INTEGRATING EUROPE'S SECURITIES MARKETS: THE WAY FORWARD

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Ever since its inception, the European Union has sought to dismantle internal barriers and create an area that guarantees the free movement of goods, persons, services and capital. The creation of a Single Market was conceived as a solid economic project designed to encourage the unhindered mobility of commodities on a Community-wide basis, thereby placing all European producers, service providers and consumers on a single platform in a bid to enhance cost-effectiveness and efficiency.

The European securities industry is no exception. The construction of a single market for securities, where investment service providers and investors can access markets situated all across the Union, and where issuers may do likewise in order to raise capital, has been promoted by the EU ever since the early days of its existence. The rationale for this initiative is founded on the premise that a common financial market will reduce the cost of capital for companies looking to finance their operations through the market while endowing investors with a greater choice of financial products and investment services. The resultant increase in market financing and investment activity will strengthen the European economy and consequently uphold its standing on a global level.

The development of EC securities regulation, with a view to achieve the goal of market integration, began slowly in the decades leading up to the turn of the century, but largely took off in the late 1990s with the adoption of a comprehensive plan to harmonise the entire financial services regulatory structure of the Union. The Financial Services Action Plan (FSAP), an ambitious programme for legislative development in the European financial services industry, was a premeditated attempt at revolutionising the integration of Europe's capital markets. By contrast, the next major legislative overhaul would be occasioned almost as an

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afterthought to one of the single most defining events in the history of global finance; the financial crisis of 2008.

The recent events in the financial world have left a legacy for regulatory reform. Prior to the crisis' impact on the economy, national governments resisted taking further reaching measures to shift the focus of power away from their local regulators in the name of promoting a more unified Single Market. Ever the proponent of smaller government in financial services, the UK was particularly resistant, not to mention eurosceptic, about any reform which took decision-making authority away from the Financial Services Authority into the hands of the Union. On the other hand, France and Germany, the continental European champions of centralised regulation, pushed for the devolvement of further powers to Europe and its administrative bodies.

While political forces were at play, and the European powers were enmeshed in an ideological tug-of-war, the European institutions were calling for much needed reforms, specifically for regulation to create a supervisory structure to complement the vast strides that were taken following the adoption of the FSAP objectives. As cross-border activity increased, and the idea of a truly European market began to take shape, the supervisory deficiencies of the regulatory architecture became all too obvious. The future of financial integration depended, as it has done so many times in the past, on a political breakthrough. This came in the form of a recession.

In hindsight, the latest proposals from the Commission might not have even been entertained on a European forum had it not been for the economic impact of the financial crisis. More than that, it was the particular character of the crisis that may have swayed public sentiment enough to justify the latest measures. Whatever the real economic reasons for the credit crunch and ensuing global recession, the last financial crisis will go down in history as the one occasioned by the greed in Wall Street and other financial centres that capitalised on the freedom of working in a deregulated financial environment. The line that many politicians took in the aftermath followed this train of thought and, with the scapegoat having been secured, lobbying for anything other than more regulation, more transparency and more accountability in financial services became something akin to a political misdemeanour.

Nevertheless, it would be wrong, and largely inaccurate, to suggest that the latest proposals represent solely a reflection of the systemic shortcomings of the European supervisory structure that surfaced during the crisis. At least in the European securities sector, changes had been suggested and tabled at least two years

prior to the endorsement of the latest recommendations by the European Council. While the political momentum to implement change was found to be lacking before the crisis, the conviction of the European institutions towards that change was not. The adoption of the latest proposals will undoubtedly give a new look and overall function to the supporting structure of financial services regulation in Europe.

The recent initiatives taken by the Commission to reform the supervisory architecture of European financial services are only a small part of its long-stated goal of integrating national capital markets that are currently still very much fragmented along borders. The Commission has utilised regulatory harmonisation as its main driver towards this objective, though it has also recognised that this must be complemented by a supervisory infrastructure that ensures even interpretation of laws during the transposition process, and follows up with practices to guarantee proper implementation. It also naturally follows that an enforcement mechanism must eventually be assembled to hold defecting market participants liable to sanctions for bad practices. Therefore, the integration process must consist of a comprehensive set of reforms that consolidate the content, interpretation, supervision and enforcement of laws regulating the industry. This article attempts to review each of these strategies individually, before going on to address the way forward for the Union in completing this grand project.

The Economic Backdrop

Upon review of the empirical evidence, the Union's progress towards legislative harmonisation has been discontinuous, most likely the result of the erratic decision-making processes that inherently exist within the European Commission and Council of Ministers. Nevertheless, this has not curtailed the Union's reliance on legislation as a principal tool in the integration project. The volume of directives and regulations issued by the EU since the adoption of the FSAP has been considerable and at times, for national legislatures and regulators, overwhelming.[2] The economic impact of the legislation has been hard to assess, particularly since the advent of the financial crisis. Cross-border trading activity has been anaemic, as has the movement away from bank-based to market-based finance. Yet despite the slow

[2] The Economist, 'Actions speak louder than words' *The Economist* (London, May 7 2003) <http://www.economist.com/node/1762448> accessed 12 July 2011.

movement, the transformation of Europe's financial markets is clearly evident.

Since commencing the implementation of the FSAP measures, securitisation activity has increased, market finance has become more popular as a method for raising capital, financial products have become more sophisticated, and the private sector has become more deeply involved in security-based markets as a result of the greater choice of investment options available.[3] In 1999, for example, public offerings in Spain, Germany and Italy raised more equity than those in the UK.[4] The introduction of the euro has also helped to accelerate the integration process, providing a stable tool for value comparison by retail and professional investors.[5] Convergence of prices of European government bond prices has, in particular, been significant since the introduction of the single currency.[6] The EU Commission has also reported that despite the external economic malaise, liquidity has deepened, competition has increased, and financial stability has grown.[7] The advent of the financial crisis slowed down the integration process over the last few years, but since the commencement of the recovery of most European economies in Q2 2009, progress is being made once more.[8]

Over the last few years, corporate bond and equity markets have shown positive signs of integration, despite the lack of a properly harmonised post-trading infrastructure.[9] The cross-country dispersion of euro-area equity returns is a solid indicator of the integration progress, and was diminishing significantly until the oncoming of the financial crisis. Since then, the dispersion statistics have been on the rise, suggesting that during market turbulence, investors tend to focus more on domestic markets

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[3] London Economics, *Quantification of the Macro-Economic Impact of Integration of EU Financial Markets: Final Report to European Commission* (November 2002) 1.

[4] E Nowak, 'Investor Protection and Capital Markets Regulation in Germany' in I P Krahnen and R H Schmidt (eds.), *The German Financial System* (Oxford University Press 2004) 141-163.

[5] *London Economics* (n 3) 2 .

[6] S Weber, 'European Financial Market Integration: a closer look at Government bonds in Eurozone Countries' (*DIW Berlin German Institute for Economic Research*, March 2009) <http://www.diw.de/documents/publikationen/73/diw_01.c.95981.de/dp864.pdf> accessed January 2011.

[7] Commission, 'White Paper: Financial Services Policy 2005-2010' COM(2005) 629 final.

[8] Commission, 'European Financial Integration Report 2009' SEC(2009) 1702 final 4.

[9] Ibid 7.

than engage in what they perceive to be riskier cross-border strategies.[10]

Furthermore, sovereign bond markets in the euro-area experienced spread divergences in yields during the crisis, suggesting that during times of volatility, markets still focus on country-specific risks, despite the utilisation of a single currency.[11] The recent sovereign debt crisis, which contributed to an unprecedented yield spread between Germany and embattled euro economies such as Greece and Ireland, provides further testimony to this reality. Furthermore, the issuance and trading of complex asset-backed securities, such as collateralised debt obligations (CDOs), virtually came to a halt during the crisis, while the interbank money market, considered to be one of the most integrated markets in the EU, also showed signs of segmentation.[12]

However, despite the shortcomings of the process, the financial integration of EU markets was widely credited for having contained the adverse impact of the crisis on the financial system and European economy in general.[13] In 2009, sovereign bond yield spreads narrowed, and the dispersion of cross-country equity returns decelerated, only to widen again once the sovereign debt crisis took effect.[14] On the equity side, prices have increased with renewed investor confidence, and money market interest rate spreads have also started to converge.[15] This progress towards securities market integration does however seem to be consistently brought about by economic factors that are generally not the result of any attempt by the EU to harmonise legislation within the Community. Nevertheless, this has seemingly not had any effect on the importance that the EU grants to regulatory standardisation in the integration process. Substantive

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[10] Lowest point reached was 1.97% in January 2006. Latest statistics show the dispersion at 3.99%. The last period the dispersion rate was this high was in September 2002. European Central Bank, 'Financial Integration Indicators' <http://www.ecb.int/stats/finint/html/index.en.html> accessed 10 January 2011.

[11] Ibid.

[12] L Papademos, Vice President of the ECB, 'Financial Integration, Development and Stability: The Legacy of the Crisis' (*ECB and EU Commission, Frankfurt am Main*, 12 April 2010) < http://www.ecb.int/press/key/date/2010/html/sp100412_1.en.html> accessed January 2011.

[13] Ibid.

[14] *Commission* (n 8) 10.

[15] Ibid 49.

harmonisation is the method most central to the EU's goal of integrating Europe's securities markets.

Substantive Integration

The FSAP heralded an avalanche of new legislation emanating from the EU, creating an entirely new financial services legal regime for the Community. Twenty-eight Directives covering issues across the entire financial services spectrum, adopted in just six years, have now all been transposed into the national law of the EU-27 area.[16] Since then, the Commission has continued to look for new ways in which Member State legislation can be integrated further.

The Commission's white paper on 'Financial Services Policy 2005 – 2010'[17] ushered in the second phase of EU central planning in financial services. The new policy was altogether less onerous on the Member States than that put forward by the FSAP. The focus of the new plan was less on regulation, and more on consolidation and supervision. In the securities sector, the only area which was highlighted by the Commission for development was clearing and settlement, stating that the existence of the Giovannini barriers in the post-trading sphere was hindering cross-border activity, and that the situation should be monitored with a view to coming forward with a proposal in the near future.[18] Since then, many strides forward have been taken by CESAME and CESR, and a new framework Directive targeting the regulation of Central Clearing Counterparties (CCPs) is currently in the consultation phase.

Another measure that is currently being considered is the regulation of the derivatives market. The financial crisis exposed the risks prevalent in not having CCPs covering over-the-counter (OTC) derivatives, especially credit default swaps (CDSs).[19] At present, around 80% of derivatives are traded OTC.[20] The lack of

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[16] Commission, Transposition of FSAP Directives, State of Play as at 19/03/2010 <http://ec.europa.eu/internal_market/finances/docs/actionplan/index/100319-transposition_en.pdf> accessed January 2011.

[17] *Commission* (n 7).

[18] Ibid 12.

[19] *Commission* (n 8) 61.

[20] EU Press Release, 'Michel Barnier Member of the European Commission responsible for the Internal Market and Services: Financial regulation in Europe – where next?' (SPEECH/10/141, 2 April 2010)

regulation in this area was noted by the Commission, which has since carried out a public consultation and issued a communication calling for legislative measures to be put in place to alleviate risk in derivatives trading.[21] A legislative proposal from the Commission was tabled in September 2010.[22]

In the same year, the Commission also made significant amendments to the Prospectus Directive. This was considered necessary in order to increase legal certainty and remove any unnecessary administrative burdens that still hampered the exportability of an EU-approved prospectus.[23] Among the major changes adopted were the introduction of proportionate disclosure requirements, alleviating some of the burden endured by small and medium-sized enterprises (SMEs) and small lenders, as well as the extension of the right of home Member State selection to issuers of all non-equity securities, whatever their denomination.[24] The amendments also sought to achieve more consistency among securities framework Directives by removing any transparency requirements from the Prospectus Directive which already exist under the Transparency Directive, as well as aligning the definition of 'qualified investor' under the Prospectus Directive with that of 'professional client' under MiFID.[25]

In a speech given in March 2010, the EU Commissioner for the Internal Market highlighted that one of the principal goals of his mandate for the next five years would be greater transparency in securities transactions,[26] a political policy no doubt motivated by the risky and irresponsible behaviour of market participants in recent years, considered to be the principal cause of the latest financial crisis. The derivatives markets will be standardised to

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<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/141&format=HTML&aged=0&language=EN&guiLanguage=en> accessed January 2011.

[21] Commission, 'Ensuring efficient, safe and sound derivatives markets: Future policy actions' COM[2009] 563 final, Brussels 3 March 2010.

[22] Commission, 'Internal Market Derivatives' <http://ec.europa.eu/internal_market/financial-markets/derivatives/index_en.htm> accessed January 2011.

[23] EU Press Release, 'Commission cuts red tape and improves investor protection on securities prospectuses' (IP/09/1351, Brussels 24 September 2009) < http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1351> accessed January 2011.

[24] Currently, issuers of non-equity securities having a denomination of less than €1,000 do not have a right of self-determination. See Commission, 'Proposal to amend Directives 2003/71/EC and 2004/109/EC' COM[2009] 491 final, Brussels 23 September 2009 4 and 6.

[25] Ibid 9 and 6.

[26] *EU Press Release* (n 20).

ensure that OTC trades are made more visible. MiFID will be amended to place more onerous transparency requirements on Multilateral Trading Facilities (MTFs). Clearing will be encouraged to take place through CCPs, and therefore registered in trade repositories. New rules will be issued governing credit default swaps on sovereign debt, in order to ensure that practices will be monitored and sanctioned if irregular. Shortselling will also be regulated to ensure that naked practices will be restricted and controlled.[27]

Whereas the EU has issued numerous Directives since the adoption of the FSAP, their lack of direct application in Member States has left the overall framework in a somewhat still patchy condition. Regulations, which are directly applicable under national law, would have certainly gone further to create a single substantive framework for the whole of the EU. At present, maximum harmonisation regimes seem to be the best solution put forward to address inconsistent national transposition of EU law; however, the risks of 'goldplating' and interpretative divergences can still result in market participants based in different countries having dissimilar legal positions. In this respect, the role of Level 3 Committees has become all the more crucial to the proper functioning of the system. Their initial function – to ensure the consistent and uniform interpretation of EU legislation during the transposition phase – as well as the supervisory function which they havee gradually evolved into, have now become the best chance the EU have to create a properly integrated securities market for the Union.

In its latest vision for a single market in financial services, the EU Commission highlighted the following five objectives in order to restore the financial sector to a healthy level:[28]

- Implementing the agreed reforms on supervision;[29]
- Filling in regulatory gaps, and promoting transparency, stability and accountability, especially with regard to the derivatives market;
- Creating a single European rule-book for the financial sector;
- Strengthening the governance of financial institutions, in order to ensure better risk identification and management; and

[27] See Ibid. for a general overview of Mr. Barnier's regulatory plans during his term in office.

[28] Commission, 'Europe 2020: A strategy for smart, sustainable and inclusive growth' COM[2010] 2020 23.

[29] See below for further details.

- Setting up a more ambitious policy to better manage future financial crises.

It appears that the focus of the EU over the next ten years will be less on regulation and more on supervision and enforcement. The EU will initially address areas which require immediate action, such as amending the Prospectus Directive and regulating the derivatives market, but will primarily focus its efforts on consolidating the rules already in place by creating a new supervisory architecture to oversee the entire system. This probably represents a telling realisation by the EU that setting up a regulatory framework based on substantive rules alone, while expecting the market to regulate itself, is simply not enough to achieve full economic integration.

Transpositional and Interpretational Integration

The second level of integration is concerned with the legislative and interpretational processes that follow the entry into force of EU law and precede the moment in time when supervision over nationally transposed law becomes necessary. This can be broken down into two parts. First, ensuring the uniform transposition of EU law into national law (which, for the sake of this argument, will be called 'transpositional integration'), and secondly, ensuring the uniform interpretation and application of that law once it is transposed (or 'interpretational integration'). As this paper shall outline, both forms of integration are necessary to attain the wider EU objective of full market integration.

Transpositional Integration

The importance of consistent and equivalent transposition of European securities law by Member States cannot be overstated. Since the majority of framework laws and implementing measures adopted so far have been Directives, they only become applicable the moment Member States transpose them under their law. This adds another level to the legislative process, at which stage all twenty-seven EU States are given the power to reconcile EU-adopted law with their legal systems. The problem associated with this disaggregation is that it could impede on the EU's principal objective of regulatory harmonisation. This constituted the raison d'être behind the Lamfalussy Committee's decision to endow Level 3 Committees with the task of ensuring that EU law be transposed in a consistent and uniform way across the Community. Transpositional integration thus became a

fundamental tenet of market integration in general, with CESR assuming the responsibility of ensuring its attainment.

Full transpositional integration is virtually impossible when the Directive being transposed employs a minimum harmonisation regime. The ability of Member States to impose additional requirements will undoubtedly lead to regulatory inconsistencies which cannot be avoided even if Member States employ the same transpositional mechanisms. However, under a maximum harmonisation regime, consistent transposition constitutes the last remaining objective towards a perfectly uniform substantive framework. The oversight of a pan-European agency such as ESMA is critical in this regard, especially considering the fact that transposition usually requires the translation of EU-adopted texts to the language of the transposing Member State. The translation must be done in such as way as to properly reflect the legislative agreements made during the drafting process. Anything less would expose the transposed law to a different interpretation, which could significantly offset the path to full integration.

Related to the issue of correct transposition is timely transposition. This falls within the realm of Level 4 of the Lamfalussy model. The European Commission is entrusted with monitoring the transposition of EU law by Member States, and taking dissuasive measures when infringements are committed. As aforementioned, many Member States have struggled to keep up with the transposition deadlines imposed by the Commission,[30] resulting in a number of infringements under Article 226 of the Treaty on the European Community.

To date, the Lamfalussy process has largely failed under this Level.[31] This presents a risk to the attainment of regulatory integration; applying proper enforcement mechanisms to ensure timely transposition has become a major strategic priority of the Commission, and is likely to develop in the near future.[32] However, realistic deadlines and the specification of harmonisation regimes must be implemented before proper enforcement can be applied. The use of transparency as a disincentive for delaying transposition has also been put forward,[33] and may be a more practical method of dealing with

[30] *The Economist* (n 2).

[31] See Commission, 'Review of the Lamfalussy Process: Strengthening supervisory convergence' COM[2007] 727 final, Brussels 20 November 2007 6, and Inter-institutional Monitoring Group, 'Final Report Monitoring the Lamfalussy Process' (Brussels, 15 October 2007) 35.

[32] Ibid.

[33] Ibid 6.

the issue than initiating judicial proceedings against infringing Member States.

In a recent development that is very relevant to the transpositional integration debate, it has been suggested that Article 226 should be extended to give the European Court of Justice (hereinafter ECJ) the right to judge upon not only the existence of transposition into national law, but also whether the implementation has been done in a manner deemed to further the goal of regulatory convergence.[34] This may provide the necessary disincentive for Member States to transpose maximum harmonisation legislation incorrectly, through inaccurate translation or 'goldplating'. However, since FSAP measures do not contain an express 'goldplating' ban, it is very difficult to argue that enforcement proceedings may be brought on this basis.[35] For the time being, it is likely that the Commission will have to rely upon the soft law issued by ESMA to dissuade incorrect transposition, though enforcing non-legally binding measures may be an altogether more worrisome task.

Interpretational Integration

Once transposed, there also exists the risk that national regulators and courts will interpret and apply EU law differently. Some of the laws found in framework Directives contain ambiguous phrases which, intentionally or not, leave room for interpretation. If not developed further under an implementing measure, the interpretation of these terms could lead to sizeable divergences in the application of the law on a national level. It is therefore also necessary to employ ESMA to ensure that any ambiguities are dealt with consistently. To this end, the Committee has issued a number of standards, guidelines, and recommendations on how to tackle laws that present interpretational difficulties.

However, sometimes ambiguity is intentional. It is argued that ambiguous terms are beneficial in certain circumstances, since they give national regulators the ability to interpret and apply them with a keener sensitivity towards the particular situation in issue or the context in which it arises.[36] This is arguably justifiable

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[34] I Chiu, *Regulatory Convergence in EU Securities Regulation* (Wolters Kluwer Law & Business, 2008) 98.

[35] N Moloney, *EC Securities Regulation* (2nd ed., Oxford University Press, 2008) 1085.

[36] J Black, 'Rules and Regulators' in I Chiu, *Regulatory Convergence in EU Securities Regulation* (Wolters Kluwer Law & Business, 2008) 113.

in a still very fragmented Community, where divergences in regulatory development and complexity from State to State are at times striking. Interpretational flexibility in pan-European legislation may therefore have to be maintained as long as infrastructural fragmentation continues to subsist.

The necessity of selective interpretation is clearly evident in areas such as market manipulation,[37] and what are considered 'accepted market practices,'[38] though the presence of ambiguity is evident throughout the entire substantive framework. However, once the infrastructural set-up of Member States begins to converge, and the geographical lines of the market become less pronounced, even these terms would have to be interpreted uniformly. In the meantime, however, the EU will have to direct its focus to the common interpretation of terms that the Community has unanimously agreed upon.

In this regard, CESR (now ESMA) has taken great strides to redress the existing anomalies, though any far-reaching measures are likely to be met by protectionist resistance from national regulators reluctant to surrender any discretionary privileges they presently enjoy to a greater pan-European cause. This is altogether more of a concern in light of the fact that ESMA's interpretive positions are taken under Level 3 and are therefore non-binding. Many Member States already have infrastructures for interpretation under their legal systems in place, which have come to be accepted and recognised within their markets as established mechanisms for order within the system. Persuading national regulators to adopt common measures simply on the basis of its influential position would certainly be a tall order for ESMA, but one that constitutes a key objective for the Authority, and is certainly a necessary prerequisite for the achievement of full integration.

Supervisory Integration

When compared to the extensive development of the substantive EU legal framework for financial services, the process of creating a complementary supervisory structure has been lethargic at best. During the decade leading up to 2007, the initiatives taken to

[37] One example is the Market Abuse Directive (MAD), which states that market manipulation subsists where the price of a financial instrument is maintained at an 'artificial or abnormal' level; see Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation on insider dealing and market manipulation (market abuse) [2003] OJ L 96/16.

[38] For a more detailed discussion on both, see Chiu (n 34) 115-118.

develop a structure that ensured proper supervision and enforcement of EU securities law were limited.[39] In fact, the setting up of CESR was as far as the EU went to guarantee some level of oversight in the system and even then, only to ensure the correct interpretation and implementation of EU law. The steady growth of CESR since its inception can be attributed more to practical exigencies than to regulatory empowerment.

As a result of the increasingly supranational character of business activity in the financial services sector, cooperation among national regulators has been more intense than it ever was. The CESR exchange platform has become a useful networking tool in helping regulators find common positions on regulatory divergences or for dealing with issues having a cross-border element. However, it is widely acknowledged that further development is necessary;[40] firstly, because the functions of the current supervisory structure are for the most part not formally recognised; and secondly, because an increasingly integrated and ever-evolving European market requires the oversight and stewardship of a pan-European body.

Since its inception in 2001, CESR has come a long way. No longer just another component in the overall structure, it has come to assume a central role for EU securities regulation, and with the latest regulatory overhaul, is likely to become even more formidable in the future.

CESR was initially conceived to oversee the correct implementation of FSAP measures, by providing the necessary technical advice on Level 2, and ensuring proper implementation of the law by Member States once adopted. Over the years, it has provided advice to the Commission during the drafting periods, and issued a number of guidelines, standards and recommendations to facilitate the understanding and correct application of EU law.

In 2004, CESR published an analytical report[41] identifying the supervisory tools it required for the foreseeable future in order to carry out its functions. It also recognised that some of the suggestions went beyond its mandate, but were considered necessary to improve efficiency and cooperation among national

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[39] See A Sapir (ed.), *Europe's economic priorities 2010-2015: Memos to the new Commission* (Bruegel 2009).

[40] Inter-institutional Monitoring Group (n 31) 14.

[41] Committee of European Securities Regulators, 'Preliminary Progress Report: Which Supervisory Tools for the EU Markets?' (04~333f, October 2004).

regulators within the CESR network.[42] The Committee also highlighted the need for national supervisors to be given equivalent legal and functional capacities to strengthen their ability to cooperate, and consequently converge, even further.[43]

In its final report, the IIMG also noted the need to encourage deeper cooperation among CESR's members, as opposed to just focusing on its advice-giving function under Level 2.[44] The report highlighted the necessity of developing the functionality of supervisory institutions, especially in light of the extensive economic impact of the FSAP measures on market integration.[45] Supervisory convergence was identified as a key objective, specifically through the avoidance of supervisory duplication and regulatory gaps, and promoting the delegation of tasks among members.[46] In its own review of the Lamfalussy model, the Commission mirrored the statements made by the IIMG, calling for specific short-term mandates for CESR, with deadlines for achievement. Increasing the Committee's level of accountability, they argued, would consolidate its role in the framework, and to some extent, formalise its functions.[47] The Commission also noted that because of the lack of an expressly mentioned role for CESR in supervisory convergence in its constitution,[48] the Committee could not be mentioned in that capacity in any Level 1 Directive issued by the EU.[49]

In late 2007, CESR responded to these evaluations with a report of its own.[50] It categorised promoting further internal cooperation under three main headings; the utilisation of common supervisory tools; the elaboration of common standards, recommendations and guidelines; and the development of conflict handling and peer

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[42] Committee of European Securities Regulators Press Release, 'CESR consults on an analytical report "Which supervisory tools for the EU securities markets?' (CESR/04~570, 25 October 2004).

[43] *Committee of European Securities Regulators* (n 41) 18.

[44] *Inter-institutional Monitoring Group* (n 31) 15.

[45] Ibid.

[46] Ibid 16

[47] *Commission* (n 31) 7.

[48] That is, the Commission Decision establishing the Committee of European Securities Regulators (CESR) of 2001, which has been repealed by Commission Decision establishing CESR of 2009.

[49] *Commission* (n 31) 8.

[50] Committee of European Securities Regulators, 'A proposed evolution of EU securities supervision beyond 2007' (07~783, November 2007).

pressure tools to be applied in the event of policy disagreements.[51] The Committee noted that internal cohesion was the first step towards achieving complete supervisory convergence on a pan-European level. It was also very keen to emphasise that the time had come for the EU to take measures with a view to securing the Committee's future development, in order to enable it to pursue the ambitious objective of supervisory convergence. In this respect, it highlighted the following initiatives:[52]

- Creating equivalent supervisory powers for all CESR members;
- Explicitly recognising CESR's role in the European supervisory framework under EU legislation;
- Introducing sanctions to national supervisors failing to comply with commonly agreed positions on supervisory practices;
- Compelling the Commission to take account of CESR-agreed standards when exercising its enforcement powers under Level 4;
- Waiving the consensus rule and applying Qualified Majority Voting (hereinafter QMV) to decisions which have an impact on developing supervisory convergence;
- Promoting CESR as the entry point for framework agreements with non-EU countries.

The impact of the report was almost immediate. In its December 2007 Conclusions,[53] the ECOFIN Council broadly supported the reforms suggested by CESR, but did not commit to any major institutional changes. The Council requested Level 3 Committees to introduce the possibility of applying QMV to decision-making policies under their charters, but such decisions would remain non-binding. However, in the event that a national regulator should choose to withdraw from implementing a commonly agreed position, it would be bound to explain its decision publicly.[54]

The Council also called upon the Commission to study national divergences in supervisory powers and whether equivalence is

[51] Ibid 2.

[52] Ibid 3-6.

[53] ECOFIN Press Release, '2836th Council meeting, 15698/07 (Presse 270)' (Brussels 4 December 2007) 16-19.

[54] Ibid 17.

sufficient or requires improvement.[55] A more progressive statement by the Council called for the possibility of introducing a set of common operational guidelines for colleges of supervisors, in order to improve the effectiveness of decision-making procedures and reassuring their members.[56]

The conviction displayed by the EU towards the development of supervisory convergence in the securities sector is self-evident; the Commission, the Council, the institutions charged with monitoring the Lamfalussy process and even CESR itself all submitted or endorsed proposals to move forward. However, ultimately, it was an external economic factor, and not the contribution of any EU institution or political lobby, that proved to be the catalyst that brought on the massive overhaul of the supervisory framework now being proposed by the Commission. Indeed, the financial crisis of 2008 was the catalyst that provided the final impetus needed by the Commission to set about revolutionising the financial supervisory framework of the EU.

The New Supervisory Architecture

In February 2009, at the initiative of the European Commission, recommendations were published by a high-level expert group[57] for the creation of a new supervisory architecture for the EU financial services sphere. These measures were largely instigated as a means to address the perceived deficiencies in the regulatory structure following the impact of the financial crisis on Europe's economy. The lack of effective monitoring and supervision was primarily blamed for the irresponsible behaviour of the financial markets leading up to the crisis, causing the collapse of the system and eventually, of the economy as a whole.[58]

The recommendations centre primarily on the creation of two new institutions; the European Systemic Risk Board (ESRB), and the European System of Financial Supervisors (ESFS). The Commission welcomed these recommendations,[59] and in May 2009, presented an outline for a new European supervisory

[55] Ibid 18.

[56] Ibid.

[57] Known as the de Larosière Group, since it was chaired by Mr. Jacques de Larosière.

[58] The Economist, *Europe: Beyond the Crisis* (The World in 2010 (print edition), November 13 2009).

[59] Commission, 'Driving European recovery' COM [2009] 114 final.

architecture[60] which was endorsed by the European Council in June.[61] In September 2009, a package of measures establishing these two entities was adopted by the Commission.

The European System of Financial Supervisors (ESFS) transformed the three existing Level 3 Committees into European Authorities. The aim is to upgrade national supervision, strengthen the oversight of cross-border activity, and establish a single rule-book applicable to all market participants operating within the Community.[62] National supervisors will utilise their enhanced status to consolidate their cooperation with the newly formed Authorities, creating a more robust and harmonised supervisory structure to support the regulatory framework.[63] The Authorities each enjoy a legal personality, giving them the power to acquire or dispose of property and be a party to legal proceedings.[64]

CESR was replaced by the European Securities and Markets Authority (ESMA). It is composed of the same members that occupied CESR, but along with the heads of every national supervisory authority, is also assisted by non-voting representatives from the Commission, the ESRB, and the other two Supervisory Authorities.[65] The Authority is headed by a full-time independent chairperson, appointed by the voting members for a one-time extendable term of five years.[66] This is intended to bring about a measure of consistency to the tasks set out by the Authority.

The quasi-legislative functions performed by CESR now have official recognition when exercised by ESMA. These include the drafting of technical standards to accompany legislation adopted by the Commission which, if endorsed, would be translated into regulations or decisions to give them a more formal status.[67]

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[60] Commission, 'European financial supervision' COM [2009] 252 final.

[61] European Council, 'Presidency Conclusions 18 and 19 June 2009' (11225/2/09, Brussels 10 July 2009).

[62] *Commission* (n 7) 51.

[63] *Commission* (n 59) 3.

[64] Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority' COM[2009] 503 final.

[65] Called the 'Board of Supervisors' under the Proposal.

[66] *Commission* (n 63), Section 3.

[67] Ibid art. 7.

ESMA is also empowered to issue guidelines and recommendations to govern the consistent internal application of Community legislation.

For the first time, a procedure is set out to deal with national supervisors who fail to apply EU legislation correctly within their territory. ESMA has authority to investigate any divergences, and adopt recommendations directed specifically at non-compliant national authorities. If this measure is not effective, the Commission will then follow up by issuing a decision to comply. As a measure of last resort, and in what is an unprecedented transfer over power to a pan-European authority in this area of law, ESMA has the authority to take a decision directly applicable to a particular market participant operating within the territory of the non-compliant national supervisor, for the purposes of ensuring the 'orderly functioning and integrity of the financial system.'[68]

Moreover, ESMA may now assume a more central decision-making role in times of emergency; a measure no doubt brought on by the necessity of centralised leadership during a meltdown, something that was conspicuously missing during the recent financial crisis.[69] Should the Commission adopt a decision addressed to ESMA determining the existence of an emergency, the Authority would have the power to adopt decisions targeted at individual national supervisors to ensure that market participants are complying with EU legislation.[70] However, they still do not enjoy the kind of power needed to avert or soften the impact of crises; power to impose legislation already in force does not include the power to take innovative measures. This new power represents a success by the proponents of centralised regulation, but is still a far cry from the regulatory power a pan-European authority would actually need to control the decision-making of national regulators during a crisis.[71]

The strengthening of networking ties between European bodies and their national counterparts is another key feature of the latest amendments. Internal dispute settlement mechanisms have now been implemented, as have the Authorities' duty to contribute to

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[68] Ibid art 9.

[69] The Economist, 'Turf wars in black tie' *The Economist* (London, June 18 2009) <http://www.economist.com/node/13881022> accessed 12 July 2011.

[70] *Commission* (n 64) art. 10.

[71] The Economist, 'Divided by a common market' *The Economist* (London, July 2 2009) <http://www.economist.com/node/13956210?story_id=13956210> accessed 12 July 2011.

the functioning of colleges of supervisors.[72] National supervisors may now delegate tasks to each other, while ESMA is responsible to cultivate a 'common supervisory culture' among its members,[73] all in a bid to enhance supervisory convergence.

Another key feature of the new architecture is the enhanced position of Level 3 Committees vis-à-vis third parties. ESMA has the authority to enter into contracts with international organisations and supervisory authorities from third countries.[74] The Authority has also been given a closer access point to market participants, through the Securities and Markets Stakeholder Group. The Group will be composed of the Authority and thirty members from the securities industry, to give market participants a voice on the decisions taken by the supervisory bodies on handling the market.[75]

Furthermore, the dependence on consensus as a means of decision-making has been replaced by QMV for the taking of decisions relating to standards, recommendations, and guidelines, as well as budgetary measures. All other decisions are to be taken by a simple majority.[76] The changes have also established a joint committee to ensure that ESMA will cooperate regularly with the other two Authorities in the banking and insurance areas.[77] Finally, a Board of Appeal will be set up to provide natural or legal persons aggrieved by decisions of the Authority with the right to seek redress.[78] Should the appeals board deliver an unsatisfactory ruling, or not be competent to take cognisance of the issue, an action may also be brought before the Court of First Instance or the European Court of Justice.[79]

The latest changes to the supervisory framework represent the biggest step taken by the EU so far towards developing and solidifying a sound and extensive pan-European supervisory framework in financial services to complement the far-reaching regulatory measures previously taken under the auspices of the

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[72] *Commission* (n 64) arts. 11-12.

[73] Ibid arts. 13-14.

[74] Ibid art. 18.

[75] Ibid art. 22.

[76] Ibid art. 29.

[77] Ibid arts. 40-43.

[78] Ibid arts. 44-46.

[79] Ibid art. 46.

FSAP. While it is fair to say that the financial crisis did ultimately push the reforms through, once analysed, much of what has been proposed is merely the reflection of a number of shortcomings within CESR which existed and were identified a long time before the economic impact of the crisis caused governments to open up to the possibility of making big changes. Whether the proposed way forward will achieve its aims is still an open question, but one the relevance of which will become a key debate for the next phase of market integration.

Enforcement Integration

The final hurdle to achieving full market integration lies in ensuring that all Member States adopt the same enforcement procedures when sanctioning illegitimate market practices in the securities sector. Fragmented enforcement procedures only serve to hinder the free movement of investment service providers and issuers within the Community, whose mobility might thereby be driven by factors other than seeking best market practices.

At present, all securities directives contain measures that ensure that Member States have administrative sanctions in place to be applied when breaches occur, and which must be 'effective, proportionate and dissuasive.'[80] All articles that impose this obligation leave it within the discretion of Member States to impose criminal penalties for the same breaches, should they wish to. Some Member States have already taken up this option, while others already had criminal sanctions in place for the same breaches before the directives were adopted.[81]

Therefore, the present scenario is one where all Member States adopt different administrative sanctions for the same offences, and at times even impose criminal penalties. In assessing market abuse cases, CESR identified the divergences in the level of

[80] Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC [2003} OJ L 345/64, Art. 25; Directive 2005/109/EC of the European Parliament and of the Council of 15 December 2004 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 [2004] OJ L390/38, Art. 28; Market Abuse Directive (n 37) Art. 14, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/61/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, Art. 51.

[81] *Chiu* (n 34) 150-151.

sanctioning as a threat to regulatory convergence.[82] The Committee intended to tackle the divergences through two methods; first, by setting up review panels to monitor and assess the application of EU regulation under national systems, and secondly, by setting up enforcement databases to increase transparency and encourage enforcement practices to converge.[83]

On the other hand, one might argue that allowing for some measure of disparity among the legal systems would be beneficial, since it would allow market participants to associate with the regime that best fits their interests. Issuers and investment firms would thus have the option of choosing to associate either with a regime noted for its rigorous enforcement mechanisms, or with a less regulated regime. The participants could then utilise this variety as a means of distinguishing themselves from one another, and consequently, impose different prices for their services. This market-based model would have to be coupled with strong transparency mechanisms to ensure that investors are aware of the profiles of the regimes under which the firms of issuers they are investing in are situated.

Another obstacle faced by ESMA in adopting a positive approach to eradicating inconsistencies in enforcement measures is the potential breach of the subsidiarity principle, which states that any measures that can be better achieved if taken at national level must be taken there.[84] Also worth mentioning is that prior to the entry into force of the Lisbon Treaty, the imposition of criminal sanctions arguably fell under the third pillar of the Treaty establishing the EU, and was consequently beyond the EU's legislative competence. However, since the abolition of the pillar structure under the Lisbon Treaty, the Union's competence to legislate in matters of justice, when considered necessary to protect EU measures taken under the auspices of the Treaties, can arguably be justified.[85] This could provide ESMA with the basis it needs to propose unifying the application of administrative and criminal sanctions under one EU-wide policy.

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[82] Committee on European Securities Regulators, '2006 Report on Supervisory Convergence in the field of Securities Markets' (06~259b, June 2006) 5.

[83] Ibid.

[84] Consolidated Version of the Treaty on European Union [2010] OJ C83/15, Art. 5.

[85] See Europa website, 'The Treaty of Lisbon: More Justice Freedom and Security' <http://europa.eu/lisbon_ treaty/glance/justice/index_en.htm> accessed January 2011.

Devising a common enforcement policy would undoubtedly be a complex proposition. It depends on clearly defined and dissuasive infringements, an efficient monitoring process, and an effective judicial system with the possibility of appealing within a short space of time. Anything less would be too costly and slow to operate within the fast-paced and constantly evolving securities market currently being developed. Finding a common accord on the sanctions to apply would be a tall order in its own right; setting up the infrastructure to support it may be too onerous an imposition to place on ESMA.

For the time being, it may be a more realistic target to focus on supervisory convergence which, when achieved, could be utilised to delegate the enforcement of a commonly agreed set of sanctions to national supervisors. Since the latest proposals would bring about equivalence in the regulatory powers of national supervisors, the task of enforcing EU legislation could arguably be safely entrusted in their hands. In any case, at the rate in which the practices of national supervisors are converging, especially in light of the recent proposals, it is only a matter of time before the enforcement mechanisms currently in place begin to amalgamate as well.

In an interesting development under the recent proposals that replaced CESR with ESMA, an appeals board will be set up specifically to deal with natural or legal persons contesting decisions taken by ESMA. While the functions of this quasi-judicial organ do not include the enforcement of securities regulation, its creation represents an unprecedented move towards developing a judicial branch within the regulatory framework. If the Board of Appeal proves to be a success, the EU may be encouraged to take further steps towards a more comprehensive pan-European judicial system for the industry, which might then include the possibility for ESMA, or the other Supervisory Authorities, to bring actions against market participants for failing to adhere to guidelines and recommendations issued by them, or Level 1 and 2 legislation in general. This sort of development would be a crucial move towards further market integration.

The Way Forward

When the EU initially went about attempting to create a fully integrated European securities market, it regularly compared itself to other models in order to gauge how far it had come along and what it had left to achieve. If the path towards integration has proven anything, it is that the European securities market is like

no other in the world and that any comparisons with other regulatory models are likely to fall short. It is in this spirit of lack of precedent that a regulatory framework must be developed; peculiar to the political and economical idiosyncrasies of the environment in which it will operate. For the most part, this reality has now been accepted by policy-makers, who have been very utilitarian in the way they capitalised on external factors to push their reformative agendas forward.

Thus far, the EU appears to be pushing for something in between a barrier-free, market-driven industry, and a fully harmonised legal framework with a complementary centralised SEC-styled regulator. Various directives and regulations promulgated over the last ten years have been directed precisely at loosening the requirements placed on market participants and investors looking to export their activities beyond their borders, if not abolishing them altogether. The passport concept has been the preferred weapon of choice for the EU legislator in this regard, and empirical evidence seems to suggest that its implementation has, at the very least, initiated the desired effect of encouraging cross-border activity. Incidentally, a main consequence of this objective has been the standardisation of Member States' national laws, which used EU legislation as a model during the transposition process. The current prevailing trend of EU directives shifting from minimum to maximum harmonisation regimes, thus negating the potential for 'super-equivalence' or 'goldplating' under national legal systems, has further encouraged legislative congruence on a pan-European level.

However, at present, some measure of legislative disparity should be maintained within the European infrastructure. While any initiative aimed at investor protection and freedom of movement should be universally encouraged through European law, there is a potential threat that the Union will go above and beyond what is necessary to achieve these stated objectives, long cited by the Commission as justifications for its extensive regulatory policy. Many national laws regulating the financial services industry of individual States, tailor-made to suit the economies of territories in which they operate, and often the product of many years of development with supporting jurisprudence, threaten to be arbitrarily overridden by embryonic rules devoid of context and insensitive to the idiosyncrasies that unapologetically inhabit the legal, financial and socio-cultural environments of a Union that is still very much fragmented along national lines. That national legislatures, regulators, and market participants alike have all called upon CESR and the Commission to significantly lengthen their consultation periods and transposition deadlines only goes to illustrate the discomfort being felt by the Member States during this period of sweeping changes. There is presently a very real

concern that national authorities, particularly those with limited resources, are so outstretched and overwhelmed with the sheer bulk of legislation emanating from the EU that not only are European laws being transposed verbatim without the necessary analysis and evaluation stages that traditionally precede the promulgation phase, but there is also a lack of mechanisms in place to implement and enforce their application in practice when the laws go into effect.

In particular, any top-down policy approach employed by the EU to regulate the way national supervisors conduct operations within their respective territories should be considered with a high degree of caution. To take an example, in a bid to encourage the metamorphosis of CESR into the ESMA, along with all its new powers, the Commission placed increased pressure on slacking national legislatures to reinforce the legal mandates of their national regulators to allow for the taking of measures intended to further 'supervisory convergence' within the Union. With a new set of official powers, ESMA is now able to wield increasing influence on matters previously held within the sole discretion of national regulators, including the power, under certain circumstances, to take decisions directed at specific market participants within a given territory. With the latest amendments, the EU will enjoy unprecedented power in dictating the way national bodies apply European securities law in practice.

The marked development of the three main EU committees in financial services (or 'Authorities', as they are now known), extorted and secured on the back of a wave of populist sentiment following the financial crisis, exemplifies the exploitative behaviour of a union conspicuously pursuing a federalist agenda. It still remains, however, a worthwhile exercise to determine, from a politically-disconnected standpoint, what level of regulatory centralisation befits the European model; more specifically, whether the EU should go on to install a single pan-European regulator in financial services.

Who will lead the way?

The idea of an SEC-style regulator for the European Union definitely has its virtues. It introduces certainty to a system that currently depends on a qualified majority (sometimes outright consensus) of twenty-seven independent States, some of whom employ more than one national body to administer different areas of financial services regulation within their territory. The current issues of inconsistency in transposition, interpretation and application of EU law would likely be resolved more swiftly. The

centralisation of power would place the undisputed authority to take supranational decisions into the hands of a single institution, without having to depend, as is the situation nowadays, on the corroboration of national bodies to apply them locally. Regulatory unification would facilitate, and help coordinate, efforts to maintain a high level of supervision on the market and its participants, with the possibility to bring defectors to account for their transgressions on the basis of well-defined rules and corresponding sanctions. Concentrating authority in one body will also improve communication and the implementation of agreements with third party authorities from the same industry looking to enter into bilateral accords with the EU.

However, attempting to set up a pan-European regulatory body of that magnitude would likely have a counter-productive effect on the European securities industry in the long term. First of all, as stated earlier, the discontinuity in the development of the securities industry from one State to another means that having a single supervisory and enforcement policy for the entire Union would simply not make sense. This inconsistency is unlikely to encounter much improvement in the future since certain governments do not consider the financial services industry as one meriting State investment, preferring to focus instead on those sectors of the economy where they enjoy a competitive advantage in relation to other economies.

The creation of an EU regulator in financial services, combining the previously distinct areas of securities, banking and insurance, could easily become overstretched if not properly resourced with the right people and given enough financial support. Moreover, new EU bodies traditionally tend to create further confusion, rather than certainty, when it comes to the division of competences. By way of example, following the adoption of the Lisbon Treaty, there is more uncertainty than ever before about who represents the Union externally, with the President of the Commission, the President of the European Council, and the High Representative for Foreign Affairs (the latter two posts having been established under the treaty) all eligible candidates for the role. Under the present scenario, one can expect the Commission and the European Central Bank (ECB), along with national governments and their local institutions, to be vying to establish their areas of unfettered authority, especially when financial decisions enter the fray. Furthermore, the establishment of a supranational regulator is expected to be met with criticism from those corners concerned about the democratic deficit in the EU, especially since it is poised to be even further detached from market participants, especially retail investors whose lobbying strength at national level is already very weak in relation to their professional counterparts. Lastly, the creation of another level in

the power hierarchy will essentially result in the regulator becoming more isolated from the participants it is seeking to regulate, making the possibility of enforcement at ground level even more cumbersome, and potentially estranging the entire industry.

European resources would be better utilised if directed at strengthening weaker regulatory bodies at national level rather than installing a detached supranational body overseeing a still very patchy and region-based European market. The maintenance of national regulators retaining a degree of autonomy within their jurisdictions would, despite the obvious bureaucratic setbacks of delays in decision-taking and inconsistency in the interpretation of European law, ensure that checks and balances are in place to counter potential corruption, while also allowing room for innovation and good practices commencing at a national level to be exported to other countries.

Although there appear to be more arguments militating against the creation of a pan-European regulatory agency, this is not to say that the current shortcomings of ESMA should not be addressed, or that its development should be stagnated. At present, ESMA requires more resources, a clearer mandate, and more autonomy from the European Commission to perform its duties properly. It is this author's view that this would be achieved to some extent by revising the Lamfalussy model to eliminate the role of the Commission at Level 2. This makes sense for many reasons. First, ESMA already provides the technical advice that ultimately forms the basis of Level 2 implementing measures, and would therefore not have to undergo any infrastructural changes to adapt to the new model. Also, removing the Commission from the equation would allow the Authority, with all its expertise in the industry, to establish commonly agreed rules without subjecting them to validation by a political institution susceptible to lobbying pressures that tend to dilute the content of otherwise comprehensive and well-thought out proposals. Despite the lack of accountability to the Commission, the presence of the European Securities Committee (ESC) in the model, along with the oversight of Parliament, would ensure that the Committee is not given a regulatory *carte blanche* when proposing new rules. Furthermore, the already overstretched Commission would be able to focus all of its resources on its main task of initiating Level 1 legislation, thereby dictating the general policy of the industry from above while defining the regulatory limitations of the Committee.

A more autonomous ESMA would benefit from a clearer mandate and a more solid external image. It would enjoy greater freedom in the manner that it regulates the industry, but would fall short

of possessing the extensive unchallenged authority that an SEC-styled pan-European regulator would have. In keeping with the subsidiarity principle, the areas of supervision and enforcement that can be better handled at a national level would remain within the ambit of the national regulators. Funds which might otherwise have been directed at creating a regulatory superstructure will be set aside for the improvement of weaker national supervisors, in order to assist them in the performance of their functions and ability to contribute to discussions on a European level.

The legal policy of the EU in the securities industry must also be revised. It would be illogical for the EU to continue its policy of adopting new laws and implementing measures when the impact of those already transposed has not yet been properly assessed and evaluated from an economic standpoint, especially in view of the fact that market participants are still struggling to come to terms with the latest changes. The indications thus far appear to be positive, but for one to properly assess the impact of complex legal instruments such as MiFID, one would necessarily require a substantial length of time to determine their performance against various economic climates.

As stated earlier, competition among national regulators looking to secure the listing of foreign-based issuers on their exchange platforms will help develop more efficient and cost-effective market practices. The role of the Commission and ESMA would then be to establish rules that ensure that those practices do not operate to the detriment of retail investors. These bodies would also be responsible to curb any protectionist or discriminatory practices employed by the same regulators. Restricting EU legislation to these two principal policy objectives, namely investor protection and barrier dismantlement, will allow national regulators to compete on every other platform, to the advantage of the issuer, the financial intermediary, the investor and the European economy as a whole.

However, despite the plethora of compelling arguments put forward in an attempt to fashion a suitable regulatory model for the EU, any ideological discussion of European legal policy rarely retains its relevance for too long a time, especially in light of the Union's insatiable zeal to forge ahead with reforms geared towards the creation of a federal super-State. Indeed, with the latest talks emanating from the EU focused on the creation of a 'securities rule-book', it appears that the Union is likely to continue pushing ahead with the full standardisation of securities regulation until the role of national regulators inevitably becomes redundant.

Despite the typical contentions of the EU claiming the contrary, it is only a matter of time before all securities regulators are officially incorporated into ESMA (or whatever it will eventually be renamed) and policy is dictated by a single entity. If history is anything to go by, this will only take place once the political, economic and legal conditions of the Member States are ripe enough for the EU to justify proposing further convergence. It is hoped that enough time will have passed before then for the best regulatory practices, determined by market forces, to be established and universally accepted across the Union such that any centralisation of authority would be unlikely to have any adverse impact on the development of the European securities industry. Till such time, however, the march towards the creation of a fully harmonised European securities market is unlikely to show any signs of slowing down.