

MAKE A SHIFT TOWARDS EUROPEAN SUPERVISION TO ACHIEVE A TRUE SAVINGS AND INVESTMENTS UNION

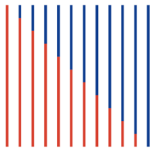
As a supervisor, AMF has a strong experience of supervising European financial market participants, including entities that provide services at a pan-European level. AMF is also a member of the Board of Supervisors of ESMA and participates in several supervisory colleges. Based on this experience, AMF believes that moving towards a more unified European supervisory architecture should become a key priority, not only to develop EU financial markets but to improve financial supervision and financial stability, as well as investor protection, all of which are highly challenged by the current setting. Moreover, it is a pre-condition to achieve simplification of the regulatory framework. In this paper, AMF would like to clarify the way forward it would recommend, with a view to providing material for the Commission to consider, in the context of its upcoming proposal to achieve a more unified supervision of European capital markets.

Time to act

Supervision in the field of financial markets remains highly fragmented within the European Union. That fragmentation of supervision has severe detrimental impacts on the EU's financial sector and Internal Market :

- **It creates deep level playing field and enforcement issues.** Supervisory convergence is still limited in spite of the tools and efforts of ESMA and NCAs. Conflict resolution mechanisms are slow and costly, as well as coordination efforts e.g. through supervisory colleges.
- It raises major issues in terms of **risks, proper supervision of financial entities, and financial stability**. In particular, for large cross-border entities and market infrastructures, the dilution of supervisory responsibilities amongst several domestic supervisors without leadership or responsibility, nor consolidated supervision, is an impediment both to assess and manage risks.
- Divergences in rules' enforcement also create **significant risks for investor protection**. Notably, a number of shortcomings have been observed in recent years by ESMA and NCAs in the cross-border provision of financial services to retail customers, undermining confidence.
- Furthermore, the current architecture of supervision is an obstacle to the development of a single European market for financial services, hence is a drag on the **EU financial sector competitiveness**. In particular, fragmented implementation and enforcement of EU rules is an important source of operational complexities and costs for EU financial firms, can generate conflicting requirements and creates barriers to cross-border business. Changes to the governance of ESMA should take into account the need to better address supervisory challenges, but also ensure the competitiveness of European markets.

Finally, the EU will not achieve the **simplification** of the European rulebook identified as a priority for the new European term, without tangible progress on EU-level supervision. In the current situation,



highly detailed and prescriptive rules, including at level 1, are the only solution to try and address the problems identified above. Competition between EU countries and the lack of convergence in supervisory practices lead to regulatory arbitrages. To address the impact of differences in rules' implementation on level playing field across the EU, or poor investor protection, national authorities tend to push for very detailed and precise rules, which results in texts cluttered up with too detailed provisions (including at level 1). This is a massive impediment to simplifying the European regulatory framework and delivering '*better regulation*'.

How to do it?

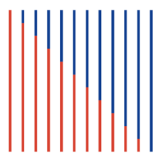
In this context, empowering the **European level of supervision is necessary and urgent**. This principle should be implemented differently on financial **entities** and financial **products**.

Regarding **financial entities**, the model followed on banking supervision should inspire markets' supervision : direct supervision for large cross-border entities and delegated supervision of smaller or national entities. Should a sequenced approach be retained, direct supervisory powers should be granted to ESMA over global **cross-border crypto-assets services providers** (CASPs) as a matter of priority. In this newly regulated area, it makes sense to centralize expertise, while the risk of regulatory arbitrage is already materializing, and risks for investors are high. It would be much more effective and cost-efficient to grant ESMA direct licensing and supervisory powers over these global cross-border platforms. Besides, it is obviously suboptimal for each NCA to develop new competences and dedicate resources to cross-border platforms, involving high coordination costs.

Direct supervision by ESMA should also include **large pan-European market infrastructures**, as well as **large asset management groups**, whose specificities as groups should be acknowledged in EU law, with a consolidated supervisory approach. In its paper of May 2024 ("*Building more effective and attractive capital markets in the EU*", ESMA71-545613100-2487, 22.05.24), ESMA mapped out possible criteria that EU lawmakers could use objectively to identify entities eligible to direct supervision (namely: entities with a pan-European and cross-border business, a degree of systemicity, the existence of a clear gain in efficiency should supervisory expertise be concentrated within a single authority, and a risk of regulatory arbitrage if it is not).

For reasons of cost-efficiency, proportionality/subsidiarity and NCAs' proximity with local markets, the supervision of smaller and purely national entities should be delegated to national supervisors. In order to ensure convergence of supervisory practices and a level playing field, ESMA would delegate their supervision to NCAs, according to the "indirect supervision" model which currently applies to EU small and medium-sized banks ("*less significant institutions*") under the Single Supervisory Mechanism.

Product supervision at EU level is a much more complicated subject, that would require a closer scrutiny and a careful assessment, and should therefore not be prioritized at this stage. It could obviously be relevant for some topics (e.g. through combining the European unified regime for prospectus with European supervisory responsibility). In general, however, this topic would need further examination as product regulation is heterogeneous and depends on national competences and specificities. In particular, in the retail space, legitimate investor protection concerns and the existence of purely local financial firms as well as tax incentives, make the rationale for moving to the European level debatable.



Which governance for ESMA ?

This highly bold move towards a real European supervision of infrastructures and asset managers implies a strong evolution of ESMA's culture and governance.

Going forward, we should reflect on changes to be made to ESMA's governance, keeping in mind the role of NCAs and the importance of having an innovative approach to make sure that expertise, European approach and competitiveness are taken on board.

The current governance of ESMA, exclusively composed of national authorities (except for EU CCPs), is not conducive to fast and efficient decision-making and could come short to ensuring a truly European approach. At the same time, it is important that NCAs retain a strong role in any future architecture. The governance model of ESMA needs to simultaneously achieve the necessary inclusion of all NCAs and the capacity to deliver swift decisions and to embody the European interest genuinely.

For the above reasons, and to accommodate potential concerns from both private and public stakeholders, it would make sense to envisage a **governance set-up** composed of **two main bodies** :

(i) a **Board of Supervisors** including the 27 NCA chairs, that would be competent for all regulatory and policy-related issues; it would have a cross-functional role, with oversight on supervisory and interpretative doctrine on the Rulebook and supervisory convergence;

(ii) an **Executive Committee** made up of a small number of **high-level personalities** appointed on the basis of their experience, skills and knowledge of the functioning and regulation of financial markets, and their complementary experiences in the public and private sector. Such external "experts" would be **appointed** by the Council based on a proposal from the Commission, or **designated** by key EU institutional bodies (including Council, EP, Commission, EESC). They would **not necessarily be permanently employed** but could sit on a regular basis, as is the case in many NCA Boards. Strict integrity rules would of course apply (e.g. withdrawal from decisions in case of conflict of interests). This hybrid collegial executive body would be in charge of individual decisions belonging to ESMA's direct supervisory remit, as well as provide advice on policy issues.

The structure and sources of ESMA's **funding** should also be reviewed to solve the existing tensions between NCAs' and ESMA budgets. Changes are needed to ensure that ESMA is able to adapt quickly to external/market developments, to finance important new projects and to properly fulfil its missions, including in case of increased supervisory powers, while avoiding unhealthy competition between ESMA's and NCAs' budgets. An ESMA Board-level task force has recently analyzed the subject and made proposals with these objectives in mind.

Finally, it is important to **work in a collaborative manner** on the subject of EU-level supervision, by way of proper consultations of Member States and stakeholders, to analyze obstacles and find common solutions. Working groups could be established to deal with the most important topics, such as defining criteria for direct versus delegated supervision.

However, a bold and decisive evolution is highly needed, and **introducing a deadline to put in place the new supervisory architecture** could also prove very useful to maintain the momentum on this sensitive project.
