025.

The MIP forms part of the Savings and Investments Union (SIU), through which the European Commission aims to remove barriers to cross-border capital market activities and further deepen the integration of the Single Market. In this context, amendments to various EU legal acts are envisaged, including the AIFM Directive, the UCITS Directive, and MiCAR.

The approach proposed in the MIP to allow depositary activities to be performed outside the home Member State of a fund (“EU depositary passport”) represents an important component of this initiative.

The VIB stands ready to act as a contact point for the further development of a proposal for the introduction of a depositary passport to strengthen capital market integration. However, achieving this objective requires more than the isolated introduction of a depositary passport; rather, certain legal adjustments are necessary prior to its implementation.

In this context, it should be noted that the depositary is not merely a service provider but a structural protection mechanism for investors. In addition to custody functions, the depositary performs tasks such as asset safekeeping, cash monitoring, oversight functions, and liability and enforcement mechanisms, which are structurally closely linked to national civil, insolvency and custody law frameworks. The depositary passport must therefore be designed in a manner that ensures legal certainty, supervisory coherence and operational resilience.

For a resilient European fund architecture, it is essential that the regulatory framework enables a balanced market structure. Only in this way can the intended benefits be achieved without creating new risks or imbalances.

B. Introduction of an EU Depositary Passport

Suggestion 1:

The depositary passport may provide fund providers with access to a broader range of depositaries.

Reasoning:

The depositary passport may enable fund providers to access a broader spectrum of depositaries. Different specialisations, technical capabilities or market expertise could thus be utilised by a larger number of funds, regardless of the Member State in which they are established. This may allow better-suited services and more efficient structures to develop in certain areas.

Smaller markets that currently have only a limited number of depositaries could benefit, as funds established there would no longer necessarily be required to rely on a domestic depositary. The increased choice may also provide economic advantages for fund providers, as they would be able to compare and select services more strategically.

Suggestion 2:

The directive proposal must clearly regulate the competences of supervisory authorities.

Reasoning:

As a result of the depositary passport, a fund and its depositary may no longer necessarily be located within the same legal and supervisory jurisdiction. The competences of the authorities involved must therefore be clearly and legally defined in order to avoid delays or conflicting interventions.

While the proposal contains mechanisms for coordination between supervisory authorities, it does not describe in detail how these mechanisms would operate in the context of ongoing supervisory practice. A clearer specification would be welcome in order to avoid delays or conflicting interventions.

Suggestion 3:

Cross-border depositaries must be able to comply with local requirements.

Reasoning:

Depositary functions depend on local legal and operational conditions. Different settlement procedures, registry processes and tax requirements shape regional market practices. An EU-wide depositary passport does not eliminate these factual differences.

In order for cross-border depositary models to function reliably, clear responsibilities, transparent processes and structures are required to ensure that country-specific requirements can be complied with consistently.

Suggestion 4:

Clear conflict-of-laws provisions are missing.

Reasoning:

In this context, substantive legal issues play an important role. Transfers of ownership, securities lending or collateral arrangements are governed by different national rules across Europe. Questions arise as to which law applies to a particular transaction if a fund is domiciled in one Member State while the depositary is located in another.

In practice, this may lead to complex constellations in dispute or insolvency scenarios that may be assessed differently in the respective legal systems involved.

In order to ensure the necessary legal certainty, the directive should therefore provide for an explicit conflict-of-laws rule clarifying which national law governs the relevant transactions. This would create the necessary reliability to ensure that the depositary passport can be applied in practice with legal certainty.

Member States have different supervisory cultures and administrative procedures. In a cross-border model, this may lead to varying supervisory requirements. For depositaries and fund providers, this means operating in an environment in which different national supervisory practices coexist. Market participants may therefore increasingly choose locations whose legal or administrative frameworks better suit their business models. This makes close coordination between supervisory authorities and clear rules on competences all the more important.

Finally, the issue of cross-border enforcement becomes more complex when several jurisdictions are involved than in a purely national model. While the liability rules remain unchanged, practical enforcement also depends on jurisdictional rules, national requirements and cooperation between authorities. The proposal itself does not address these aspects in detail.

In order to avoid legal uncertainty, it would therefore be helpful if the directive at least provided a clear connecting factor or guiding principle for determining the competent jurisdictions and for cooperation between authorities. Such guidance would not need to regulate all details but would provide orientation and establish a framework ensuring that cross-border liability and enforcement issues can be resolved consistently.

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The transfer of responsibilities addressed within the framework of Regulation (EU) 2023/1114 (MiCAR) to the European Securities and Markets Authority (ESMA) also represents a key component in the further development of an integrated European supervisory framework for Crypto-Asset Service Providers (CASPs). The objective is to promote a consistent application of regulatory requirements and to ensure a level playing field within the Single Market.

The VIB generally supports measures that contribute to harmonising authorisation requirements and strengthening legal clarity. At the same time, it must be ensured that existing, effectively functioning national supervisory structures are preserved and that operational supervision can continue to be carried out efficiently and close to the market.

Against this background, a differentiated allocation of competences appears necessary. While centralised application procedures and authorisation decisions may contribute to the harmonisation of licensing procedures, ongoing supervision should remain with the competent national authorities in order to preserve existing market knowledge, established communication structures and effective supervisory mechanisms.

B. Transfer of Supervisory Powers under MiCAR to ESMA

Suggestion 1:

The creation of a uniform application procedure for authorisation at ESMA is desirable. However, acquired rights should be safeguarded. For authorisation extensions by already operating credit institutions and investment firms that intend to provide CASP services, national authorities should remain competent.

Reasoning:

A single point of entry for applications ensures harmonised authorisation criteria and a consistent assessment process across all Member States. Divergent interpretations of substantive requirements as well as differences in the depth of assessment and procedural practices at national level would be reduced. This would create equal competitive conditions for market entry, particularly for new market participants that currently face heterogeneous national requirements.

A uniform EU-wide assessment standard strengthens legal clarity and the predictability of authorisation decisions. At the same time, regulatory arbitrage – the deliberate choice of a Member State based on supposedly more favourable licensing conditions – would be effectively limited. In a technologically driven market segment that frequently operates across borders, a consistent application of authorisation requirements is of particular importance for the integrity of the Single Market.

For CASPs that have already been authorised, a clearly structured transition mechanism must be provided. Existing authorisations must neither be effectively devalued by the system change nor burdened with disproportionate administrative requirements. An explicit grandfathering provision is necessary to ensure the continued validity of existing authorisations.

Where adjustments to a uniform EU-wide authorisation regime are required, these should take the form of clearly defined and proportionate notification or documentation obligations towards ESMA. The objective must be to establish a uniform information basis without unnecessarily destabilising existing business models or established supervisory relationships. Legal certainty, continuity and planning certainty for the affected institutions must be ensured.

Transferring competence to ESMA with regard to already existing credit institutions and investment firms that apply for authorisation extensions does not appear advisable. The national authorities and the European Central Bank (ECB), which have already granted the existing authorisations to such institutions and conduct their ongoing supervision, are significantly closer to the relevant facts and can therefore handle such authorisation extensions more efficiently.

Suggestion 2:

Centralising ongoing supervision at ESMA does not appear advisable.

Reasoning:

Operational supervision of CASPs depends to a significant extent on knowledge of the respective market structures, business models and market practices. National supervisory authorities possess established expertise regarding local market conditions, civil and supervisory law frameworks, tax environments and the practical design of distribution and business models. This contextual market knowledge is essential for risk-oriented assessments of business activities and for the evaluation of new developments.

In addition, national authorities typically maintain close and continuous dialogue with supervised institutions. This interaction enables early identification of risks, pragmatic clarification of operational questions and efficient enforcement of supervisory requirements. Integration into existing national supervisory and enforcement structures, including cooperation with other authorities and law enforcement bodies, contributes significantly to the effectiveness of ongoing supervision.

A full centralisation of ongoing supervision at the European level would not be able to reflect these established structures, communication channels and market knowledge to the same extent. It also carries the risk of longer decision-making processes and a greater distance from operational market realities.

Against this background, a functional division of responsibilities appears appropriate: centralised, EU-wide authorisation by ESMA combined with ongoing, market-oriented supervision by the competent national authorities. This model combines harmonisation of market access with efficiency and practical proximity in ongoing supervision.
