DEBATE PAPER

Issue 7 – Décembre 2024

Towards an SEC in the European Union: unified supervision or single supervisor?

Towards an SEC in the European Union: unified supervision or single supervisor?

Recently a number of calls have raised the need to establish a single European Union (EU) supervisory authority for capital markets in order to facilitate the emergence of a bona fide savings and investment union.[1] Although the Securities and Exchange Commission (SEC) in the United States has sometimes been mentioned in this context, it is in fact the Single Supervisory Mechanism (SSM) that is the standard—the largest banks or those with cross-border activities are under the direct supervision of the European Central Bank (ECB) with the help of national supervisors, while other credit institutions are under national supervision coordinated by the ECB.

The goal of creating a veritable Capital markets union, making it possible for savings generated in one EU Member State to be invested without problem in products created in another Member State, or similarly, for investments put together in one Member State to be financed from any EU Member State, is embodied in the fundamental European freedoms applied to financial services: freedom of movement of capital and freedom to provide financial services through the freedom to establish branches and the freedom to market a financial product developed in another Member State in any EU Member State. This goal naturally leads to the need to rely on a body of common rules (the single rulebook) and on uniform implementation through unified supervision. However, when we get into the details of the players to be covered and the products to be supervised, into the concrete organization and governance of this unified supervision, conceptual differences become apparent: unified does not necessarily mean single, and the numerous national specificities—bankruptcy law, securities law, criminal law, and so on—are cited as reasons for rejecting unified supervision.

At its meeting on April 17 and 18, 2024, the European Council identified the main drivers of the Union's competitiveness. It called for studies to be carried out decisively and rapidly to improve competitiveness. Among the studies, concerning the Capital markets union, it invited "the Commission to assess and work on the conditions for enabling the European Supervisory Authorities to effectively supervise **the most systemic relevant cross-border capital and financial market actors**, with the aim of strengthening financial integration and ensuring financial stability, simplifying processes and reducing compliance costs, taking into account the interests of all Member States" (European Council, 2024).

[1] Extracts from the main recent reports and speeches on this subject can be found in the Appendix.

However, the roadmap sent by President von der Leyen to the Commissioner in September seems less ambitious: while the Savings and Investments Union figures prominently, the only mention of supervision is “improving the supervisory system at the EU level” (European Commission, 2024 b).

Within this shifting context, the intention of this debate paper[2] is to help clarify the issues and develop realistic goals. It will not deal directly with elaborating financial regulation, but rather with how to implement financial supervision. Both functions are often assumed by the same authority, but each has its own logic.

[2] This Debate Paper was prepared under the responsibility of Robert Ophèle, Chairman of AEFR's Debate Paper Advisory Board, together with members of the Board and outside personalities who are listed in Appendix 1. The opinions expressed in this document do not necessarily reflect those of the individual members.

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1. In the 25 years that the issue of capital market supervision has been raised at the EU level, convergence between national supervisors has always been preferred, rather than centralized supervision

1.1 The European System of Financial Supervision (ESFS) was established in 2010 under the principle that supervision should essentially remain a national responsibility

The ESFS is comprised of a macroprudential authority, the European Systemic Risk Board (ESRB), and three sector-specific European supervisory authorities, the ESAs: the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Markets Authority (ESMA).

The road to more unified financial market supervision in the EU has been a long one. In 1998, national authorities set up the FESCO (Forum of European Securities Commissions), an informal group for dialogue and coordination. In 2000, the Council charged a group of seven "wise men"[3] chaired by Alexandre Lamfalussy (Committee of Wise Men's recommendations, 2001) with coming up with proposals for the rapid creation of a single market in securities and within that framework with determining how to ensure that national supervisors properly apply European regulations ("the Committee will propose various approaches to adjusting the practice of regulation and cooperation between regulators in response to current developments"). To implement this objective, the final report, which was generally very critical of how financial regulation had been drafted ("too slow, too rigid, produces too much ambiguity, fails to distinguish between core, enduring, essential framework principles and practical day-to-day implementing rules"), simply referred to the need to strengthen cooperation between national regulators. That was one of the missions of the Committee of European Securities Regulators (CESR), created in June 2001 by decision of the European Commission as an advisory committee, but which "should also contribute to the consistent and timely implementation of Community legislation in the Member States by securing more effective cooperation between national supervisory authorities, carrying out peer reviews and promoting best practice" (European Commission, 2001).

In October 2004, the CESR issued a report, called the Himalaya Report ("Which supervisory tools for the EU securities markets?", 2004). It placed strong emphasis

[3] There was no French person in this group of seven "wise men".

on the convergence of supervisory practices through cooperative approaches and peer pressure. "The report lists possible new improvements so as to enhance the convergence in supervisory enforcement and decision-making (including an extended mediation mechanism); to develop significantly, within the legal limits, the role of CESR as 'supervisor of national supervisors' through thorough peer pressure instruments; the possible definition of a 'mission statement' for EU securities supervisors; and finally, developing a better access by regulators or by the general public to regulatory information on an EU-wide basis." It concludes, "The mention of trans-national options is risky in the sense that the focus of attention is likely to move too soon into this field. CESR believes that these options should be considered only if it is very clear that the present system cannot be developed to provide proper solutions to the questions of supervisory convergence."

Following the recommendations of the High-Level Group on Financial Supervision in the European Union, chaired by Jacques de Larosière (2009), a transition was made from CESR, an advisory committee, to the European System of Financial Supervisors (ESFS), an independent authority. But it is clear from the report's proposals that virtually all supervision was to continue at the national level:

"Recommendation 18: A European System of Financial Supervisors (ESFS) should be set up. **This ESFS should be a decentralized network:**

- **existing national supervisors would continue to carry-out day-to-day** supervision;
- three new European Authorities would be set up, replacing CEBS, CEIOPS and CESR, with the role to **coordinate** the application of supervisory standards and **guarantee strong cooperation** between the national supervisors;
- colleges of supervisors would be set up for all major cross-border institutions."

It is true that exceptions to national supervision were introduced in Recommendation 22 for EU-wide institutions. This would become the ESMA and concerned, for example, rating agencies and post-trade infrastructure, i.e. clearing houses (CCPs) and central securities depositories (CSDs).[4]

[4] "In addition to the competences currently exercised by the level 3 committees, the Authorities should have, inter alia, the following key competences:
i) legally binding mediation between national supervisors;
ii) adoption of binding supervisory standards;
iii) adoption of binding technical decisions applicable to individual financial institutions;
iv) oversight and coordination of colleges of supervisors;
v) designation, where needed, of group supervisors;
vi) licensing and supervision of certain EU-wide institutions (e.g. Credit Rating Agencies and post-trading infrastructures);
vii) binding cooperation with the ESRC to ensure adequate macro-prudential supervision.

According to the report, the guiding principles of financial supervision in the EU would consist of regulations without national options, with interpretations drafted at the European level by the ESAs and supervision carried out in a uniform manner according to the principles established by those authorities, who would monitor national authorities with peer reviews. Supervision would be exercised, where necessary, on a collaborative basis through supervisory colleges.

The report's recommendations were largely implemented, except that in the field of financial markets (in fact, the problems of banking and even insurance supervision were dealt with more extensively in the report than was the problem of financial markets) only credit rating agencies were placed under ESMA supervision, and not post-trade infrastructures. No colleges of supervisors, other than for CCPs, were created. Binding supervisory standards were just outlined and increased peer reviews were deferred to the revision of the founding ESA framework in 2017/2019.

With very limited supervisory powers, ESMA's decision-making body was the Board of Supervisors, which comprised the national authorities (29 at the time) and included a chair, who was initially a non-voting member, and observers. Decisions were taken by a simple majority or, in the case of technical standards or guidelines, by a qualified majority.[5] A Management Board was also set up, comprised of six national supervisors and the chairperson, which is essentially responsible for internal management (budget and personnel policy) and preparing the work program.

The report called for a review of ESFS three years after its introduction, in particular to examine the case for wider supervisory duties at the EU level. But it suggested great caution in this area: "**Concerning one idea, that often appears, suggesting the unification of all supervisory activities for cross-border institutions at the pan-EU level, the Group considers that this matter could only be considered if there were irrefutable arguments in favor of such a proposal.** The complexities and costs entailed by such a proposal (which would result in a two-tier supervisory system, one for cross-border institutions and one for domestic institutions), its political implications and the difficulty of resolving cross-border burden-sharing are such that the Group has doubts of it being implemented at this juncture. This scenario could become more viable, of course, should the EU decide to move towards greater political integration."

A few years later (2013), however, the sovereign debt crisis and its consequences for an EU banking system already weakened by the great financial crisis of 2008 led to setting up the SSM with the two-tier system cautiously referred to by the

National authorities should continue to be fully responsible for the day-to-day supervision of firms."

[5] A qualified majority is defined as equal to at least 55% of Member States and at least fifteen of them, representing at least 65% of the EU population.

Larosière report, but only at the euro area level (other EU countries were allowed to join the SSM on a voluntary basis, but almost none did),[6] which was justified by the need to have a banking system with consistent solvency in order to conduct effective monetary policy.

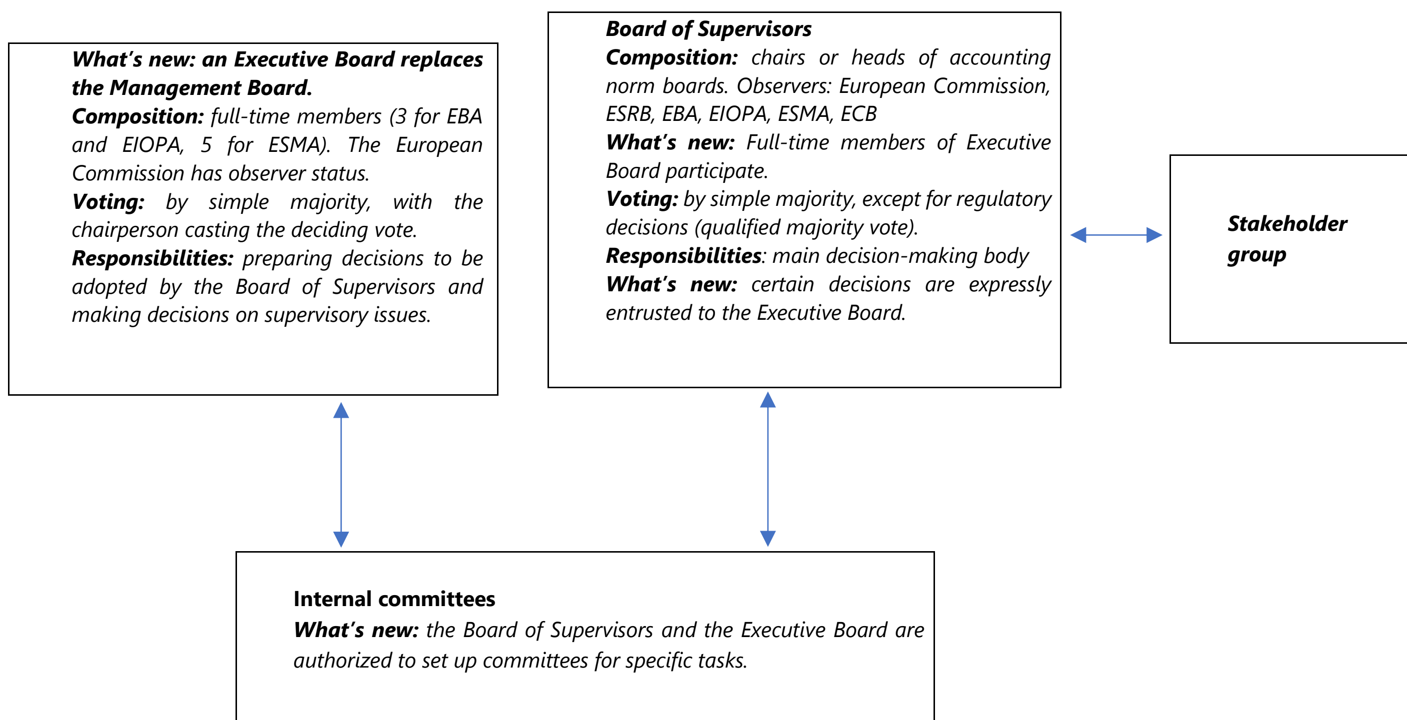
1.2 As part of the review of the ESFS, in 2017 the European Commission did propose significantly strengthening ESMA's supervisory responsibilities and, as a result, a change in its governance, but the Council did not agree.

Concerning supervisory responsibilities, the European Commission thus proposed (European Commission, 2017b) expanding ESMA direct supervision of:

- funds covered by a European regulation (as opposed to those covered by the UCITS and AIFM directives), i.e. funds covered by the EuVECA, EuSEF, and ELTIF regulations;
- businesses related to data communication services;
- administrators of critical benchmarks;
- the approval of certain prospectuses—those for wholesale markets for non-equity securities marketed only to qualified investors, those relating to specific classes of complex securities, such as asset-backed securities or those created by specialist issuers, and those by issuers from third-party countries.

The extension of these direct supervisory responsibilities was coupled with a governance reform, with the creation of an Executive Board consisting of the chairperson and 5 full-time members (the latter, however, had no voting rights in the Board of Supervisors). In particular, they were to be responsible for taking all decisions on supervisory matters, as seen below:

[6] The SSM expanded with the enlargement of the euro area, but only Bulgaria joined the SSM in 2020 through an enhanced cooperation agreement.



At the same time, a reform of CCP supervision was proposed by a text entitled "European Markets Infrastructure Regulation (EMIR)" (European Commission, 2017a), which reinforced the role of ESMA by entrusting it with:

- supervisory powers over CCPs of third-party countries (direct supervision of so-called Tier 2 systemic CCPs) and
- increased oversight of EU CCPs by requiring its approval for a whole range of decisions that national authorities might take.

To this end, the governance of ESMA was also modified by establishing for CCPs, alongside the structure described above, an Executive Session, comprised of three full-time members and, for matters concerning EU CCPs, a representative of the competent national authority of the EU countries having a CCP, as well as a non-voting representative of the central bank of issue concerned by each CCP. The Executive Session was to have the power of decision and was to inform the Board of Supervisors of its decisions.

In the absence of a political consensus, none of this really came to fruition. The only provisions accepted were:

- direct supervision of activities tied to data communication services and of the administrators of critical benchmark indices (in fact, administrator in the singular, since only Euribor was recognized as having critical importance). This did not justify the governance reform referred to by the

creation of a new Executive Board and, in fact, the only change in the conditions governance of was to grant the chair voting rights;
- the supervision of CCPs from third-party countries and a very toned-down version of increased oversight of EU CCPs. The scope of decisions by national authorities that are to be submitted to the Executive Session is more limited than originally planned, and decisions taken by the Board of Supervisors upon proposal of the Executive Session are no longer binding. The philosophy espoused is clearly set forth in the first paragraph of Article 23a of the revised EMIR regulation: "ESMA shall fulfil a coordination role between competent authorities and across colleges with a view to building a common supervisory culture and consistent supervisory practices, ensuring uniform procedures and consistent approaches, and strengthening consistency in supervisory outcomes, especially with regard to supervisory areas which have a cross-border dimension or a possible cross-border impact." (European Parliament and Council, 2019).

2. Given the slow progress made in setting up unified European supervision, many statements have been made on the need to significantly strengthen it in the financial markets sector. The general principles of these statements have been consistent, but not always the means proposed.

These positions are consistent with an environment marked by the intrinsic limits of the cooperative model and its negative consequences, as well as by the need to set up a genuine Savings and Investments Union that will make possible realizing the necessary investments to ensure the major transitions that the European economy needs to make.

The end of the term of the European Parliament in 2024 coincided with the realization that the EU had fallen somewhat behind the rest of the world, particularly the US, in economic and financial terms and that financing the major challenges it faced (climate, digital, and demographic transitions) at a time when public resources dedicated to defense would have to be boosted, could only be ensured by a decisive breakthrough in the Capital markets union, renamed the Savings and Investments Union in accordance with this perspective. While unified supervision of capital markets alone would not, of course, bring this union into being, given the vital importance of issues such as the orientation of savings and pension systems, it appeared, after 15 years of seeking convergence, that more unified supervision, including a direct role for a European authority, ESMA, would be a necessary

condition for the project's success. Indeed, without underestimating the progress made towards supervisory convergence through[7] the proliferation of level 3 texts (guidelines and supervisory briefings), the definition of joint supervisory actions, the discussion of concrete cases of problems encountered during audits, the carrying out of peer reviews of supervisory practices in specific areas, and so on, it must be said that, for the most part, these actions are incentive-based, require considerable human resources, and will only lead to truly uniform supervision—which also may be challenged at any time—in the long term.

Many have therefore called for the introduction of a significant dose of direct supervision.

2.1 The various proposals for a single supervisory authority cover different boundaries and are sometimes defined in very general terms

Beyond the assertion that more supervision by ESMA is necessary, one is struck by the circumspection of many reports when it comes to specifying which new responsibilities ESMA should have and the realization that any centralization of supervision through ESMA constitutes a politically sensitive subject. It is true that the Treaty does not give the EU exclusive jurisdiction in this field, but rather shared jurisdiction, which complicates reforms.

In a high-profile speech in November 2023 (appendix 2.1), Christine Lagarde called for a "Kantian shift" (presumably meaning that this should be a categorical imperative), corresponding to a top-down approach that would impose a single European supervisor along the lines of the US SEC, rather than the current bottom-up approach resulting from coordination between national supervisors. However, she seemed to limit herself to advocating ESMA supervision of institutions likely to pose systemic risks, i.e. "**large cross-border firms and market infrastructures such as EU central counterparties**"**.** This is a far cry from aiming to create a European SEC (the standard would be more the European Commodity Futures Trading Commission (CFTC)).

Enrico Letta's April 2024 report (appendix 2.4) takes a potentially more precise approach, considering that the ESMA "*could assume more supervisory responsibilities for major entities based on criteria such as size, cross-border activities, and their systemic importance, encompassing trading venues, issuers, asset*

[7] This is how ESMA describes its work in favor of supervisory convergence: "*Supervisory convergence implies developing consistent interpretation of rules, building sound and effective supervisory capabilities, coordinating approaches and activities, conducting concerted supervisory actions across the EU, and reviewing and sharing good practices. ESMA applies different supervisory tools to its convergence work*" (ESMA, website, "Supervision and Convergence").

managers, and other financial market participants." But he remains cautious, deeming a single supervisor to be premature at this stage. In contrast to Christine Lagarde's terms, he therefore advocates a pragmatic bottom-up approach based on an assessment of the degree of market integration, offering two options, the difference between which is unclear, except in terms of timing (the second option postpones the extension of the sphere of supervision to the distant future):

- "One option involves shifting the supervision of the most integrated markets or significant market players to ESMA, particularly when supervision proves more effective at a supranational level, such as with equity markets.
- "Another route requires the European Commission to assess market integration for each Directive or Regulation moving forward. This assessment aims to pinpoint where supervisory efficiency is most advantageous and suggests a data-driven handover to ESMA whenever a Directive or Regulation undergoes review."

In his September 2024 report, Mario Draghi (appendix 2.7) recommends to start by giving ESMA exclusive oversight of large issuers[8] and certain market infrastructure, citing large regulated markets and CCPs. He suggests dealing with mutual funds, "which is likely to be more controversial" in a second phase.

Christian Noyer's report (April 2024, appendix 2.5) is much more precise, dealing in detail with all market infrastructures and asset managers, but without referring to the issuers mentioned by Enrico Letta and Mario Draghi. With regard to asset managers, he remains cautious, not initially suggesting mandatory direct supervision, but rather the creation of colleges and the possibility for players and certain funds to opt for supervision by the ESMA, which would free them from local strictures.[9]

For the Franco-German Council of Economic Experts (CAE and CGEE, appendix 2.6), supervision could be direct and, depending on the sector, either joint or exclusive (where the national authorities would not be concerned). In the latter category it would put so-called wholesale activities and, at the very least, all essential financial market infrastructure in the EU, such as stock exchanges, clearing houses, and central securities depositories. For retail activities, ESMA's role would be reinforced as a decision-making center for tasks shared with national authorities.

[8] "Large multinational issuers i.e. those with subsidiaries in various EU Member State jurisdictions and revenue, and/or total assets above a certain threshold, a natural identifying criterion would be issuers belonging to major indices such as the CAC40, DAX, Euro Stoxx 50, FTSE MIB, IBEX 35, or else - if one wants to be more encompassing - the STOXX Europe 600."

[9] This would be a form of an optional "28th system", along the lines of what was initially proposed for European crowdfunding platforms.

2.2 Everyone calls for overhauling ESMA governance and for national authorities to retain an important role.

Whenever it is a question of expanding ESMA's supervisory powers, a reform of its governance is systematically advocated. The SSM is then a natural reference referred rethinking how ESMA should be organized. Whether it is a question of managing supervisory matters with its Joint Supervisory Teams (JSTs), bringing together ECB staff and national supervisors under the direction of the ECB, or making decisions on its governance. On that point, in addition to a certain mixing up the governance of the SSM and that of the ECB, it is legitimate to believe that those models cannot be mechanically transcribed to the field of supervision, particularly to market supervision.[10]

In Enrico Letta's view, ESMA's governance should be structured around a full-time Board of six members, and a Council made up of the national authorities and the six Board members.[11] However, he does not specify the responsibilities of this board, nor does he address the question of voting rights.
Mario Draghi is not more specific. He simply points to Enrico Letta's report.[12]

The governance of the SSM and the ECB is summarized in the box below:

ECB governance

- Governing Council

The 6 members of the Executive Board and the governors of the central banks of the countries that have adopted the euro (currently 20 governors).
For most decisions, the number of voting members is limited to 21: the 6 members of the Executive Board and 15 governors, with a system of rotation within 3 groups of countries (based on size).[13]
In some instances, all Council members have voting rights (for a change in the statutes), or only the Governors have voting rights,[14] because their vote is weighted by their share of the capital (based on the Member State's GDP and population), in which case the Executive Board members have zero weight.

[10] In Mario Draghi's report, this orientation appears to be justified by tactical considerations: "To overcome likely opposition, the EU regulator will have to share supervision with national regulators and elicit their cooperation along lines similar to what the SSM does with national central banks in euro area bank supervision" (in fact, the SSM Board gives voting rights to representatives of national banking supervisors, which are not always national central banks). In any case, SSM governance results partly from the desire to not modify the Treaty on the Functioning of the EU (TFEU) and thus to attach its governance to that of the ECB.

[11] "When the ECB was created, the choice was to add six 'other' members to the Governors of Central Banks in the Governing Board and in the General Council: the six independent members constitute the executive board of the ECB. A similar choice should be made for the ESAs. The Management Board should be composed of six independent and highly-qualified individuals, including the chair, appointed by a qualified majority of the Council and an opinion of the European Parliament. The Board of Supervisors should be composed of the heads of the national competent authorities plus the 6 members of the Management Board."

[12] "To enable ESMA to take swift and decisive action in sensitive areas, it would be important to add six independent and highly-qualified individuals, including the chair, to ESMA's Management Board, as proposed by the Letta report."

[13] In November 2024, the governors of 5 countries (the Netherlands, Belgium, Estonia, Slovakia, and Finland) do not have voting rights.

[14] For example, decisions concerning the transfer of foreign exchange reserves, the distribution of monetary income, and so on.

- Executive Board

Six members appointed for non-renewable 8-year terms.
The Executive Board is responsible for the day-to-day management of the ECB and implements monetary policy in accordance with the guidelines and decisions issued by the Governing Council; certain powers may be delegated to it by decision of the Governing Council.

- General Council

The President and Vice-President of the ECB and the governors of the Union's central banks (currently 27 governors); its responsibilities are essentially consultative.

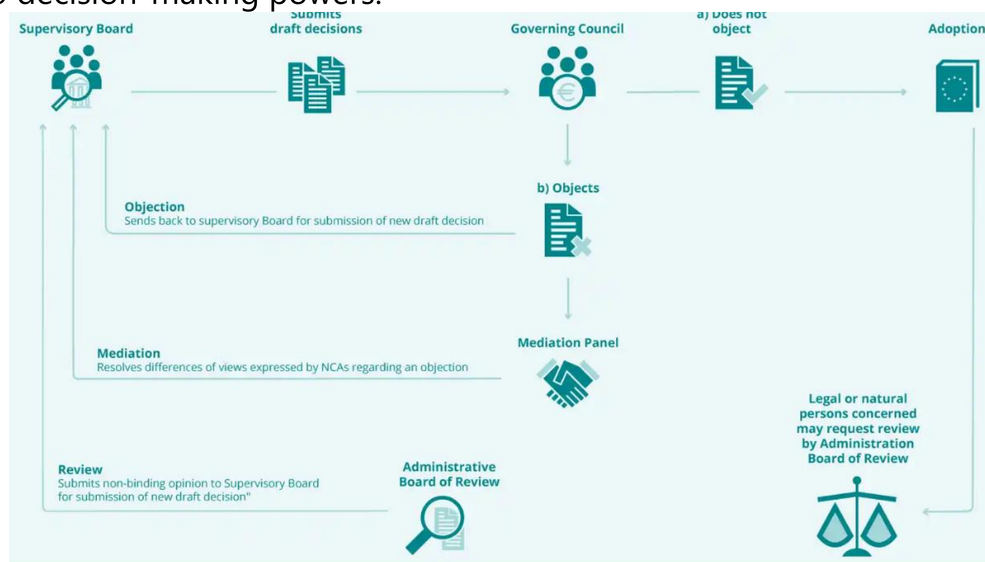
SSM governance

- Supervisory Board

The voting members are one representative per national supervisory authority that is part of the SSM (i.e. currently the 20 euro area countries) and 6 additional members, including a chair, a vice-chair (a member of the ECB Executive Board), and 4 members appointed by the ECB.
The Board's decisions are taken by simple majority without weighting and are actually proposed decisions that are passed on to the ECB Governing Council for approval.

- The Steering Committee

This is a subgroup of the Supervisory Board that prepares Board meetings and has no decision-making powers.



The Noyer report and the Silvia Merler - Nicolas Véron paper for Bruegel (appendix 2.8) refer to different governance structures in the case of direct supervision by ESMA without voting rights for national supervisors, as in the case of the Single Resolution Board and the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA, see below).

The joint declaration of the Franco-German Council of Economic Experts (appendix 2.6) calls for reforming ESMA (and EIOPA). The reformed structure could consist of a slimmed down executive board of 5 or 6 members with exclusive authority over all administrative and supervisory decisions. The current ESMA Board of Supervisors would remain the decision-making body for drawing up regulations. To perform its supervisory responsibilities (both exclusive and shared), a multi-site setup has been suggested, with ESMA offices in the EU's main financial centers (around ten have been identified), particularly in order to "allay fears that a stronger ESMA would unilaterally favor Paris as a financial center."

3. What should be the scope of centralized European supervision and what role for ESMA?

In the EU, centralized supervision has so far been confined to relatively homogeneous sectors and activities, and/or to regulation compiled in a relatively limited number of texts. This is the case for banks, with the SSM (CRR and CRD) and for compliance with the anti-money laundering and countering the financing of terrorism provisions with the AMLA. The capital markets sector is more diversified, with a host of different players and numerous regulations for each type of player (issuers, trading platforms, central depositories, shareholders, rating agencies, and so on) and products (UCITS, hedge funds, securitization, etc.). Defining the perimeter for which centralized supervision would be justified in this sector is therefore a complex endeavor, requiring the definition of appropriate criteria that differ according to its components. This exercise is all the more difficult because of the need to establish that centralized supervision is preferable to a patchwork of national supervision coordinated by ESMA for certain players or products; a patchwork that could be all the more justified because the specific national legal features are many and because proximity to economic players would be essential, especially to ensure the protection of those with savings.

History shows us that such a change rarely takes place "out of the cold"; it comes in the wake of a crisis: it was the impact of the euro area sovereign debt crisis on banks weakened by the 2008 crisis that hastened the creation of the SSM, despite the plethora of "national options" and various national legal frameworks, particularly with regard to the rights of creditors; AMLA resulted from the shortcomings observed in certain countries in the fight against money laundering, and from the sovereign debt crisis, at a time when the sanctions imposed following Russia's invasion of Ukraine demonstrated the need to Europeanize operations; in the United States, the creation of the SEC in 1934 was a direct consequence of the 1929 crash and the ensuing depreciation. National supervision of national financial

players is seen as an important aspect of national sovereignty, fueling misgivings about European supervision. It takes a particularly serious crisis to overcome them.

Two criteria are generally mentioned for defining the scope of centralized supervision: the activity's systemic nature and its cross-border character. Concerning systemic nature, the idea is to include structures whose default would be highly detrimental to the EU, possibly leading to a cascade of defaults; as for the cross-border dimension, the idea is to go beyond the home/host debate and ensure equal treatment in all jurisdictions for entities whose activity extends beyond a national framework. Of course, it would also be necessary to show that centralized supervision, which in any case would rely on the current resources of national supervisors, would be no more expensive than national supervision coordinated by ESMA.[15]
In its position paper "Building more effective and attractive capital markets in the EU", ESMA (2024) was naturally rather prudent about direct supervision, but repeated the same criteria—knowing whether these entities operate with a strong cross-border and pan-European dimension, whether they may present a high risk of regulatory arbitrage, and whether efficiencies can be better achieved at the EU level.[16] The criteria for determining systemic character and/or direct supervision have been the subject of numerous studies in the banking sector.

The Financial Stability Board (FSB) has thus identified five criteria used to determine which banks are systemically important and subject to higher capital requirements: size, interconnections, substitutability, complexity, and multi-jurisdictional nature. These criteria are combined with a battery of indicators to produce a systemic importance score. To determine systemically important global banks, there are therefore 14 indicators; for other systemically important banks, the indicators are left to the national authorities, according to an approach set, for the EU, by an EBA guideline (2014).[17]

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[15] Creating the SSM has led to doubling the cost of banking supervision in the euro area (national supervisors' staff numbers have not decreased, and those of the ECB have rapidly expanded, with unit wage costs significantly higher than those of national supervisors), but the previous situation, with no real coordination of national supervisors, was sub-optimal.

[16] "While much of the capital market activity should continue to be supervised at national level, the European Commission and co-legislators should continue evaluating whether specific areas of EU capital markets may benefit from EU-level supervision, such as large pan-European market infrastructures or crypto-asset service providers. Such considerations should be based on certain criteria, such as whether those entities operate with a strong cross-border, pan-European dimension, whether they may present a high risk of regulatory arbitrage, or whether efficiency gains can be achieved better at EU level. Further criteria may need to be taken into account on a case-by-case basis, depending on the specific nature of the sector under consideration, and the risks it may present."

[17] In France, the Autorité de contrôle prudentiel et de résolution (ACPR) uses 10 indicators (A-EIS methodology):
1. Total assets of the entity concerned (size)
2. Value of the concerned entity's domestic payment transactions
3. Amount of private sector deposits from EU depositors with the entity concerned
4. Outstanding loans granted by the entity concerned to the private sector for beneficiaries in the EU
5. Notional value of OTC derivatives of the entity concerned

All euro area banks deemed systemic at the global or national level are indeed subject to direct supervision by the ECB under the SSM, but the scope of direct supervision goes far beyond that, and the regulation establishing the SSM (2013) stipulates that important banking groups are under direct supervision. Their importance is gauged according to the following criteria:

i. their size: "total asset value in excess of €30 billion";
ii. their importance for the economy of the EU or of a participating Member State: "the ratio between its total assets and the GDP of the Member State is greater than 20%, unless the total value of its assets is less than 5 billion euros";
iii. the importance of the establishment's cross-border activities (total value of its assets is greater than 5 billion euros and the ratio of its cross-border assets to its total assets is greater than 20% or the ratio of its cross-border liabilities to its total liabilities is greater than 20%)

However, an institution meeting these criteria may not be subject to direct supervision by the ECB if special circumstances warrant considering that such direct supervision is not justified.

In addition,

- the ECB may also, on its own initiative, consider an institution to be of significant interest if it has established banking subsidiaries in more than one participating Member State and if its cross-border assets or liabilities represent a significant share of its total assets or liabilities, subject to the conditions set out in the methodology,
- institutions for which public financial assistance has been directly requested or received from the European Financial Stability Facility (EFSF) or the European Stability Mechanism (ESM) are not considered to be less important,
- the preceding paragraphs notwithstanding, the ECB carries out missions concerning the three largest credit institutions in each of the participating Member States, unless special circumstances justify otherwise.

Altogether, the ECB directly supervises 113 banking groups representing over 800 establishments. Of these 113 groups, however, only one has been identified on the sole criterion of cross-border activities (the Austrian Addiko Bank). At the same time, for three banks which meet the criteria for direct supervision (and which manage major EU market infrastructure), special circumstances have been cited to

6. Cross-border liabilities of the entity concerned
7. Outstanding cross-border receivables
8. Liabilities within the financial system of the entity concerned
9. Assets within the financial system of the entity concerned
10. Total outstanding debt securities of the entity concerned

leave them under national supervision: Euroclear Bank, Eurex Clearing, and Banque Centrale de Compensation (LCH SA).

For third-party country CCPs, there is also the criteria used in a delegated regulation to measure their systemic character in function of their activity in the EU (2020): annual amount of clearing transactions, amount of open positions, and so on.

The precise criteria that will be established to determine the institutions under direct supervision by the AMLA have yet to be specified by the authority, but the regulation sets out the basic principles—the main criterion is residual risk, and they should, in principle, number 40—and provides for a complex two-tier system:

- First, the residual risk of all credit and financial institutions operating in some manner in at least six Member States is assessed;
- Establishments presenting a high residual risk are then selected, provided that they number no more than 40; if such were to be the case, either the establishments selected will be those present in the highest number of Member States, or there will be an increase in the number of establishments selected.

Finally, it may be considered, as was the case for the SSM and AMLA, that once an establishment is eligible for centralized supervision under these criteria, it's the entire group and its related entities that should be subject to centralized supervision for its regulated activities in the financial sphere. Indeed, the purpose of supervisory reform is not to add complexity and fragmentation to an already cluttered landscape. That means, for example, that if a regulated market were to be supervised directly by ESMA, then the Multilateral Trading Facilities (MTFs) and Organized Trading Facilities (OTFs) belonging to the same group would also come under centralized supervision.

As these precedents demonstrate, the criteria to be applied depend on the activities involved. In each case specific approaches are needed to determine the benefits of centralized supervision and the right dose of local involvement. There will thus be an examination of:

- whether a default is likely to have serious consequences beyond national boundaries, especially because of the importance of the cross-border activity in question or a possible domino effect;
- whether or not efficiency requires a heavy dose of national involvement, particularly because of the specificities of national legal frameworks.

Here we will limit ourselves to the three main families that structure financial markets: issuers, infrastructures (trading platforms, CCPs, CSDs), and asset managers (management companies and investment funds), assuming the existence

of a single supervisory system, with direct supervision for those players/products that would be justified on the grounds of their importance, associated risks, and/or European characteristics, while the others would remain under national supervision, monitored by ESMA.

3.1 Issuers

It's to issuers that the SEC (2024) refers first in describing its missions both in terms of protecting investors ("Companies offering securities for sale to the public must tell the truth about their business, the securities they are selling, and the investment risks") and of economic development ("Our regulatory governance provides companies and entrepreneurs with a variety of avenues to access the U.S. economy's capital markets to help them create jobs, develop life-changing innovations and technology, and provide financial opportunities for those who invest in them. Access to capital is particularly critical for small businesses, which create approximately two-thirds of all new jobs in the U.S. economy").

And indeed, while market capitalization of the EU's regulated markets is of the same order of magnitude as GDP, issuers generally have an economic activity that goes beyond the national framework and target investors beyond the national perimeter in their issuances/listings. Moreover, their ability to obtain financing from the markets is decisive in ensuring the economic growth and the effective implementation of the various transitions that the EU must make. Such financing of EU companies, wherever they are located, from investments, whatever the origin, therefore needs to be encouraged. Is that sufficient to justify a single supervisory authority, when its implementation in the EU would clearly be complicated, particularly because of the diversity of national corporate law and the large number of regulations, some of which have allowed numerous national options? In particular, these regulations cover:

- Periodic information to be provided, defined by the so-called Transparency Directive (European Parliament and Council, 2004 b).
- Ongoing information and management of insider information, which are governed by the Regulation on Market Abuse, known as MAR (European Parliament and Council, 2014 a).
- Prospectuses in the event of a public offering, which are governed by a 2017 regulation (European Parliament and Council, 2017), which is currently being revised (Listing Act draft).
- Financial transactions (takeover bids, public exchange offers, and so on), which are governed by a 2004 directive (European Parliament and Council, 2004 a).

There are numerous national specificities: the threshold above which a prospectus is mandatory, the threshold that automatically triggers a takeover bid, etc. In addition, the language in which information is provided may be the national language or may be left to the discretion of the issuer: in France, the Autorité des marchés financiers (AMF) has given issuers the choice of publishing their regulatory information either in French or in a language commonly used in financial matters. De facto, many issuers—the largest—choose to publish in both French and English, but there are still issuers of securities listed on a regulated market in the EU who put out their regulatory information only in the local language.

In 2017, in order to get around the problem of national specificities, the Commission proposed transferring to ESMA only the responsibility for supervising certain prospectuses (mainly those that correspond to the "wholesale" bond market), but that would have led to further fragmentation of issuer supervision between several regulators. Indeed, either everything is centralized or nothing is centralized, and the arguments in favor of centralized supervision remain strong. Essentially, they are the following:

- Many companies whose headquarters is in one EU country are listed in another EU country, and their securities are traded on platforms that may be located in several other EU countries. This leads to several authorities being responsible for the same issuer,[18] which is an unnecessary complication.
- The supervisory procedures of the various national authorities are still too heterogeneous, whether in terms of reviewing information provided by corporations or market oversight.[19]
- Companies whose securities are listed on a regulated EU market apply common standards for their periodic reporting, both in financial terms (consolidated accounts according to IFRS standards) and in non-financial terms (European Sustainability Reporting Standards, ESRS); this pleads in favor of a single supervisory framework.

A pure model would mean placing all issuers whose securities are traded on a regulated market under the single supervision and authority of ESMA, but with

[18] An issuer whose head office is in a Member State is subject to the corporate law of that State. It will keep its accounts and have them verified in that State, and it is the supervisor of that State that is normally the issuer's supervisor. But the issuer may have its securities listed in other EU Member States and, if these securities are bonds, it may then choose its supervisor (either where it is listed or the Member State where it has its head office). Similarly, when securities are traded on several EU markets, the authority in charge of monitoring (and punishing) market abuse will be the one where liquidity is the greatest. This leads to complicated interactions (e.g. see the case of Solutions 30 in 2021).

[19] Thus, according to ESMA's Peer Review of July 2022, only 7 of the 30 national supervisors in the European Economic Area (EEA) (including the French AMF) fully satisfied standards in terms of prospectus review: "This report also identifies several areas where there are material differences between NCAs, such as the deadlines imposed by NCAs for issuers to respond to comments, NCAs' procedures for the approval of prospectuses and the additional criteria that NCAs apply to prospectuses under their scrutiny . Although these differences may appear minor at first glance, their accumulation may result in it being easier to have a prospectus approved at some NCAs than at others. Ultimately, this means that it will be more convenient for issuers to raise capital in the Member States where it is easier to have a prospectus approved."

substantial reliance on national bodies. A two-tier model is also conceivable, with some issuers under direct ESMA supervision and others under supervision delegated to the national level.

Both Enrico Letta and Mario Draghi, who advocate a single supervisory authority for large issuers, remain quite vague on its exact scope, what this supervision would cover exactly, and how it might be organized.

Since the criteria mentioned in the Draghi report do not seem relevant,[20] the temptation is to use only the criterion of market capitalization (which might be complemented by a free float criterion). In that case, a minimum of €30 billion (as for banks) would lead to placing around 80 issuers, with head offices in 9 of the 27 EU countries, under direct supervision:

Number of issuers	Market capitalization above:			
	€10 bn	€30 bn	€50 bn	€100 bn
UE	225	82	45	20
FR	40	21	13	7
GE	45	19	9	4
SW	24	6	3	0
IT	17	6	4	0
SP	18	5	4	1
IE	19	9	5	3
NL	20	11	5	3
Other Member States	42	5	2	2

The Member State corresponds to the Member State of the head office, not of the main listing.

If a minimum of one issuer per Member State is added, provided that market capitalization exceeds €10 billion, that would make for around 90 issuers in 15 countries.

In any case, if at the very minimum only the most "European" aspects of issuer supervision were to be placed under a single supervisory authority, it should concentrate on:

- periodic information for (major) issuers listed on a regulated market (financial information according to IFRS standards approved in the EU and to extra-financial standards in line with the Corporate Sustainability Reporting Directive, CSRD);

[20] The fact that the issuer has a presence in several EU countries through its subsidiaries is of no significance in financial terms, and direct supervision cannot be based on inclusion in indices, which are in the hands of private players and, moreover, do not prove that an issuer is of systemic importance.

- surveillance of all markets, with a centralized tool at ESMA to detect abnormal situations likely to result from market abuse; delegating to national supervisors the investigation of alerts concerning issuers not under ESMA's direct supervision.

3.2 Market infrastructures

Market infrastructures are the institutions most frequently cited as justifying single supervision in general and centralized supervision for the most significant infrastructures according to volume of activity, for the sensitivity of the markets on which they operate, and for their trans-national nature.

The term "market infrastructures" encompasses the infrastructures that handle every link in the securities trading chain:

- the listing, which triggers the requirement of providing the market with information,
- trading, which may take place on regulated markets, MTFs, and OTFs, but also includes systematic internalizers,
- transaction clearing by CCPs,
- settlement via central depositories.

3.2.1 Concerning listing/trading, which is governed by MIFID regulations, operators generally have access to several platforms (e.g. regulated markets and MTFs), sometimes in several countries.

Currently supervision is carried out by the national supervisor for platforms located in its country; as concerns Euronext, which operates several regulated markets in several EU Member States and which applies common rules and offers a common liquidity pool (single order book), a college of regulators from these regulated markets has been set up to coordinate their decisions. As in the banking sector, central supervision makes sense at the group level and, where justified, it includes all trading activities.

The analysis must be carried out on an instrument-by-instrument basis (equities, bonds, commodities, derivatives, including commodities and carbon, and so on) and take into account the volumes in question, the transnational nature of the

products in question and of the market participants, and the complexity/sensitivity of the products being traded.[21]

In addition to the large number of platforms, there is a high degree of concentration around a limited number of groups of operators: Euronext, CBOE Europe, Deutsche Börse (Xetra), Nasdaq OMX, Aquis, Turquoise and Bolsa Madrid are natural candidates for such ESMA oversight of equity trading. Were the range extended to derivatives, only ICE Europe would be added, making a total of eight groups, corresponding to over fifty platforms.

Concerning systematic internalizers (nearly 200 institutions), which are normally banks or investment firms, a simple rule would be to place under the direct supervision of ESMA institutions that are under the direct supervision of the ECB in the framework of the SSM, while leaving the others under national supervision.

3.2.2 By definition, CCPs are risk concentrators/poolers and should be subject to central supervision.

Concerning CCPs, the process applied to third-party country CCPs can be the basis, on a contract-by-contract basis, for the process to be applied to identify EU CCPs that have cross-border activity and that have a systemic nature of such importance as to justify central supervision. The criteria to be taken into account are well known: number of participants outside the country of location, open positions, amounts cleared, type of product cleared, level of default fund, etc.

The historical reluctance to come under central prudential supervision (for CCPs as well as for banks) is justified by the idea that, in the event of a CCP default, it is the countries in which they are located that would bail them out (even though there is no commitment to do so), and that this justifies their being supervised nationally. The introduction of specific regulations to prevent and supervise the resolution of CCPs in 2020 (European Parliament and Council, 2020) significantly undercut the relevance of this argument. Moreover, access to the various central bank facilities (including the ECB) is available to many CCPs beyond those with credit institution status, as demonstrated by the study carried out by their association (EACH) for 13 European CCPs (in the broad sense):[22]

[21] The criterion put forward in the Draghi report ("major regulated markets with trading platforms in various jurisdictions") is not relevant, because MTFs may have a high market share and, from a single location, a platform can cover the entire EU.
[22] ATHEX Clear, BME Clearing, CC&G, CCPA, ECC, Eurex Clearing, EuroCCP, KDPW CCP, KELER CCP, Nasdaq Clearing, OMI Clear, SIX x-clear, Takasbank.

Figure 1 - CCP access to Central Bank Deposits (intra-day and overnight)

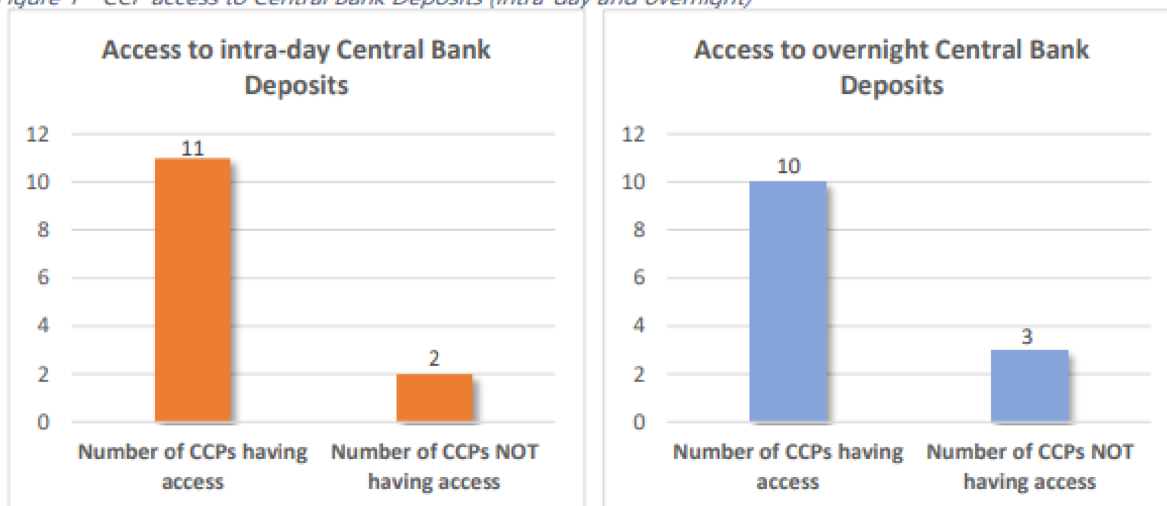
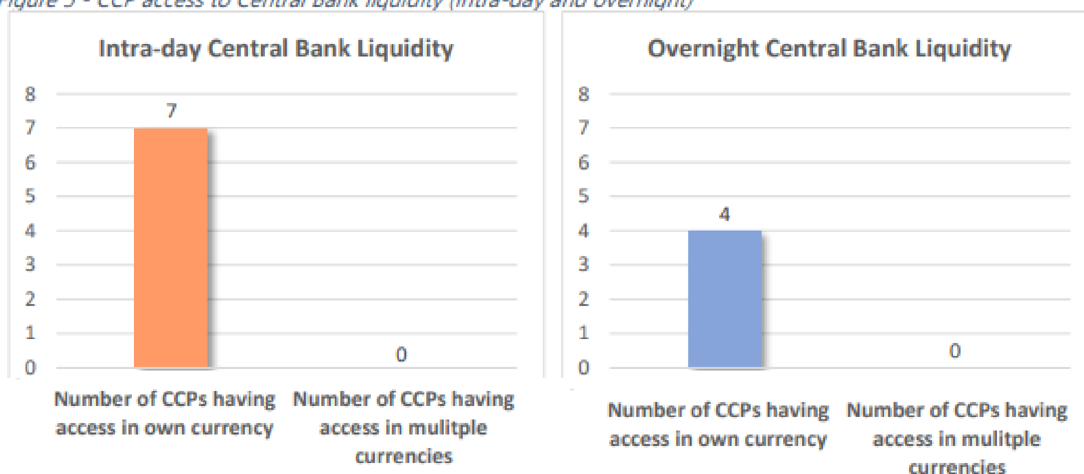


Figure 5 - CCP access to Central Bank liquidity (intra-day and overnight)



EACH Paper - CCP access to Central Bank facilities - December 2021

The list of potential candidates for direct supervision by ESMA would cover at most, if the riskier nature of derivatives clearing, including commodities, is taken into account, 8 of the 14 current EU CCPs: Eurex Clearing and ECC in Germany, LCH SA in France, ICE Clear and CBOE Clear in the Netherlands, Euronext Clearing in Italy, BME Clearing in Spain, and Nasdaq OMX Clearing in Sweden. Naturally, when one of these CCPs also has the status of a credit institution, it should be under the direct supervision of the SSM as far as prudential regulation of banks is concerned.

For the CCPs that would remain under national supervision, ESMA's role would then be the same as in the Commission's proposal mentioned above: certain decisions by the national authority should be subject to validation by ESMA (instead of a non-binding opinion).

3.2.3 The case of CSDs is similar to that of CCPs

Settlement and delivery is a crucial function for capital markets, and one that warrants the special attention of central banks, whether with regard to collateral management in providing liquidity (for example, the role of CCPs as tripartite agents) or to financial stability (the role of TARGET2-Securities and central bank money settlements).

There are currently 28 CSDs in the European Economic Area (EEA), two of which are international (ICSD). The indicators to be taken into account are, in addition to their volume of activity, the importance of their ties with other CSDs and their activity in the various EU host countries. Three groups are natural candidates for direct supervision by ESMA: the six CSDs of the Euroclear group (two in Belgium, including one ICSD, France, Finland, the Netherlands, and Sweden), the two CSDs of the Deutsche Börse group (Clearstream in Germany and Luxembourg, including one ICSD), and the three CSDs of the Euronext group (Denmark, Italy, and Portugal).

3.3 Asset management

Asset management is a largely cross-border activity, and its importance makes it a particular focus of attention in terms of financial stability. It is therefore especially necessary to develop a single system of supervision, with a strong component of direct supervision by ESMA.

- Net assets of EU-registered funds reached €18.6 trillion at the end of June 2024 (source EFAMA); assets under management by EU asset management companies, including the funds they manage and their discretionary management mandates, were around €17.5 trillion. These amounts are higher than outstanding loans to non-financial companies and to households by EU banks (€11.8 trillion for euro area banks alone).
- The vast majority of these funds are open-ended, allowing holders to exit at any time. They are therefore subject to liquidity risk, while other funds employ leverage by borrowing or using derivatives. The authorities in charge of financial stability (the FSB at the international level, the ESRB at the European level) regard this as a sensitive sector that requires tighter regulation and supervision.
- The cross-border marketing of these funds is massive, raising the concern of host states who have no accurate measure of their local market share and no way of assessing the risks involved, short of introducing national marketing rules that would fragment the single market. The EFAMA

estimates that investors from the country where a fund is registered account for only 44% of total net assets, while 26% belongs to investors from other EU states and 30% to investors from third-party countries.

- In this cross-border context, supervisory responsibilities are often spread out, with one supervisor in the country where the asset management company is located (and therefore several supervisors if it is a group with management companies in several countries), one supervisor in the country where the funds it manages are registered (and therefore several supervisors if the funds are registered in several countries) and, possibly, a different supervisor if it has delegated part of its activities to another asset management company, and even perhaps a supervisor in yet another EU state in which it is marketing its products. Not very effective in calm periods, such an organization can prove detrimental in times of crisis.

The timidity of the various proposals on the subject of central supervision of asset management is nevertheless striking. The European Commission's current consultation (2024 a) on how to manage the risks to financial stability posed by the funds underscores the difficulty of such management in a fragmented supervisory landscape. But it is only consulting on reinforcing coordination between national supervisors, taking as a model the way CCPs are currently handled in the EU, which actually makes the regulatory process more cumbersome and complex, without ensuring that the different approaches are genuinely standardized:

> “Insufficient coordination may lead to instability, driven by fragmentation among national jurisdictions and regulatory arbitrage between NBFI sectors. This raises important questions on how to ensure effective coordination among Member States, especially during systemic events affecting more than one Member State, while ensuring autonomy to competent authorities.
> “ESMA could be given specific coordination powers over large asset management companies, with the day-to-day support and supervision left to NCAs under ESMA guidance. In particular, ESMA could be given enhanced coordination role over the supervision conducted by competent authorities (similar to the ESMA CCP Supervisory Committee model). This means that NCAs would remain responsible for the supervision of investment funds authorised in their jurisdiction. However, amongst others, they would need to obtain the opinion of ESMA prior to the adoption of certain decisions and explain any deviation therefrom. ESMA, among others, would be competent to initiate and coordinate Union-wide stress tests, to initiate and conduct peer review analyses of NCAs.”

Supervision should be organized, as the Commission now proposes, around supervision of the asset management company, since it oversees investment activity and especially management of the corresponding risks. Referring again to

the criterion of the volume of managed assets, the 40 largest groups situated in the EU each thus have assets under management in excess of €100 billion. The other asset management companies would remain under national supervision.

Dividing up supervision of funds is more complex, since it cannot be based on their net assets, which are subject to wide fluctuations. The principle could be national supervision, except for certain categories of funds governed by directly applicable European regulations or critical in terms of financial stability, such as money market funds and ELTIF funds.

However, a necessary condition for asset management companies that have registered funds with passports in several EU states would be to set up a college chaired by the company's supervisor (normally ESMA, since in most cases these companies would be under ESMA supervision), with the participation of the funds' national supervisors.

4. How should centralized supervision be organized and governed?

There is unanimous agreement that direct supervision in these fields would not mean concentrating all supervisory resources at ESMA in Paris (the SEC in this regard has ten regional offices). Beyond the language issue, a local contact has a more detailed understanding of the local legal context and direct contact with local institutions (issuers and financial intermediaries) and investors (especially those investing their savings). The extent of its involvement in supervision naturally depends on the sectors concerned—the more these are wholesale markets with an entirely European regulatory framework, the less national involvement is important.

On this basis, there are three main models:

- The first is based on the competition policy in place since 2003,[23] where it is the national authorities who enforce EU regulations in close collaboration with the European Commission, which in fact makes only 10% of the decisions (those with a proven European dimension). The network of national supervisors would work in close collaboration under the authority of ESMA, which would in any case always have the final word.
- The second is a variation on the SSM model for banks and relies on national supervisors with Joint Supervisory Teams (JSTs) that make it possible to handle cases at the local level, even if oversight and decisions are largely centralized, and with on-site control missions by composite teams, with substantial assistance from the resources of national supervisors.

[23] Benoît Cœuré advocated this model in an op-ed in *Les Echos* of May 3, 2024.

- The third option is to set up local ESMA offices in the main EU (or EEA) financial centers.

That last possibility, proposed by the Franco-German Council of Economic Experts, does not seem appropriate for a model where, in any case, not all financial market activities would come under the direct supervision of ESMA, but only the most systemic ones and those with the most cross-border activity, and where national supervisors would therefore still retain their own responsibilities. Admittedly, the SSM model has its limits, in that it draws on the resources of national supervisors—who are governed by purely national budgetary and accountability mechanisms—for European tasks that are subject to other budgetary and accountability mechanisms. Ultimately, however, it represents at least an intermediate stage between generalized direct supervision and supervisory convergence.

The argument that creating ESMA agencies would alleviate fears that the Paris financial center would be offer preferential treatment does not seem to be convincing, given that the ESMA would continue to rely heavily on national supervisors, whether the competition model or the banking model were applied.[24] Ultimately, it is probably a combination of the first two models that would seem preferable (competition model for issuers and perhaps asset managers, banking model for market infrastructure).

A number of national centers of expertise could also be considered to provide ESMA (and other national supervisors) with the IT tools they need to carry out their tasks; this is how the European System of Central Banks (ESCB) operates, with the Target or collateral management systems developed by a number of national central banks, for example.

Many reports have also suggested taking the example of the SSM to expand the ESMA Board of Supervisors by including five permanent members representing European interests (which would make six, including the chair) and do not raise the question of the Executive Session, which deals with CCPs.

However, it may be felt that this would be insufficient to independently and effectively provide direct supervision; moreover, this is not what has been done in either the Single Resolution Mechanism (SRM) (European Parliament and Council, 2014) or the new AMLA (European Parliament and Council, 2024):

[24] If that argument were to be accepted, then clearly the way the SSM and the AMLA are organized, favoring Frankfurt, would have to be thoroughly reviewed.

Governance of the MRU by the Single Resolution Board (SRB)

The plenary session of the SRB has the powers of internal management (work program, budget, and so on) as well as powers concerning contributions from those required to pay and the use of the Single Resolution Fund (SRF). The chair and four full members have voting rights (there is a vice-chair, but they have no voting rights, and their field is similar to that of the ESA Executive Directors), as do representatives of the national resolution authorities (one per Member State that is part of the banking union). Decisions are taken by simple or qualified majority, as long as it represents at least 30% of contributions, on subjects concerning the SRF.

It is the executive session of the SRB that is responsible for individual decisions. The executive session is comprised of the chair and the four full members, plus the national resolution authorities of the participating states concerned (where the head office and subsidiaries are located). However, if a decision cannot be made unanimously, the decision is made by a simple majority of the five permanent members.

A representative of the ECB and a representative of the European Commission are permanent observer members and take part in the discussions at plenary and executive sessions.

AMLA governance

A General Council, which meets in a supervisory or financial intelligence unit (FIU) format. The chair is common to both formats, and in the first case the General Council includes national supervisory authorities with a single vote per Member State. In the latter case, they are replaced by the national FIUs. In both cases, there is a non-voting representative of the European Commission. Relevant observers are also provided for**.** The General Council does not have decision-making powers, rather only a consultative power in AMLA's execution of its responsibility of directly supervising entities chosen for their high-risk nature.

An Executive Board, which is responsible in particular for supervising the entities selected for direct supervision by the AMLA, and which comprises the chair and five permanent members. During its deliberations on these entities under direct supervision, the member of the General Council in its supervisory capacity from the Member State in which the selected entity concerned is located may take part in the deliberations but is not present during the vote. These decisions that fall within the scope of direct supervision are made "taking into account the proposal of the selected obliged entity's joint supervisory team (...), the proposal of the independent investigatory team (...), and the opinion provided by the General Board on that proposed decision (...). Where the Executive Board decides to deviate from such an opinion, it shall provide detailed reasons thereof in writing." Ultimately, therefore, decisions are taken by a simple majority of the 6-member Executive Board.

Of course, while all general questions should be discussed and voted on (in some cases with weighting and qualified majorities) in the body that includes all the national authorities, as proposed by the Commission in 2017 and Christian Noyer's report in 2024, it is the permanent members alone who should have ultimate responsibility for the individual supervision of entities under direct supervision. An advance opinion from the General Council, foreseen in the case of the AMLA, does not seem suited for the supervision of market players, which sometimes requires being able to react quite rapidly. The model of the SRB executive session therefore appears preferable in the case of ESMA.

The issue of CCPs does not seem to warrant specific treatment if the ESMA's direct supervision is expanded as outlined above, but it could be integrated into the general framework if the Executive Board (to use the name adopted by the Commission in 2017) were made up of six permanent members (including the chair), two of whom would be chosen on the basis of their expertise in post-trade infrastructure. Of course, having ESMA take on the current role of national supervisors would simplify but not challenge the current framework, which brings together the supervisors of the EU clearing members and the central banks that issue the traded currencies for the various types of decisions to be taken, notably through colleges.

With regard to disciplinary powers, the basic principle could again be based on the rules applicable to prudential regulation. It is the supervisor of the offending institution who should be able to initiate the disciplinary procedure. When the supervisor is ESMA, it would have disciplinary powers and the usual means of amicable review and appeal to the Court of Justice of the European Union would be available in the case of a breach of a directly applicable rule. In the case of a breach of a rule transposed into national law, ESMA should refer the matter to the competent national authority. For market abuse, which may have a criminal dimension, the penalty would again be pronounced by the national authorities (with, in France, the procedure of steering the matter between the *Parquet national financier* and the AMF's *Commission des sanctions*).

Conclusion

Single supervision is possible and desirable, but it is hard to slice up. If we focus on the most systemic players, the largest CCPs, CSDs, and certain asset managers are the prime candidates. But it's difficult not to have a single supervisor responsible for all the players in the chain, from issuers to CSDs. Similarly, asset managers and the funds they create need to be monitored by a coherent system. Given the

complexity of the subject, it may be tempting to limit efforts to measures to improve cooperation between supervisors, in the hope that a single supervision system will come in due course. But we no longer have time for a long-term approach. The Savings and Investments Union needs a single supervisory system that will in any case rely heavily on the resources of national supervisors.

Bibliography

ACPR (2022), Notice méthodologique relative à l'identification des « Autres établissements d'importance Systémique » (A-EIS) et à la détermination des taux de coussin associés, juin.

CESR (2004), preliminary progress report which supervisory tools for the EU securities markets? An analytical paper open to consultation, Paris, October.

Cœuré B. (2024), Union des capitaux : s'inspirer de la politique de la concurrence, Les Echos, 3 May.

Committee of Wise Men's recommendations (2001), final report on the regulation of european securities markets, Brussels, 15 February.

Council (2013), Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, 15 October.

EBA (2014), Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs), EBA/GL/2014/10, 16 December.

ESMA (2022), Peer review of the scrutiny and approval procedures of prospectuses by competent authorities, peer review report, ESMA42-111 7170, paragraph 107, 21 July.

ESMA (2024), Building more effective and attractive capital markets in the EU, position paper, May.

European Commission (2001), 2001/527/CE, Decision establishing the Committee of European Securities Regulators, 6 June.

European Commission (2017), Proposal for a Regulation as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs, COM/2017/0331 final, 13 June.

European Commission (2017), Proposal for Regulation Amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and Regulation (EU) 2017/1129 on the prospectus

to be published when securities are offered to the public or admitted to trading on a regulated market, COM/2017/0536 final-2017/0230 (COD), 20 September.

European Commission (2020), Delegated regulation (EU) 2020/1303 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the criteria that ESMA should take into account to determine whether a central counterparty established in a third country is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States, 14 July.

European Commission (2024), Targeted consultation document assessing the adequacy of macroprudential policies for non-bank financial intermediation (NBFI), Directorate-general for stability, financial services and capital markets union, 22 May.

European Commission (2024), mission letter Maria Luís Albuquerque, 17 September.

European Council (2024), Special meeting, conclusions, 18 April.

European Parliament and Council (2004), Directive 2004/25/EC on takeover bids, 21 April.

European Parliament and Council (2004), Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, 15 December.

European Parliament and Council (2014), regulation (EU) No 596/2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, 16 April.

European Parliament and Council (2014), Regulation (EU) No 806/2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, 15 July.

European Parliament and Council (2017), Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, 14 June.

European Parliament and Council (2019), Regulation (EU) 2019/2099 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs, 23 October.

European Parliament and Council (2020), Regulation (EU) 2021/23 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU)

2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132, 16 December.

European Parliament and Council (2024), Regulation (EU) 2024/1620 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, 31 May.

Larosière, Jacques de (2009), The high-level group on financial supervision in the EU, report, Brussels, 25 February.

SEC (2024), mission.

Appendix

Appendix 1: The people who contributed to this debate paper

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Appendix 2: Reports and declarations addressing the issue of supervision of capital markets in the EU

Appendix 2.1 Christine Lagarde (2023), *A Kantian shift for the capital markets union*, speech at the European Banking Congress, Frankfurt am Main, 17 November (extract)

So it is time to enact what I call a "Kantian shift" – and to move from a bottom-up approach to a top-down one.

Even though the US capital market developed organically in response to a need for funding, establishing appropriate institutions was critical to sustain it. Indeed, the creation of the Securities and Exchange Commission (SEC) in the 1930s played a pivotal role in suppressing state efforts to fragment securities markets.

The European Securities and Markets Authority (ESMA) does some of that in the EU, but it is not truly *single*. Supervision remains largely at the national level, which fragments the application of EU rules. In fact, enforcement powers are often split across several national regulators.
Creating a European SEC, for example by extending the powers of ESMA, could be the answer. **It would need a broad mandate, including direct supervision,** to mitigate systemic risks posed by **large cross-border firms and market infrastructures such as EU central counterparties.**

But beyond a strong institution, a single rulebook is also key – a lesson we have learned in the banking sector. Before the great financial crisis, an approach based on minimum harmonisation led to a weak regulatory framework, creating an uneven playing field and enabling shallow, reversible financial integration. By contrast, when the banking union was launched, the development of a single rulebook – a set of unified, directly applicable rules for all banks – levelled the playing field.

To mitigate fragmentation in EU capital markets, **a more ambitious approach should involve the creation of a single rulebook enforced by a unified supervisor**. That would empower private entities to expand their ambitions in fostering high-growth private investments.

Appendix 2.2 Association française des marchés financiers (AMAFI, 2024), A new impetus for capital markets to meet the financing needs of the Union, 2 January (extract)

Reforming ESMA's mandate and governance

- ***Adding competitiveness to the ESMA's mandate***

The EU's concern for competitiveness must translate into a radical change of approach, which should be reflected in the very mandate of the supervisory authorities, as they play a fundamental role in the development and implementation of regulation. In this way, the ESAs' mandates, and in particular the one of ESMA, should be modified. The objectives set for by the regulation establishing it (Regulation (EU) 1095/2010, Art. 1.5) should be modified: alongside the contribution to *"ensuring the integrity, transparency, efficiency and orderly functioning of financial markets"* and to *"enhancing customer and investor protection*", ESMA's mandate should include *"ensuring the competitiveness of the financial markets"*.

This should lead ESMA to consider competitiveness when it is engaged in rulemaking or supervision, from both the internal perspective and outside of the EU.

- ***Towards a more pragmatic governance***

At a time when firms need to adapt quickly in a fast-changing environment, ESMA needs to be able to be reactive and agile in its decision-making process. This is the reason why AMAFI believes that ESMA's governance needs to be fundamentally reformed to strengthen its decision-making power and make it more adaptable.

  - Changing the decision-making process of the Board of Supervisors (BoS)

In taking decisions, the BoS members face two particular challenges: firstly, the need to understand issues that are often highly technical; and secondly, the need to ensure that national interests do not unduly interfere. As such and while simple majority voting may appear to be the most "democratic" approach, it does not reflect the reality of financial markets in Member States, which vary widely in size and complexity. For this reason, we believe that new voting arrangements should be considered that reflect the heterogenous weight of the financial markets of the Union and the different areas of expertise of each national market authority. We also consider that, as it is the case with simple majority voting, abstentions should never count as a vote for or against, regardless of the matter being voted on.

  - Replacing the existing Management Board with an Executive Board

Echoing the governance of the upcoming Anti-Money Laundering Authority, AMAFI considers that an Executive Board composed of a few selected members would enable ESMA to take some decisions more efficiently.

The main objective is to provide ESMA with a decision-making process that is better guided by concerns for the smooth functioning of financial markets, limiting potential political and national interferences. Such a development is of paramount importance not only for the agility of the decision-making process but also to reinforce the international stance of the Union.

- ***Towards ESMA's direct supervision***

Firms with pan-European operations report encountering varying approaches from different NCAs. This hampers their competitiveness, as it becomes more arduous to

establish common processes and tools that would allow them to reduce the cost of their services and products for investors and issuers. There would be benefits from a supervisory, business (time to market related considerations) and level playing field perspective to bring these actors under the single supervision of ESMA.

Unfortunately, at this point, it does not appear feasible to pursue such an initiative through a binding text that would translate into direct supervision by ESMA of all market participants. Primarily, because many, if not most, Member States are unlikely to concede the transfer of sovereignty that would be implied by the acquisition of such generic direct supervisory powers by ESMA. Additionally, direct supervision at the European level may not make sense, or bring the same value, for all players of a given sector. Lastly, it is important to note that ESMA would need to acquire the required expertise and resources to execute any new direct supervision, which will hence need to be part of a gradual approach.

Therefore, AMAFI suggests an approach whereby, for those sectors of activity which the European authorities would consider to be a priority, ESMA supervisory powers would be enhanced for the sectors in question: ESMA would be responsible for the supervisory framework and would perform direct and indirect supervision of actors according to relevant criteria (significance of the business, cross-border activities…). Consideration could be given, alternatively, to a system under which market participants could express, as part of this framework, their interest in being placed under the direct supervision of ESMA. The conditions under which this mechanism would operate would need to be defined to guarantee that ESMA can respond to transfer requests and perform both its direct and indirect

supervisory duties effectively, and to ensure that a level playing field is guaranteed throughout the sector concerned by this possibility.

Whilst such an approach might be considered to contribute to the fragmentation of EU capital markets, it could on the contrary, if managed within a consistent framework, bolster the competitiveness of market players with pan-European operations and reduce fragmentation in supervisory practices.

This approach would also provide for some flexibility, as it may be more efficient for smaller entities with local operations to remain under the direct supervision of their NCA, in direct coordination with ESMA.

In the medium to long term, AMAFI considers that Single Supervision in Europe must be the ultimate goal, as it is a condition to the effective union of capital markets. It is imperative to eliminate uncoordinated national exemptions and prevent domestic gold plating of EU law to deliver a Single European Rulebook. This necessitates a strengthened ESMA, able to promote close collaboration and alignment amongst national supervisors to promptly and decisively intervene in instances of diverging regulatory practices.

Appendix 2.3 European League for Economic Cooperation (ELEC, 2024), Why EU Capital Markets Union has become a "must have" and how to get there, February (extract)

ESMA reforms

The next CMU action plan should enhance and broaden the role and structure of ESMA as the main EU markets authority. ESMA should be recognized as a fully-fledged supervisor with the necessary power and independence. A lot of work has been done to create a single rulebook, but it is still applied and enforced differently. This makes financial activities unduly expensive and increases regulatory uncertainty. The current EU supervision model does not reflect the high degree of interdependence in our financial markets. Supervision should be performed by a central authority when markets operate across borders to overcome the otherwise chronic vulnerability that lies in regulatory arbitrage. The successful reorganization of banking supervision following the Great Financial Crisis from a strictly national competence to a shared European responsibility demonstrates both the merit and the feasibility of a de facto federalization of supervision. The reform of ESMA should therefore draw inspiration from the established SSM-model where centralised decision-making goes hand-in-hand with utilizing local NCA expertise. Doing so, one would inevitably also create a European counterpart to the SEC, which is also promoted by ECB President Lagarde (2023).

ESMA supervision on critical cross-border market infrastructures, such as clearing houses, exchanges and securities depositories, would be a logical first step. In this context, we note ESMA has already been entrusted with the direct supervisory oversight of "third country" Tier 2 CCPs which dwarf EU-based CCPs and thus pose the greatest risk to the financial stability of the EU. The logic of extending that supervision to the home-grown sources of financial instability in capital markets is clear. More generally, ESMA should be given the task and the powers to supervise the entire wholesale financial market via joint-supervisory teams with NCA staff. On the conduct authority side, a similar case exists for centralizing supervision, albeit a bit less strong. Retail market supervision for instance is better left to NCAs given the stronger interaction with local language and culture, as is the case with the marketing of a specific retail product. ESMA should also improve, harmonize and centralize the collection of market and supervisory data, becoming a hub for information and analysis. To reinforce its independence and allowing it to endow itself of adequate technical expertise, ESMA's funding should come entirely from levies on the capital markets industry.

Overall ESMA could, together with the Commission, become a driving force behind the development of the CMU. As such it should identify barriers to integration and devise ways of surpassing them so that market participants can freely exploit the

opportunities that a larger, more integrated capital market would offer. Schumpeterian creative destruction would powerfully contribute to a higher performance of the capital market thus benefiting the economy of the euro area.

Appendix 2.4 Enrico Letta (2024), Much more than a market, report, April (extracts)

A pivotal structural measure involves establishing a **single-entry point to public capital markets for small and mid-cap companies**. It is imperative to establish a specialised section of the capital markets tailored to small and mid-cap companies, with simplified listing requirements proportionate to their age, size, and ownership structure, serving as a preparatory phase prior to transitioning to the main segment. Encouraging collaboration among key EU stock exchanges to pool their small and mid-sized segments, thereby creating a unified IPO gateway to EU public markets for these companies before they transition to their chosen EU stock exchange's regulated market, is also paramount. **Granting direct supervision of this joint venture to ESMA will streamline the regulatory and supervisory framework of such a unified IPO access point**. (...)

A crucial structural initiative involves **advancing towards more comprehensive and integrated supervision of financial markets.** While stronger regulators and supervisors alone cannot create the Savings and Investments Union, the absence of a robust and standardised framework can impede further integration. **Establishing a single, centralised supervisor in the EU at this stage may be premature, potentially overlooking the benefits of proximity to the diverse local financial markets and economies within the EU. Conversely, relying solely on national-level supervision is also inadequate.** The system must evolve similarly to the banking sector's single supervisory mechanism, where the ECB's Single Supervisory Mechanism (SSM) directly oversees significant banks, while national supervisors manage less significant ones. Concurrently, a **strengthened European Securities and Markets Authority (ESMA), in collaboration with National Competent Authorities**, **could assume more supervisory responsibilities for major entities based on criteria such as size, cross-border activities, and their systemic importance, encompassing trading venues, issuers, asset managers, and other financial market participants.**

Considering previous endeavours, the progression towards more integrated supervision within the securities domain entails **gradually enhancing the direct supervisory powers of ESMA, adopting a bottom-up strategy**. This approach opens up various pragmatic pathways.
One option involves shifting the supervision of the most integrated markets or significant market players to ESMA, particularly when supervision proves more effective at a supranational level, such as with equity markets.
Another route requires the European Commission to assess market integration for each Directive or Regulation moving forward. This assessment aims to pinpoint where supervisory efficiency is most advantageous and suggests a data-driven handover to ESMA whenever a Directive or Regulation undergoes review.
In instances where market integration is less apparent, the mutual recognition and convergence of supervisory practices should suffice to ensure the efficiency of the supervisory function.

Such transfer of powers raises the question of the adequacy of the **governance and decision-making processes of ESMA**. Increasing ESMA's direct supervision should be coupled with a change in the governance system. Currently, the Board of Supervisors and the Management Board are composed of national competent authorities, plus the Chairman and some non-voting members. This composition does not necessarily guarantee the efficiency of ESMA's decisions or ensure the necessary degree of independence, as it embeds the interests of national authorities. This governance structure may be a factor that makes it more difficult to take action in sensitive areas, particularly with respect to Article 17 enforcement action. The mandatory review of the European Supervisory Authorities (ESAs) includes in fact: "*the impartiality, objectivity and autonomy of the authority*". (...)

Road map

By 2025

- Implement a single access point for public capital markets, specifically designed for small and mid-cap firms, to consolidate their market segments via key EU stock exchanges, simplifying their transition to main market segments under ESMA's direct and streamlined supervision. (...)

By 2026

- Progress toward a cohesive and comprehensive supervision of financial markets by adapting a model similar to the banking sector's supervisory mechanism, where a strengthened ESMA, in collaboration with National Competent Authorities, could assume more supervisory responsibilities for major entities.

Appendix 2.5 Christian Noyer (2024), Developing European capital markets to finance the future – Proposals for a Savings and investments Union, report by a expert committee, April (extracts)

4.2. Reform of the governance and running of ESMA is a prerequisite to any extension of its powers. (…)

4.2.2. The reform of the governance and running of ESMA could usefully be modelled on more recent authorities such as AMLA

In terms of governance, ESMA needs to be made autonomous with respect to the Board of Supervisors (BoS) for individual decisions. For normative decisions of general scope, the role of the BoS could be maintained without a problem. Nevertheless, more agility appears to be necessary with regard to individual decisions.

To this end, the organisation of the Anti-Money Laundering Authority (AMLA) and the Single Resolution Board (SRB) could provide useful inspiration.

These two authorities have the particularity of having a stronger central decision-making body in the shape of an Executive Board, comprising the Chair and five other members (including the Vice-Chair at the SRB, sitting as a non-voting member), which is responsible for individual decisions concerning directly supervised entities. This model is also similar to the Board of Governors of the US Federal Reserve System (Fed), which has the authority to take individual decisions in matters of supervision without referring them to the regional Feds.

This structure would make for a more agile decision-making process than formations comprising all the supervisors, since the members of the Executive Board would be permanent members of ESMA. The smaller number of Executive Board members with a broader range of profiles would also support the development of a more consistent and robust internal policy, which could give more weight to proposals for ESMA's services in internal work. Lastly, this configuration would theoretically ensure a geographical balance in the representation of the various Member States.

The Executive Board would continue to have knowledge of draft rules submitted for the approval of the BoS, which implies maintaining a representation of the European Commission and European authorities, in smaller numbers (such as two instead of six) for these decisions. The current Management Board and Central Counterparties Supervisory Committee would therefore be scrapped and its current powers transferred to the new Executive Board.

In addition to these governance adjustments, it would also be useful to revise the organisation of supervisory work at ESMA under an integrated model, by creating

joint supervisory teams (JSTs) under ESMA's lead. This model would also be based on AMLA or the SSM. Documentary and on-the-spot supervisory work would hence be conducted by teams of ESMA staff working with national competent authorities under the leadership of ESMA, and individual decisions would then be taken by ESMA's Executive Board.

This type of organisation would facilitate ESMA's upskilling in its new supervisory tasks leveraging national supervisors' expertise, and would also offer guarantees to entities transitioning to ESMA supervision by enabling them to maintain their pre-existing level of dialogue with their domestic national competent authorities.

ESMA should also be granted real no-action letter powers when certain level 1, 2 or 3 rules appear clearly inapplicable in the light of market developments or financial stability concerns. The introduction of a power of this kind in the ESA review has not yet made for the effective deployment of this tool, since ESMA was not granted a power of suspension of obligation, but rather a power of deprioritisation. Consequently, ESMA only uses this tool when a revision of the relevant legislation is underway and provided that it has received guarantees from co-legislators that this revision will definitely change the provision concerned to address the problem identified. Conversely, no-action letters from American authorities are more explicit as to the suspension of legal effect. This asymmetry of means between the EU and third-country jurisdictions has created competitive disadvantage situations due to the lack of agility granted the European authorities.

Finally, to enable ESMA to better consider the competitiveness of European financial market players and markets, the objectives assigned to it should be broadened to explicitly include the competitiveness of European markets, in addition to the goal of ensuring 'the integrity, transparency, efficiency, and proper functioning of financial markets' already assigned to it. This expansion of ESMA's objectives would be comparable to that recently implemented by the FCA (Financial Conduct Authority) and the PRA (Prudential Regulation Authority) in the United Kingdom.

4.3. ESMA's powers should be extended by different means depending on the actors and markets covered

4.3.1. Mandatory supervision by ESMA is essential for the most cross-border and systemic market infrastructures

Clearing houses and central securities depositaries (CSDs) are of the most significant systemic importance.

Since the 2008-2009 crisis, central clearing has been concentrated among a few systemic central counterparty clearing houses (CCPs)[25]. The monopolistic nature of

[25] CCPs are private sector infrastructures that intervene in the "post-market" phase, i.e. after the trading of securities on the markets. Their role is to limit the counterparty risk by intermediating between buyers and sellers to ensure the delivery and payment of

clearing houses – associated with massive scale effects due to netting transactions and the advantages associated with available liquidity – foster the emergence of extremely large actors operating across national borders. The systemic importance and cross-border nature of clearing houses is well known and regularly observable[26].

CSDs deliver securities in exchange for settlement once two counterparties have concluded an agreement on the securities markets[27]. They are therefore also of systemic importance due to their role at a number of stages key to the smooth running of the financial markets, whether in terms of issues or settlement-delivery. They are governed by a certain number of rules harmonised at European level, in particular with respect to prudential and internal organisation requirements, by means of the Central Securities Depositaries Regulation (CSDR), which came into force on 1 February 2022.

However, supervision of the CCPs and CSDs remains entirely vested in national authorities.

Only third-country CCPs are paradoxically subject to European supervision. ESMA measures the systemic importance of third-country clearing houses for the financial stability of the European Union with the assistance of the central banks. The EU has also logically tasked ESMA with the direct supervision of the most systemically important third-country clearing houses.

For European CCPs, the option of centralised supervision has been systematically ruled out by somewhat fallacious arguments. An idea often put forward is that only the country in which the clearing house is established could bear the budgetary cost of a resolution. However, in the highly improbable event of a resolution, losses would be shared among European actors: the framework for the recovery and liquidation of European clearing houses adopted in 2020 is based on the principle of an allocation of losses between the clearing house, clearing members and, where applicable, their clients. These last two categories imply that losses are shared on an intra-European basis with, most probably, a massive impact on the clearing member banks.

The EMIR colleges do not take issue with the principle of national supervision. These colleges are made up mainly of ESMA, the CCP's national competent authority, which also chairs the college[28], competent authorities responsible for the supervision of the

securities during the transaction conclusion phase, including in the event of default by one of the parties. Following the 2008 crisis, the use of clearing houses was gradually made mandatory for certain transactions to strengthen financial stability by reducing the risk of chain defaults on the markets. However, effectively reducing financial stability risks by means of the obligation to use clearing houses implies that the CCPs themselves apply strict risk management measures. In the European Union, the EMIR regulation in effect since August 2012 lays down the main prudential rules applicable to clearing houses.

[26] In 2022, huge numbers of European energy players were subject to massive margin calls issued by EEX established in Germany and ICE Clear Europe established in the United Kingdom. Yet the sums called were in part due to risk management models submitted for the approval of national supervisors alone.

[27] Central securities depositories ensure that securities are not delivered if payment has not been made and vice versa, record newly created securities (securities created by issues) in a book entry system and keep centralised accounts to ensure that the number of securities created equals the total number of securities in circulation at any given time.

[28] With the upcoming entry into force of EMIR3.0, ESMA will become co-chair of the colleges with the national competent authority concerned. ESMA will therefore be involved in setting the dates of college meetings and their agenda. Nevertheless, EMIR3.0

clearing members making the largest contributions to the central counterparty's default fund, and competent authorities responsible for the supervision of the trading platforms and central securities depositories to which the central counterparty provides services. (...)

While their opinions remain non-binding, the EMIR colleges have not become supervisory tools, but rather chambers recording the decisions made by the national competent authority and, at best – but highly variable from one clearing house to the next – mechanisms for the exchange of information[29].

With respect to the CSDs, the latest revision of the CSDR called the "CSDR refit" made it a requirement for colleges to have an extremely reduced role of mere information sharing when the CSD is of systemic importance to two Member States other than its State of establishment[30].

The post-market infrastructures are therefore natural targets for a mandatory transition to ESMA supervision[31].

This transfer of supervision to ESMA could be a gradual process, initially concentrating on the most systemically important CCPs and CSDs, which could be selected on the basis of a combination of quantitative criteria regarding (i) the volume of transactions/securities handled by these infrastructures, and (ii) the scale of the cross-border part of their business, for example by measuring the different Member States' exposure to the market infrastructure.

Secondly, a transition to ESMA supervision could be considered for all clearing houses and central securities depositories so as to prevent the perpetuation of a situation whereby smaller market infrastructures can benefit from a competitive advantage by retaining the benefits of what might be laxer supervision depending on their place of establishment.

In addition to its beneficial effect for financial stability, assigning the supervision of the CCPs and CSDs to the European level would also reduce post-market fragmentation and be conducive to integration among large pan-European groups. In general, this development would guarantee a uniform interpretation of the different applicable European regulations and would prevent regulatory arbitrage and competitive distortions[32]. In breaking with the multitude of colleges, it would also allow for a more efficient allocation of public supervision resources.

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explicitly provides for the national competent authority to have the last word on these aspects in the event of disagreement. The development is therefore purely symbolic.

[29] The European Commission made the following observation in its impact study drafted for the EMIR3.0 review: "Confidential information provided to DG FISMA services stated that there is a risk that, following authorization, CCP colleges have become a mechanism for the exchange of information, rather than an effective supervisory tool."

[30] These colleges are then made up mainly of the relevant CSD's national competent authority, ESMA and the national competent authorities of the Member States in which the CSD's activity is deemed significant. The minimal frequency of college meetings is also very low (one per year).

[31] The ECB will need to be involved in certain decisions, especially concerning clearing houses with a credit establishment licence.

[32] For example, the interpretation of the substantive scope of clearing house decisions, which must be subject to an EMIR college opinion in a necessarily longer timeframe than a scenario where solely the national authority decides on a matter.

In the specific case of CCPs, transition to single European supervision would drastically reduce time-to-market and costs for private actors[33].
In the case of CSDs, supervision with European legitimacy could enable issuers, especially public issuers, to opt where relevant for CSDs that are not established in their country. This could strengthen competition between CSDs and reduce settlement-delivery costs.

Trading venues of European scale would also benefit from an integrated supervision through ESMA. Although they do not directly have a systemic dimension comparable to that of CSDs and CCPs, their operational resilience is a central point for the proper functioning of markets.

• Over the past decade, several have pursued an ambitious consolidation strategy, like Euronext (exchanges in Paris, Brussels, Dublin, Lisbon, Oslo, Amsterdam and Milan) and Nasdaq Nordics (exchanges in Sweden, Denmark, Finland, and Iceland).

• These consolidations should be significant levers for integrating European financial markets, providing investors with a theoretical single order book in the case of Euronext. From the issuers' perspective, this integration should allow access to a considerably expanded liquidity pool, even though post-trade fragmentation still limits effective investor access to this integrated liquidity pool.

• However, the absence of integrated European-level supervision limits the benefits trading venues and their users derive from this bottom-up consolidation. For example, Euronext benefits from the coordination of its supervisors through a college, voluntarily established within the framework of a memorandum of understanding without EU level prescription. However, in the absence of a supranational legal basis, this relies on a consensus system, effectively aligning with the most demanding process of the concerned regulators. Therefore, Euronext submits requests for pre-validation of trading rule changes as they are required by the law of 3 of its 7 national supervisors. Audits are conducted on a national basis, even though the company operates a unified technological platform and internal subcontracting must be subject to complex formalization.

In this context, it is recommended to transfer the supervision of the most significant trading venues to ESMA. This transfer of supervision to ESMA would be mandatory based on quantitative criteria, similar to those used for DCTs and CCPs, this time considering the size and cross-border dimension of these operators' activities, to initially limit this supervision transfer to the operators with the largest and most

[33] Although EMIR college decisions are not binding, they – justifiably – take time. A supervisor's approval for the launch of a service or line of business takes 8.5 months on average, with lead-times ranging from 3 to 15 months once the application has been declared complete by the national supervisor. Applications for validation of significant changes to risk models can take up to 2.5 years. Although these lead-times are due in part to the completeness checking stage, there is no doubt that the multitude of authorities involved in supervision decisions, when the only decision-making authority remains the national authority, not only fails to meet the financial stability objectives, but also increases the costs for private actors.

international volumes. This integrated supervision would be intended to replace, rather than supplement, the supervision of the relevant national authorities.

• This transition to integrated supervision would go hand in hand with the recognition of intra-group services, an alignment of the supervision mechanisms of operators and market rules, replacing the applicable national frameworks, and a centralization of reporting and monitoring systems.

4.3.2. For asset managers of European scale and their funds, a more integrated supervision is also recommended

As with trading platform operators, European supervision should be considered as a lever for competitiveness for European asset managers. Unlike the CCPs and CSDs, the other market players have less of a systemically important profile. This calls for the relevance of their integrated supervision to be considered, not in terms of financial stability stakes, but from the point of view of integration and competitiveness objectives.

Integrated supervision should enable European asset management champions to benefit from the economies of scale generated by the single market by benefiting from recognition of the group notion for those operating and singularly being recognised as integrated European groups.

This recognition of the concept of a group would, at a minimum for European-scale asset managers, involve the creation of mandatory colleges of supervisors led by ESMA. These colleges could help bring the entire market towards the path of integrated supervision and control the risk of a new form of fragmentation. They would be chaired by ESMA and able to issue binding opinions on certain key supervisory decisions.

For asset managers wishing to benefit from more integrated supervision, an opt-in arrangement for direct supervision by ESMA would be offered. Such voluntary mechanism would allow for the gradual building of ESMA's credibility as a direct supervisor, which could lead to an increasing number of actors opting for this integrated supervision as the associated benefits become established. The condition of explicit agreement from the concerned parties would ensure that the transfer of authority occurs under conditions favourable to their competitiveness.

The opt-in is therefore a response to the current political deadlock over the scale-up of European supervision. With some Member States and actors still opposed to any extension of ESMA's supervisory powers, the proposed approach would offer a simple option to voluntary players without any impact on those who wish to remain supervised by their national competent authorities.

Basically, certain market players could opt for a 28th European supervision regime enabling them to be supervised as integrated European groups**.** This 28th regime would provide a response particularly well suited to asset managers, many of whom operate in the EU on the basis of integrated models via entities established and accredited in several European Union jurisdictions. To mitigate the significant shift that moving from national to integrated European supervision might represent, it would be appropriate to allow them to make this transition either entity by entity or directly at the group level at their discretion.

Distributed products could also be placed under this integrated supervision regime, in particular investment funds defined under European law (such as UCITS[34]and ELTIFs). In this case, the funds would be authorised and supervised by ESMA where their managers so request. From the point of view of corporate law and tax law, the vehicle could be registered in a Member State, but the financial product would be supervised by ESMA. A European support could even be developed in the long run based on the "European company" model.

For investment funds, the opt-in would offer a more effective marketing passport. A single validation of marketing documentation by ESMA would be planned, with no recourse possible by the competent national authorities: this would significantly accelerate the 'time to market' for funds, provided that ESMA's approval times are in line with those currently observed at the national supervisors. The single validation of marketing documentation would allow circumvention of the heterogeneity of national rules, particularly in terms of ESG communication. Furthermore, fund passporting would be facilitated by eliminating the notification requirement. It is also important to note that asset managers could choose to register and supervise some funds intended for cross-border purposes while keeping other funds under a national regime.

This opt-in option would also be offered to trading platform operators and post-trade infrastructures that wish to benefit from integrated supervision, but do not meet the quantitative criteria that make it mandatory. (…)

[34] Most likely on the condition of the directive becoming a regulation.

Appendix 2.6 French Council of Economic Analysis and German Council of Economic Experts, (2024), Enhancing EU Capital Markets, Joint Statement, July (extract)

Strengthening European supervision of capital markets

The EU should reinforce its supervisory effectiveness and make it conducive to greater market integration by strengthening and reforming both the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Supervisory Authority (EIOPA). Supervisory fragmentation along national lines has emerged as a bigger obstacle to EU capital markets integration than the remaining regulatory differences. Transformative progress can realistically be achieved in this area to catalyse the next steps of the CMU.

ESMA is the EU's financial markets regulator and supervisor. It does this by promoting supervisory convergence between National Competent Authorities (NCAs) as a "supervisor of supervisor", directly supervising specific market players, such as credit rating agencies, and monitoring financial markets.

The transformation of ESMA should include its governance and funding framework. ESMA's Board of Supervisors is currently made up of representatives of the national supervisory authorities in the EU Member States as well as the three other states of the European Economic Area. A reformed set-up could consist of a compact executive board of five or six members that has sole authority over all administrative and supervisory decisions. ESMA's existing Board of Supervisors would remain the decision-making body for rule making. Funding should primarily be provided by a levy on the supervised entities and market segments, with a possible residual role for the EU budget to cover expenses associated with rule making and other non-supervisory activities.

In order to avoid supervisory fragmentation and a related scope for capture, it is important to shy away from creating sub-entities under ESMA that deal with specific tasks. In the past, this has occurred in the case of the supervision of central counterparties established outside of the EU (third-country CCPs) with the so-called CCP Supervisory Committee. Instead, a unitary framework of decision-making should be preserved.

The supervisory model of an empowered ESMA can be a combination of direct and joint supervision. It may be useful to distinguish between purely wholesale supervised entities activities on the one hand, and those with a retail component on the other hand. For wholesale activities, exclusive direct supervision by ESMA, with no role for national authorities, may be preferable. It should include at least all financial market

infrastructures that are critical on an EU scale, such as most stock exchanges, central counterparties, and securities depositories, with possibly a complementary role for the ECB on a subset of these. Moreover, it should entail the enforcement of regulatory requirements for which cross-border comparability is paramount, such as the implementation of public financial and sustainability reporting standards. For activities with a retail component, a variation of the joint supervisory team should be considered. Depending on specific mandates, ESMA should be sole supervisor or act as decision-making hub for tasks shared with national authorities.

A multi-location organisational concept would bring ESMA closer to market participants while reaping the benefits of supervisory integration. It would also help mitigate worries that a stronger ESMA would mechanically result in the onesided favouring of Paris as a wholesale financial centre. With the expansion of its supervisory scope, ESMA may need to open offices in major centres of market-related activity, including Amsterdam, Brussels, Dublin, Frankfurt, Luxembourg, Milan, Madrid, Stockholm, Vienna, and Warsaw, and perhaps more.

Appendix 2.7 Mario Draghi (2024), The future of European competitiveness, report, (Part B | In-depth analysis and recommendations), September (extract)

Introduce a European Security Exchange Commission

- As a key pillar of the CMU, ESMA should transition from a body that coordinates national regulators into the single common regulator for all EU security markets.

  To this purpose, ESMA should be entrusted with exclusive supervision over:

(i) large multinational issuers (i.e. those with subsidiaries in various EU Member State jurisdictions and revenue, and/or total assets above a certain threshold, a natural identifying criteria would be issuers belonging to major indices such as the CAC40, DAX, Euro Stoxx 50, FTSE MIB, IBEX 35, or else – if one wants to be more encompassing – the STOXX Europe 600);
(ii) major regulated markets with trading platforms in various jurisdictions, such as EuroNext (where ongoing supervision would be done by ESMA, while sight visits might be done by joint supervisory teams with national competent authorities (NCAs, such as Consob, AMF, BaFin, CNMV, CONSOB, etc.); and
(iii) central counterparty platforms (CCPs).

- An essential step to transform ESMA into a regulatory and supervisory agency similar to the SEC is to modify its governance and decision-making processes along similar lines as those of the ECB Governing Council, so as to detach them as much as possible from the national interests of EU Member States. Currently, ESMA's governing bodies are composed of national competent authorities, plus the Chairman and some non-voting members. To enable ESMA to take swift and decisive action in sensitive areas, it would be important to add six independent and highly-qualified individuals, including the Chair, to ESMA's Management Board, as proposed by the Letta report. Another all-important step in this transition is to shift EU security market legislation to a principles-based approach, outlining the key strategic policy choices of co-legislators, while delegating technical work to ESMA, and enhancing its powers to develop and change technical rules and streamline their adoption; and increasing its funding to enable it to efficiently carry out its regulatory and supervisory tasks.

- To overcome likely opposition, the EU regulator will have to share supervision with national regulators and elicit their cooperation along lines similar to what the ESM does with national central banks in euro area bank supervision. Turning national security market regulators into subsidiaries of a single, EU-wide one will face fierce resistance, not only by the national bureaucracies that will feel directly displaced, but also by trading platforms and market participants who draw sizeable rents from

the status-quo fragmentation, as suggested by both theory and evidence. Therefore, tactically wise steps would be to:

(i) leave the supervision of purely local issuers to national regulators, as done for the prudential supervision of smaller banks within the Eurosystem;

(ii) start from the supervision of issuers and market structures, and subsequently turn to that of mutual funds, which is likely to be more controversial;

(iii) create Joint Supervisory Teams between ESMA and national supervisors to supervise significant issuers and market structures, and mechanisms to ensure a constant and timely information flow among them.

Appendix 2.8 Silvia Merler and Nicolas Véron (2024), Memo to the commissioner responsible for financial services, Bruegel, September (extract)

European Securities and Markets Authority reform

Start with in-depth reform of ESMA to make it an effective financial supervisor, which it arguably cannot be under its current design. The model to follow is the governance and financing template of AMLA, itself based on lessons learned from previous experience. This means a compact executive decision-making board and funding by an ad-hoc levy on supervised entities under scrutiny of the European Parliament. To allow greater connectivity with market participants, the reconstructed ESMA should establish offices in the EU's major financial centres, if not in every member state; some of these offices may also host teams that lead supervision of specific market segments, thus alleviating concerns about excessive geographical centralisation in Paris. In parallel or following ESMA reform, but not before, you should work to significantly broaden ESMA's scope of direct supervision, including relevant critical financial infrastructure (in appropriate interaction with the ECB), audit firms and accounting enforcement

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