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One market, many rules: The 28th regime's challenge in unifying Europe

Apostolos Thomadakis *

The 28th regime could see a potential overhaul of Europe's capital markets that would address key challenges such as financing the green and digital transitions and unlocking private capital. By establishing a streamlined supervisory framework under ESMA, the regime could enhance market integration, reduce fragmentation and foster cross-border investment.

However, it also poses risks, including the possible deepening of market disparities and hindering the broader goals of the Capital Markets Union. For the regime to succeed, it must balance national interests with the need for a cohesive and competitive European financial market that would truly position Europe as a global leader in sustainable finance.

Europe's capital markets: Constrained by fragmentation and regulation

Europe's capital markets are at a critical juncture. The twin challenges of financing the green and digital transitions – requiring an estimated EUR 700–800 billion annually over the next decade – are far beyond the capacity of public budgets and traditional bank lending. Unlocking private capital is no longer optional – it is imperative. However, Europe's financial landscape remains constrained by structural and regulatory inefficiencies that hinder the development of deep, integrated and efficient capital markets capable of addressing these challenges.

One of the key issues is retail investors' limited scope to participate in capital markets. European savers are often confined to low-yield financial products due to consumer protection rules that, while well-intentioned, restrict their access to higher-return investment

* *Apostolos Thomadakis is Head of Research at ECMI and Research Fellow at CEPS.*

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European Capital Markets Institute, Place du Congrès 1, 1000 Brussels, Belgium
www.ecmi.eu, ecmi@ceps.eu
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opportunities. This discourages capital flows into innovative and growth-oriented sectors, stifling the potential for wealth creation and broader economic growth. Revamping savings products and enabling more direct engagement with capital markets could be transformational in mobilising private investment.

The near-elimination of the securitisation market is another glaring bottleneck. In contrast to countries like the US, Canada and Australia, Europe has yet to harness the full potential of securitisation as a tool to recycle capital and fund businesses. Reviving this market could unlock EUR 300–400 billion annually but doing so requires a coordinated effort to ensure that securitisation products are both attractive to investors and aligned with robust regulatory standards.

The fragmentation of Europe's capital markets further exacerbates these issues. National supervisory frameworks create inefficiencies, as firms operating across borders must navigate a patchwork of regulations, duplicating efforts and increasing costs. This lack of harmonisation stymies the development of pan-European financial products, which are essential for creating a truly integrated capital market. The current structure inhibits the free flow of capital and restricts market participants from reaping the benefits of scale and competition.

What the EU needs: A systematic approach to market integration

To address these challenges, the EU needs a more systematic approach to determine the most efficient supervisory structure. For instance, a 'supervisory efficiency test' could be undertaken when reviewing legislation such as the Markets in Financial Instruments Directive (MiFID) or the Undertakings for the Collective Investment in Transferable Securities (UCITS), evaluating whether supervision should remain national, adopt mutual recognition or shift to a supranational level based on the market's complexity and integration. Balancing the 'right to move' with the 'right to stay' could also help preserve market presence and influence for smaller or less-integrated regions.

Taxation, governance and shareholder rights present additional complexities. These areas are deeply embedded in national legal frameworks and any harmonisation attempt must tread carefully to avoid disrupting established practices. A gradual approach to transferring responsibilities, informed by the experiences of the banking union, could help mitigate resistance and build trust among stakeholders.

Beyond structural reform, there is a need for a cultural shift in how Europe approaches capital markets. Policymakers must balance the drive for harmonisation with the need to foster innovation and growth. This includes rethinking the role of regulation to ensure it supports, rather than stifles, market development. For example, simplifying the processes for asset managers to operate across borders and aligning rules to reduce compliance costs could enhance competitiveness without compromising investor protection.

Harmonisation efforts should focus on eliminating unnecessary national variations, particularly in areas like prospectus standards, to reduce duplication and complexity. Using KPIs to track

market integration, leveraging AI and digital tools to overcome language barriers and enhancing trust among retail investors are practical steps that can be taken to increase efficiency. Mechanisms such as EU-wide arbitration for dispute resolution could simplify redress for retail investors, thus building confidence in cross-border products.

Towards a 28th regime: A new framework for capital markets integration

On 29 January 2025, European Commission President Ursula von der Leyen unveiled the Competitive Compass, a strategic roadmap designed to steer the EU's economic trajectory and drive growth over the next five years. One of its key proposals is to create a 28th legal regime, an optional EU-wide framework aiming to simplify applicable rules and reduce the cost of failure. It would cover key areas such as corporate law, insolvency, labour law and tax law.

Although specific details are still lacking (a proposal is expected at the end of 2025/beginning of 2026), the 28th regime is envisioned as an optional framework under the ESMA. It would allow firms to opt into centralised supervision while maintaining collaboration with national authorities, thereby streamlining the oversight of cross-border activities, reducing administrative burdens and facilitating the creation of pan-European financial products. By offering a single set of rules and a unified supervisory structure, the regime could significantly enhance market efficiency and boost Europe's attractiveness as a global investment hub.

The 28th regime could be transformative in its potential to offer a more integrated approach to capital markets by enabling greater flexibility for countries with different regulatory environments. Several regulatory types demonstrate how legal structures can work across borders to promote integration but also highlight the limitations of purely national or single-regulatory approaches. UCITS, for example, provides a common framework for investment funds, but its reliance on national regulatory agencies creates inefficiencies and complexity. Similarly, the company statute regime offers a way for businesses to operate in multiple jurisdictions, yet often faces application challenges due to differences in national legal traditions.

Rather than offering a strict, one-size-fits-all solution, the 28th regime could function as a coalition of willing Member States, where countries that are ready to move forward with integration could align their policies under a common regulatory framework. This approach would allow for flexibility, accommodating different national approaches, while still advancing the broader integration goals of the Capital Markets Union (CMU).

As has been observed in areas such as banking union, a gradual and strategic approach can allow for adaptation without overwhelming national sovereignty concerns. By focusing on areas where there is already significant alignment – such as the green and digital transitions – this model could facilitate faster integration in specific sectors.

Potential risks and challenges of the 28th regime

The 28th regime, while offering the potential to streamline Europe's capital markets, poses several risks that could undermine its intended benefits. One of the main concerns is the possibility of increasing fragmentation within Europe's financial markets. If some countries opt into the regime while others remain outside, it could create two-speed markets, with the more developed markets benefiting from integration while smaller, less-developed regions fall further behind. This division could worsen existing disparities, making it harder to achieve a truly unified capital market.

Another challenge is the potential for divergent speeds in market development. Countries with more advanced financial markets might implement the regime quickly, while those with less sophisticated markets could struggle, leading to uneven progress across the EU. This imbalance could discourage investment in slower-moving markets and delay the creation of a fully integrated European capital market.

The 28th regime also risks complicating the broader goal of CMU. Instead of fostering a single, seamless financial market, it could result in the emergence of smaller, regional unions with differing regulatory frameworks. This could hinder the free flow of capital across the EU, making it difficult for Europe to compete globally as a unified economic entity. National authorities might also resist the shift towards centralised supervision, fearing a loss of sovereignty and control over domestic markets.

Finally, the 28th regime must strike a delicate balance between national diversity and integration. Europe's financial markets are deeply rooted in national traditions, and any attempt to harmonise regulations too aggressively could generate significant political resistance.

Success will depend on the regime's ability to incorporate national perspectives while still promoting a cohesive and integrated capital market that can compete on the global stage.

Conclusion: Striking the right balance

A well-designed 28th regime could be a game-changer for Europe's capital markets, promoting deeper integration, attracting private capital for the green and digital transitions, and enhancing Europe's global competitiveness.

However, despite its benefits, the regime could also pose risks that must be carefully managed. Uneven participation could create a two-tiered market, exacerbating disparities between more and less developed financial sectors and disrupting capital flows.

To succeed, the EU must adopt a balanced and collaborative approach that aligns ambition with pragmatism. Effective implementation will require regulatory coordination, stakeholder buy-in and mechanisms to prevent market fragmentation. Only through a cohesive, pan-European framework can Europe fully realise its financial and sustainability objectives.

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