

BSP's Feedback

Savings & Investments Union - EU rules to foster market integration and efficient supervision (Proposal for a Directive)

March 16th 2026

1. Introduction

Business & Science Poland (BSP) and its sectoral members welcome the possibility to opine on the constituent elements of the Market Integration Package and other aspects of the Savings and Investment Union agenda as part of the Commission adoption consultation process. We are grateful that the Commission wishes to build on input from capital market operators and participants.

First, it needs to be stressed that BSP supports **the objective of improving the functioning of European capital markets and reducing unnecessary fragmentation across Member States**. At the same time, the process of market integration should remain proportionate, operationally coherent and attentive to the specificities of smaller and medium-sized national markets. It is imperative to highlight that specific characteristics of local markets across the Member States often make it easier to address the financing needs for local SMEs. The sheer fact of the existence of smaller, local capital markets – a certain level of fragmentation – is therefore a positive inherent feature of the European Union. Conversely, the consolidation or convergence of the smaller markets into a pool centered around larger operators may paradoxically make it more challenging for SMEs to access liquidity from the public market, given the greater multiplicity of competing entities.

This piece of feedback provided by BSP is the first of two parts and relates to the provisions in the proposal for the *Directive amending Directives 2009/65/EC, 2011/61/EU and 2014/65/EU as regards the further development of capital market integration and supervision within the Union*, henceforth referred to as “(Master) Directive”. Given the nature of the directive, in this part of our feedback we refer to the level of coherence, clarity and intelligibility of changes introduced by the directive to the legislative architecture borne out of MIFID II and UCITS, among others, and their overall utility at a systemic level. The second part – the feedback that will be provided in the Master Regulation consultation – will concern the market-specific mechanics proposed, comprising the CTP, trading and post-trading elements, as well as other market infrastructure consolidation proposals.

On the basis of our members' expertise, which is echoed by the input shared by other Central European stakeholders, we posit that the current approach as dictated within the Directive appears to have been designed primarily with larger European operators in mind. It does not sufficiently reflect the realities of smaller and medium-sized markets, such as

Poland, in turn risking a systemic marginalization of the latter. Some of the proposed mechanisms which we describe below may result in the relocation of key infrastructure functions outside Poland, weakening the domestic capital market and its ability to finance Polish enterprises.¹

Although the crux of our feedback focuses primarily on the MiFIR dimension of the package, it also contains an important consequence for the Directive. In particular, we state that the legislative technique used by the Commission, namely the transfer of provisions on the functioning of trading venues from MiFID II to MiFIR, has led to the omission of several important issues at MiFIR level and will require further clarification in order to avoid legal gaps and ensure regulatory consistency. From the perspective of BSP and its sectoral members, this observation is central to the Directive-level debate. The Directive should therefore be assessed not only in terms of what it retains, but also in terms of whether it adequately manages the legal and operational consequences of what is being removed from MiFID II.

2. Consequences of the MiFID II to MiFIR market operator provisions' transfer

We posit that the transfer of trading venue provisions out of MiFID II cannot remain merely formal. The shift of rules governing trading venues from MiFID II to MiFIR has already created the risk that important elements of the framework will no longer be properly addressed unless they are expressly clarified during the legislative process. This means that the Directive cannot be treated as a purely technical clean-up exercise. Rather, it must ensure that the legal transition from the MiFID II-based framework to the MiFIR-based framework is complete, coherent and operationally sound.

From the perspective of BSP and its sectoral members, this is a matter of legal certainty as much as of market design. If the Directive removes a significant part of the existing MiFID II architecture without ensuring that all necessary concepts, safeguards and practical procedures are preserved or properly re-articulated elsewhere, the package may end up generating uncertainty precisely in those areas where the Commission seeks to deliver simplification. A legislative transfer of this kind must not create ambiguity as to which rules continue to apply, which powers remain available to market operators and supervisors, and which matters still allow for necessary procedural organisation at national level. The latter part is especially important in the face of the removal of national discretions from UCITS, as per the proposals of the Directive.²

¹ The specifics relating to the problem of consolidating CSDs or CCPs infrastructure will be covered in the second part of our feedback.

² Recital 6, Proposal for a Directive of the European Parliament and of the Council amending Directives 2009/65/EC, 2011/61/EU and 2014/65/EU as regards the further development of capital market integration and supervision within the Union, COM(2025) 942 final, 4 December 2025

3. Avoiding Legal Gaps

Our central concern pertains to risk of legal gaps arising in the above-described situation. On the basis of our members' expertise we can confidently say that the transfer of provisions concerning the functioning of trading venues has omitted several important issues and that these matters will need to be clarified in order to preserve regulatory consistency. As far as BSP is concerned, this should be understood as a direct signal that the Directive must be revised with particular care wherever it repeals or relocates provisions that currently serve as the legal basis for the organisation and operation of regulated markets.

This concern is reinforced by the examples identified by our members in relation to rules that currently stem from MiFID II but, once moved into MiFIR, may lose their clarity or completeness unless explicitly restated. Among those examples is the one as follows:

- according to the interpretation of our sectoral member, a regulated market should continue to be able to impose stricter admission requirements on issuers than those laid down in Union law, as this principle currently follows from **recital 122 of MiFID II³ and is reflected in Polish law⁴**.

This, however, may become uncertain once all provisions relating to the operator of a regulated market and the operation of that market are transferred into MiFIR. This is precisely the type of issue that the Directive should not leave unresolved. If a principle that is functionally important to market quality and investor confidence disappears from the operative framework as a by-product of legislative restructuring, this will erode the existing framework and not serve as a simplification of rules.

The same logic applies to definitional clarity: we call for the concept of "*held by the public*" (Article 2j of MiFIR)⁵ to be clarified at Union level because, once the relevant regime is moved out of MiFID II, that notion will directly determine the free-float requirement for admission to trading and should therefore be understood uniformly throughout the Union.

We posit that if the Directive facilitates the transfer of core admission-to-trading rules to a directly applicable regulations, it must safeguard the consistency and uniformity of the concepts that are the basis of those rules, otherwise we risk running into interpretive chaos and lack of clarity for market participants.

³ Recital 122 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), OJ L 173, 12.6.2014.

⁴ Article 16(2) of the Act of 29 July 2005 on Trading in Financial Instruments, Journal of Laws 2024, item 722 (consolidated text).

⁵ Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 as regards the further development of capital market integration and supervision within the Union, COM(2025) 943 final, Article 2(j).

4. The need to safeguard national procedural autonomy

We also note a particular relevance for the Directive: whether the new framework leaves any workable room for basic national procedural organisation once the relevant substance is moved into MiFIR and Member States are barred from imposing additional requirements.

We fundamentally question how procedures such as the approval of changes in the management body of a market operator or the approval of amendments to the rulebook of a regulated market are expected to function if the future legal regime is both highly general and accompanied by an explicit prohibition on additional national requirements. By way of example, MiFID II defines the management body in functional, governance-neutral terms and does not harmonise company law, thereby relying on national procedures for appointments and removals.

Based on our interpretation, one cannot be certain as to whether any minimum national organisational rules will still be possible, for example regarding the mode of communication with the authority, and if they are not, then those areas should be specified at Union level instead.

For BSP and its sectoral members, this concern should be taken seriously in the context of the proposed Directive. The issue is whether the Directive, by enabling a major transfer of regulatory substance out of MiFID II, leaves behind a framework that is sufficiently complete to be administered in practice. There is a clear difference between preventing gold-plating and creating a procedural vacuum. If the new system is to function effectively, the legislative package must preserve space for essential national procedural arrangements and not just eliminate the possibility for them with a blanket clause.

5. The question of open access and preservation of the roles of National Competent Authorities

BSP's sectoral members highlight also the strengthening of ESMA's direct powers in matters affecting access to market infrastructure and states that decisions on whether CCPs should be granted access to domestic cash markets should remain with the relevant national authorities, taking into account the impact on the stability of the domestic CCP, the liquidity structure of the market and the strategic autonomy of the capital market of the Member State concerned.

The centralisation of these decisions would materially reduce the role of national supervisors and the flexibility of local markets in managing systemic risk and protecting the integrity of local post-trade infrastructure.

Though the Directive aims to centralize the supervisory framework, it should still preserve a clear and meaningful role for national authorities in areas where market structure, liquidity concentration and infrastructure resilience remain deeply market-specific. All problems associated with trading venue governance and market integrity **cannot simply be resolved**

by an entity that is distant from the market concerned, and therefore a proportionate model of integration, one which still retains systemic relevance and possibility of meaningful action from the local national authority, needs to be implemented.

We also wish to underline that the proposed amendments affecting post-trade infrastructure include the migration of Article 37(2) MiFID II into Article 34 MiFIR, but in a significantly altered and **high-risk** form. The revised approach departs from the previous, more balanced framework and introduces obligations that could materially affect the stability and operational coherence of national post-trade systems. We have serious reservations regarding the unconditional right to designate any CSD established in the Union, as currently provided in Article 34c MiFIR. Imposing an obligation on trading venues to accept the designation of any Union CSD — irrespective of existing connectivity or operational arrangements — would create substantial operational complexity. It is important to recall that the former Article 37(2) MiFID allowed the choice of settlement location only under clear conditions, including the existence of functioning links and supervisory approval to ensure orderly market functioning. The current draft of Article 34c MiFIR no longer reflects these safeguards.

BSP will provide more on the specifics of access to market infrastructure and the supervisory framework in the second part of its feedback (concerning the Master Regulation).

6. Directive's potential for undermining conditions for smaller markets

We advise the European Commission to consider whether it is not possible that the proposed package **may have effects that go beyond technical harmonisation** and may in practice **weaken the viability of smaller national markets**.

The package appears insufficiently sensitive to local conditions and could lead, in the longer run, to a transfer of key market infrastructure functions outside Poland, which would in turn **go against the declared aim of the SIU and MIP initiatives** of fostering clarity and performance of the EU capital markets. BSP and its sectoral members consider that this concern is relevant not only for the Regulation, but also for the Directive insofar as the Directive participates in the same structural redesign. Even where the immediate legal provisions are found mainly in MiFIR, the Directive helps shape the institutional consequences of that shift by removing the existing MiFID II-based legal architecture.

The Directive **should therefore be tested against a simple standard**: whether it contributes to a more integrated market without indirectly stripping smaller domestic markets of the regulatory tools, supervisory clarity and organisational capacity necessary for them to continue functioning as meaningful parts of the Union's financial ecosystem. It needs to be ensured that in fact, relevant regional characteristics are upkept in the aspects where they are beneficial to local market participants.

7. Conclusion

Ultimately, Business & Science Poland and its sectoral members consider that the proposed Directive requires **further refinement before it can be regarded as a sound and proportionate complement to the broader Market Integration Package**. The key issue is not opposition to integration as such, but whether the Directive properly manages the **consequences of transferring the legal regime for regulated markets and trading venues from MiFID II into MiFIR**. Our members' analysis indicates that, in its current form, this legislative technique risks leaving important matters insufficiently addressed, thereby creating legal gaps, weakening regulatory consistency and generating uncertainty for market operators and supervisors.

In our view, the Directive should therefore be improved to address the above. As it currently stands, the proposed transfer of provisions out of MiFID II results in:

- the loss of important regulatory principles,
- unclear legal definitions,
- insufficiently specified procedures,
- and an unbalanced weakening of the role of national authorities in matters of domestic market integrity.

The example provided - including the need to preserve the possibility for regulated markets to apply stricter admission requirements, to clarify key concepts such as "*held by the public*", and to address how core approval procedures are to function under the new framework — show that these are concrete and practical concerns.

A well-designed Directive should complete the transition to the new framework without creating interpretative ambiguity. We believe our testimony sufficiently demonstrates that this quality threshold has not been met. We are nonetheless grateful and willing to present the consequences of the changes brought about by the package in the second part of our feedback — one which we will submit in the Master Regulation consultation process, the due date of which is 20th March.