Reshaping the governance of Europe's capital markets:
Is enforcement the weakest link?

Comments by

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Financial regulation/supervision around the world

Country	Banking	Securities	Insurance/Pension fund
Austria	FSA	FSA	FSA
Belgium	CB/FSA	FSA/CB	CB/FSA
Denmark	FSA	FSA	FSA
Finland	FSA	FSA	FSA
France	PA/IP	PA/IP	PA/IP
Germany	FSA	FSA	FSA
Greece	CB	S	CB/G
Ireland	CB	CB	CB/PF
Italy	CB/S	S/CB	I(CB)/PF
Luxembourg	FSA	FSA	I/FSA
Netherlands	CB/S	CB/S	CB/S
Portugal	CB/S	S/CB	I
Spain	CB/S	S/CB	G
Sweden	FSA	FSA	FSA
UK (macro FPC)	P(CB)/IP	P(CB)/IP	P(CB)/PF
EU (macro ESRB)	SSM/EBA/CA	ESMA/CA	EIOPA/CA
United States	B/CB	B/CB/S/S	Is/CB
Japan	FSA	FSA	FSA

CB (Central bank), PA (Prudential Authority on banks, securities and insurance, different from CB), B (Prudential Agency for banks), IP (Investor protection Authority for banks, securities and insurance), S (Securities Authority), I (Insurance Authority), PF (Pension Fund Authority), IPF (Insurance and Pension Fund Authority), FSA (Single prudential and investor protection regulator), G (Government department), CA (National Competent Authorities)

Evolution of European Financial Market Regulation

- 3 (cities?) micro-prudential (?) supervisory (?) authorities (?) (EBA, ESMA, EIOPA) and ESRB (macro-prudential).
- Banking Union: ok, more or less…

New ESAs Review? CMU White Paper?

- New review of ESAs by January 2nd 2017 (2014+3?) (art. 81.2 ESAs Regulations). Appropriateness of separation of banking, insurance, securities and financial markets and separation of prudential supervision and business conduct; coherence in ESFS of macro and micro levels and between the ESAs; move ESAs to a single seat
- The EU Commission **ESAs report** identifies several areas for improvement: ESAs should give a higher profile to issues related to consumer/investor protection, and strengthen the focus on supervisory convergence, with better use of peer reviews. Long term: governance of the ESAs, in particular to further improve the capacity of the Board of Supervisors to take decisions in the interest of the EU as a whole.
- ESMA SMSG **Contribution** on ESAs Review: Short and Long term proposals. Enlarging powers to areas of 1(3); new CG of ESAs; direct supervisory powers on all entities with EU-wide reach; ESAs in the treaty; twin peaks with microprudential outside (E)CB and Investor Protection
- EU Parliament **Resolution**. Governance: transforming the Management Boards of the three ESAs into independent bodies, staffed by three professionals with a European mandate, appointed by Parliament, the chairperson of the ESAs and the executive directors. Enhancing investigatory powers of ESAs and introducing direct supervision of highly integrated pan European entities or activities. Is current model of three separate supervisory authorities the best solution for coherent supervision?
- EU Commission CMU White paper on governance and financing of the ESAs

What’s next

- Increasing number of ESAs Joint Committee documents
- 78 Financial Conglomerates (last ESAs list): nearly half involve insurance. Limits of 127(6) TFUE (to grant SSM prudential supervisory tasks on insurance)
- 114 TFUE good legal basis for ESAs (including supervisory tasks) after ECJ Short selling decision
- (German) (old) Debate on the Separation Monetary policy/banking supervision
- New EU Regulations (less Directives) in financial market regulation
- CMU objective: Establish a genuine single capital market in the EU where investors are able to invest their funds without hindrance across borders and businesses can raise the required funds from a diverse range of sources, irrespective of their location
- Brexit? OtherExit? Increasing coincidence of EU/Euro?

De Laroisere Report (p. 58)

216) There may be merit, over time, in evolving towards a system which would rely on only two Authorities: The first would be responsible for banking and insurance issues, as well as any other issue which is relevant for financial stability (e.g. systemically important hedge funds, systemically important financial infrastructures). The second Authority would be responsible for conduct of business and market issues, across the three main financial sectors. Combining banking and insurance supervisory issues in the same Authority could result in more effective supervision of financial conglomerates and contribute to a simplification of the current extremely complex institutional landscape.

Too late for:

- **having (regulation and) supervision ONLY at national level; too early to have supervision ONLY at the central/EU(ro) level**
- **having different (regulation and) supervision for different legal entities performing the same economic activities.**

<u>Macro-stability, Micro-stability, Investor Protection (and Competition)</u>

An (old) proposal: Euro(pean) Financial Union

SHORT RUN

- New governance of ESAs in general and ESMA in particular as a prerequisite to give more supervisory powers at least on SICMI (systemically important Capital market institutions)
- IFF (If and only if) Governance of central agencies similar to ECB: Management Board by 6 full time independent professionals appointed by EU Commission, Parliament and Council

LONG RUN

- Financial Union for EU countries (or opt-out for no-euro countries)
- Federal model: central regulation; central supervision for systemically important institutions. National supervision for other entities.
- Stronger legal basis (114 or 352?) to SSM extended to insurance firms; merger of Single Supervisory Board of the SSM with EBA and EIOPA
- … 4-peaks (separating macro and micro stability, investor protection and competition) irrespective of the nature of intermediaries; cancel one ESA
- National coordination committees at national and central level with policy makers (and EU Commission)

4-Peaks model for Euro(pean) Financial Union