

CMU 2.0: what is needed, by whom and when?



Jörg Kukies

State Secretary Financial Market Policy and European Policy,
German Federal Ministry of Finance

A step-by-step approach will ensure best progress on deepening the Capital Markets Union

The corona pandemic and the impact of containment measures impede the access to capital markets for small and medium sized enterprises as well as for large corporates. This counteracts the significant steps towards the development of the Capital Markets Union, which the EU has taken over the last years. More than ever, we need to work on ensuring future-proof financial markets in the Union. Further steps are required to promote capital market-based financing, to integrate and strengthen the European capital market further and to make it internationally competitive.

Together with France and the Netherlands Germany has therefore taken the initiative and set up a working group of acknowledged European experts in the area of capital markets from various Member States to provide recommendations to deepen the Capital Markets Union (NextCMU).

In its final report, the NextCMU group has outlined some of the key issues we need to address. First, in order to further develop financial markets, in particular equity markets, the listing burden for SMEs should be reduced in a proportionate manner (this could be achieved, for instance, by reviewing the MAR), investments in Venture Capital should be promoted (e.g. through creating EU-wide funds-of-funds schemes) and retail investment in financial markets should be increased (e.g. through introducing a new category of semi-professional investor). Second, in the interest of long-term savers and investors, it needs to be ensured that a wide range of long-term financial products is offered – also in a low yield environment.

This objective should be appropriately reflected in the regulatory framework (Solvency II). In addition, savers should be further incentivized to turn into investors (e.g. through encouraging workplace equity investments and improving financial education), while at the same time ensuring adequate investor protection. Third, to ensure the free flow of capital between EU financial

market places, remaining barriers in the internal market need to be removed (in particular in the area of post-trade), further consolidation of intermediaries and infrastructures should not be hampered and an EU wide Digital Finance Action Plan should be adopted. Last but not least, the EU financial markets will only flourish when they are liquid and competitive. To further develop EU financial markets, sovereign green bonds should be established, securitization markets need to be revitalized and a pan-European payment market should be created.

It is now up to the European Commission to translate the NextCMU recommendations and the ECOFIN priorities into specific proposals for legislative amendments.

Building on the work of the NextCMU group Finance Ministers agreed at the ECOFIN meeting under the Finnish Presidency in December 2019 on key priorities for the Capital Markets Union. These include better access for small and medium-sized companies to Europe-wide, cost-effective, capital market-based sources of finance, improved Europe-wide range of diversified, long-term and sustainable pensions, savings and investment opportunities, increasing retail investor participation in financial markets, removing remaining barriers to cross-border financial flows and a digital financial market union. These priorities may not be implemented overnight, but require a step-by-step approach.

It is now up to the European Commission to translate the NextCMU recommendations and the ECOFIN priorities into specific proposals for legislative amendments. The European Commission has established a High Level Forum of ►

► European experts to provide further input into their work and to inform their Action Plan. An important first step to bring forward the CMU would be the short-term revision of the core regulatory framework for financial markets in the EU (MiFID II and MiFIR). A market consultation conducted by the German Federal Ministry of Finance last spring has shown a clear need for targeted improvements, which since then has been reinforced by the Brexit. The European Commission should therefore intensify

its work on the MiFID II/MiFIR review and prepare a legislative proposal with high priority.

The incoming German Presidency is looking forward to appropriate legislative proposals from the European Commission to overcome the negative effects of the corona pandemic and the containment measures on the access to capital markets by deepening the Capital Markets Union. ●



Odile Renaud-Basso

Director General, French Treasury,
Ministry of Economy and Finance, France

A CMU rooted in the European economy

This article is written as the COVID 19 health crisis is hitting European nations and their economies hard and in an unprecedented manner. No one can predict the consequences of the crisis but surely, immediately after the crisis, we will need to mobilize all the driving forces of our economies and, above all, we will undoubtedly need to act with redesigned economic tools. The day after the crisis will not be the same as the day before the crisis. The world will need even more cooperation between Europeans and a Europe capable of mobilizing its economy in a strong way to start rebuilding and reorganizing its economy.

The central contribution of CMU to the macro-economic stabilization of the European Economy is to provide a private risk-sharing mechanism. The CMU reflects Europe's design for its capital markets, both domestically and in relation with other markets worldwide. As Europe has the most open markets in the world, it is crucial to ensure the competitiveness of its financial services providers. The CMU will bring a decisive contribution into shaping the European sovereignty. It is clear, that in the long-term growth innovation and the green transition will require significant additional capital in the European economy. A significant part of this investment gap needs to be filled by equity rather than debt, in order to provide an adequate financing to these projects. As emphasized by the ECB, long term sources of financing are required as these investments have a long term or even very long-term horizon.

In a context of increased capital requirements for banks and taking into account the structural differences with their peers, relying on the sole channel of bank financing would limit our collective

ability to raise the deeply-needed capital and would make us lag behind our peers. US banks benefits to a greater extent from the possibility to securitize and deconsolidate the mortgages on their balance sheet. Even if bank financing is the preferred financing mechanism in Europe, improving the functioning of our capital markets thus appears to be a necessity. In order to tackle this existential challenge for the European economy, it is paramount that the European Commission delivers on a realistic and proactive action plan as early as possible in 2020.

Based on the Ecofin Council conclusions from the 5th of December 2019 and on the numerous recent reports on this topic, in particular the Next CMU report, the High-Level Forum (HLF) still has to put forward concrete realistic proposals. If allegedly the previous 2015 action plan from Commission was somewhat watered down at the legislative phase, no one would understand that the Commission does not seize the opportunity to build upon the Council's ambitious conclusions.

As for concrete priorities, first the CMU must adapt to the green and digital transition, both in its means and objectives. Non-financial reporting and taxonomy require to build upon robust common standards to avoid market fragmentation which would arise from diverging labels and definitions. New technologies offer opportunity to revisit existing financial functions but need at some point a regulation based on the "same activity, same risk, same rules" principle.

Second, the CMU requires strong, efficient and demanding participants. On the one hand, we need capital on the ►

► European Capital markets. This means that there will not be any CMU without the active implication of resilient CIB, nor without the investment of insurers into equity. Thus, a careful transposition of Basel III and an adjustment of Solvency II are uppermost needed. On the other hand, companies and especially SMEs deserve to access this financing more easily. The increase of financial transparency and any measure to facilitate IPOs

would be welcome here. Last, -and this, surely, will be critical in the post CoVID 19 context- we must improve the level of trust among market participants, so that the benefits of the retail flow to the markets remain. There is still room to enhance the training of financial advisors, deliver more concise and adequate information to the costumers and take advantage of new technologies to improve European customers' experience. ●



Harald Waiglein

Director General for Economic Policy, Financial Markets and Customs, Federal Ministry of Finance, Austria

Priorities and factors of success for the next CMU-initiative

Deeper integration of EU-Capital Markets should enable easing the access to capital and liquidity for EU companies as well as to diversified investment opportunities for investors in line with their risk appetite and needs. The Capital Market Union-Initiative 2015 - 2019 has shown that a comprehensive approach enables progress in capital market integration. However, further steps are needed to accomplish the ambitious goals of the initiative.

The Capital Market Union 2015 - 2019 was characterized by an evolutionary approach. Room for improvement was identified and legislative and non-legislative measures expedited by the Commission and adopted by Member States and the European Parliament. I anticipate that the Next Capital Market Union will again follow this approach thus moving forward towards a truly integrated, liquid and competitive capital market.

In my view, a holistic approach is needed thus addressing also obstacles outside the financial and capital market regulation, e.g. in the insolvency law to advance in the spirit of the CMU. Furthermore, it will be of importance to have a close look to some of the applicable legislation as well as on international standards to be implemented in due time. With regard to existing legislation we should change elements associated with excessive bureaucracy thus limiting the investment opportunities for customers and the competitiveness of EU-markets and enable up-to-date-solutions for existing and arising deficiencies. When transposing international standards, e.g. Basel IV, we should keep the supervisory standards achieved after the financial crisis but prevent competitive disadvantages by using a pragmatic approach which sufficiently respects EU-specificities and business models.

It is not the time to restrict priorities for the Capital Market Union. Additional game changers have arisen. Covid-19, BREXIT and climate change policies will have to compliment effective digitalization-policies within the Next Capital Market Union. We will have to mitigate the negative impacts of Covid-19 and BREXIT on Capital and Financial Markets and on the real economy in a decisive manner while not disregarding effective measures to address climate change and the transformation to a more digitalized EU. The next CMU has to incorporate reactions to game changers to achieve progress.

The reactions to the spread of Covid-19 throughout the EU has shown the positive effects of an advanced digitalized environment as well as remaining deficiencies to be overcome. We could all monitor to what extent Covid-19 hit financial and capital markets as well as the coordinated responses of EU-institutions. We are also looking forward to an European Union without the United Kingdom and the challenges to be overcome when the most liquid and progressive market stays outside the EU. Also in this regard we should aim for a pragmatic solution. Climate change remains one of our main and urgent challenges. We have to act to contain social and economic costs for future generations.

I am convinced, that the EU is capable of finding good and effective solutions to these challenges. In my view, it will be of key importance to demonstrate openness by acting and not only reacting to these challenges. In particular, the continent should learn from more advanced financial and capital markets and incorporate an open and progressive approach to ensure the competitiveness and efficiency of EU-markets also in the medium and long-term perspective. ●



Bruce R. Thompson

Vice Chairman and President, EU and Switzerland,
Bank of America

The time is now for a CMU for the businesses and citizens of Europe

Ever since its September 2015 communication, the European Commission has made it a top priority to develop a Capital Markets Union (CMU) in the EU. At the time, President Jean-Claude Juncker faced a Union struggling with high unemployment and in need of investments that could generate jobs. With a banking sector still under the constraints of both the financial and Eurozone crises, traditional funding sources had to be complemented to channel capital to all companies, including those that form the backbone of the European economy, SMEs.

While an ambitious Action Plan was immediately put in place, new challenges such as the departure of the largest finance centre from the Union, technological developments and the need to seriously tackle climate change make the project even more crucial for the future.

These challenging times should be seen as an opportunity to do things differently.

This is why President Ursula von der Leyen made completing the CMU one of the cornerstones of her Presidency. One of the European Commission's first actions in this renewed impetus has been to create a High-Level Forum (HLF) composed of experienced industry executives and international experts and academics, with the aim of providing suggestions and guidance on future CMU policies; the sudden change in the economic outlook as a result of the COVID-19 crisis make this work even more of a priority – Europe needs its capital markets to be as large and liquid as possible to maximise funding sources to support citizens and businesses.

As a member of the HLF subgroup focusing on the development of European capital markets architecture, I am struck by the clear conviction among all HLF members that the future of the Union requires the development of a truly integrated CMU.

While many reports have been published on the matter, the HLF intends to set aside broad policy recommendations and focus instead on concrete policy measures as well as the method and processes needed to see them through. The HLF's

recommendations, expected in May, will not target “low-hanging fruit”, but instead aim for measures that will lead to tangible results, no matter how hard they are to achieve. These challenging times should be seen as an opportunity to do things differently.

While work is still underway, the final report will likely focus on a dozen or so recommendations centred around four broad categories:

- Financing for business: the HLF will consider issues such as enhancing the transparency and comparability of company data for investors, supporting the development of cross-border long-term investment vehicles, increasing the risk appetite of institutional investors, facilitating the listing of companies, and strengthening the tools available to financial intermediaries – such as securitisation.
- Market infrastructure: we are looking at enhancing the integration and efficiency of trading and post-trading, as well as improving the liquidity of secondary markets by strengthening the role of European intermediaries.
- Retail investment: conscious of current demographic and environmental challenges, the HLF will propose measures to steer citizens towards sustainable, long-term investment products through the development of adequate occupational and personal pension products. This will also require putting in place a strong financial literacy and equity culture in Europe.
- Cross-cutting issues: these are the pressing issues that are considered politically sensitive but must be tackled – issues around withholding tax for cross-border investors, the harmonisation of national insolvency proceedings, and the need for a true level-playing field for financial players across the Union.

While Rome wasn't built in a day, it is time for policy-makers across the Union to deliver on their political promises and boldly push for reforms that will make the EU a true global capital markets player. European citizens stand to gain significantly from an integrated and open CMU – a well-developed pool of capital that will not only enable wider household and retail access to capital markets but also finance the SMEs that drive the European economy forward. ●



Leonique van Houwelingen

Chief Executive Officer, BNY Mellon SA/NV

Capital markets policy – Incisive steps to make progress

I started writing this article about a week ago. In that week the world has become a different place. Some things seem much more important; other things much less important. Capital markets policy doesn't seem very important for the moment. But I do sincerely hope that when this article is published capital markets policy will have regained some importance. Lessons and challenges.

As we recover from the devastating personal, social, and economic impacts of the COVID-19 virus, it will be possible to reflect on some important lessons, and on some major challenges. Two key challenges will be how to make our societies and economies better prepared and more resilient for the next crisis, and how to recover from the current crisis.

Capital markets policy. In this context, capital markets policy has a role to play. One of the main justifications for the Capital Markets Union project has been that a greater role for capital markets, and for cross-border capital markets, improves the ability of an economy to absorb external shocks. The current crisis has caused major economic disruption, and financing problems for many corporates, including banks and SMEs. Improving the financing mechanisms of capital markets can help support the future financing of corporates.

Key principles. A week ago, I would have said that key principles for a bigger and more effective European Capital Markets Union are simplicity, developing market access, and encouraging diversity. Today, I would add the principles of resilience, decentralisation, and inter-connectivity. I see all these principles as having common elements, including the importance of common definitions, and a key dependence on the widespread use of standards.

Practical proposals Capital markets policy has few tools that can have a rapid impact. Other policy areas, such as monetary and prudential policy, and supervisory actions, have a much speedier impact. Capital markets policy deals with the structures and institutions that allow issuers and investors to use capital markets. But the slowness of their impact is precisely why we need rapid, clear and incisive capital market policy measures.

We need three things. We need measures to bring investors to the market; we need measures to bring issuers to the market;

and we need measures that reduce cost, complexity and risk in the use of infrastructure and intermediaries, especially with relation to cross-border investment. Measures to bring investors to the markets should include the development of pension funds, and the use of investment savings accounts to encourage direct participation in capital markets by retail investors. Measures to bring issuers to the markets should in particular tackle barriers for securitisation and for SMEs. Measures to reduce cost, complexity and risk in cross-border investment are typically the most challenging, as they affect policy areas (for example, tax and insolvency procedures) that are deeply embedded in national law, and their benefits may be difficult to see. But they deal with the foundational building blocks of capital markets, and they are critical pre-conditions for progress. They include common definitions, for example, of a financial instrument, and of a shareholder/legal owner of a security.

Today, I would add the principles of resilience, decentralisation, and inter-connectivity.

A Capital Markets Union will mean that investors in any European security are faced with common operational processes through the full life cycle of a securities investment, including common corporate action, and common withholding tax processes. This will require measures to facilitate cross-border and pan-European issuance, measures to ensure the harmonisation of core CSD processes, and a high degree of integration of tax processes. All these measures are desirable in themselves, but they have the additional benefit that they help build resilience in capital markets through decentralisation and inter-connectivity between capital market eco-systems. Report of the CMU High Level Forum. Despite the current difficult times, I am optimistic for the future.

I am confident that the final report of the European Commission's High Level Forum on the Capital Markets Union will contain some important transformational recommendations. And I am confident that the European Commission will take serious account of the recommendations in its future CMU Action Plan. ●



Deborah Zurkow

Global Head of Investments, Allianz Global Investors

What do we see as priorities for the CMU to have a good chance to solve the pension dilemma?

Written as of March 16th, 2020 - The Capital Markets Union (CMU) has the ambitious mission to align and integrate Europe's financial system. This is a challenging but critical task, as the success of the CMU may well determine not only the strength of the EU's economy and its financial sector, but also the ability of its institutions and companies to serve its citizens now, and in the future.

If the main CMU's goals are fulfilled, two imperative needs of citizens will be solved: maximise their current quality of life and their current income by mobilizing capital to invest in Europe's companies, while simultaneously putting savings to work to guarantee retirement income adequacy.

Our starting point is the EU's very fragmented capital market from a regulatory point of view. National tax, corporate, securities and insolvency laws, come on top of very different procedures and practices from country to country. In addition, Member States are on very different stages of their respective business cycles, which makes it hard to make that one solution fits all.

This diversity quickly becomes complexity and it deters market access and portability. Greater harmonisation across Member States will facilitate broader and more diversified investment opportunities for pensions funds and the ultimate savers they represent. In the absence of further alignment between Member States markets will be unable to play their role in maximising retirement income adequacy.

Cross border alignment and collaboration, as well as openness to change in favour of innovation, simplification and harmonisation will be key to solve the structural pension threat. Priorities in my view are 1) channelling long-term savings into financing entrepreneurship, 2) rethinking individual Member State approaches in favour of greater Pan European coherence, and 3) ensuring global competition of the EU in capital markets.

- **Channelling long-term savings into financing entrepreneurship;** A regulatory environment favourable to long-term investment would certainly help to enhance the offering of available savings products such as employees' savings schemes. Member States should work together and share best practices to undertake aligned measures that expand the amount of pension

savings being invested. For this, unnecessary obstacles would have to be removed, and tax incentives would provide a much-needed support. One way to do this would be to recommit to a Pan European Pension Plan that allows citizens in all member states to direct their retirement savings into the capital markets in an aggregated and risk controlled way, with common regulatory and taxation principles that allow these savings to be transportable between countries in an efficient manner.

- **Rethinking individual Member State approaches in favour of greater Pan European coherence;** Member States should be encouraged to simplify and standardise withholding tax procedures and mutual fund taxation to encourage increased retail participation as well as greater cross-border asset ownership for institutional investors.
- **Ensuring global competition of the EU in capital markets;** Deeper and more competitive financial markets will contribute to growth through efficient allocation of capital. We need policy measures that balance market resiliency, market integrity and appropriate supervision with keeping Europe's capital markets sufficiently open and competitive in order to grow their capacity. This will promote further investment, continue to reduce reliance on banks and will create employment. There is also significant room to improve integration of financial centres, and to attract investors and companies from around the world.

“The Capital Markets Union has the ambitious mission to align and integrate Europe's financial system. This is a challenging but critical task.”

In a nutshell, the investment challenge is well beyond the capacity of the public sector alone. Within the ambitious mission of the CMU, asset managers not only will help savers maximise their returns and mitigate investment risks, but also will be able to act as active stewards of capital, supporting sustainability through important extra-financial considerations such as ESG and climate, contributing to long-term health and sustainability of capital markets and society as a whole. ●



Steven Maijoor

Chair, European Securities and Markets Authority (ESMA)

The priority areas for the CMU

The imbalance that exists in the European Union between bank and capital markets funding makes the EU less competitive and less financially stable than it could be. Creating globally competitive markets takes time and we have yet to fully achieve that, but the UK's withdrawal from the EU reinforces the urgency of this goal: in the aftermath of Brexit, the EU will only be able to compete effectively with other major financial centres and reinforce its economic growth if its financial markets are sufficiently sizable – and further integrated. Moreover, in the context of the COVID-19 pandemic and its economic fall-out, stronger EU capital markets may play an important role in the recovery phase.

While the CMU is, in its current form, a relatively new project, achieving common capital markets is, more generally, a long-standing EU goal. Much progress has already been made, with successful market integration being observed in areas such as funds, trading venues, and clearing.

Looking forward, efforts should be focused on three priority areas which are essential to achieve a successful CMU: (i) Develop retail investor participation in EU capital markets; (ii) Improve capital market access for EU SMEs; (iii) Ensure effective consistent supervision in EU financial markets.

Looking at successful capital markets across the globe, a high level of retail participation should be an essential characteristic of a CMU. Some of the key reasons for scarce retail investor participation is their lack of trust in capital markets as a result of mis-selling cases, as well as limited financial literacy.

In addition, ESMA found in its 2019 and 2020 Reports on the performance and cost of retail investment products in the EU that costs associated with obtaining financial products are substantial and represent a significant reduction to long-term gains. Finally, due to a variety of disclosure rules applying, including on costs, it is not always clear to investors how different products compare with each other.

To address scarce retail participation in capital markets, several potential actions could be considered. Examples include: (a) further aligning disclosure requirements for investment products across different pieces of regulation

and facilitating their cross-border distribution, (b) improving the distribution of financial products by looking into the incentives, like inducements, for advisors, and (c) reinforcing the role of pensions systems to stimulate retail participation in financial markets.

It is well known that EU SMEs tend to rely mainly on bank funding and that – when they access capital markets – they tend to privilege local markets due to easier access and lower information asymmetries for investors. For example, while venture capital funds can support the path towards IPOs, their presence is uneven across member states.

At the same time, it is fair to say that SMEs may pose increased risks for investors and it is challenging to develop rules that are appropriate for all types of SMEs at different stages of their development. The right balance should be found between making standardized information on SMEs available to investors across the EU, while the costs of such information to SMEs should be proportionate.

“In the context of the COVID-19 pandemic and its economic fall-out, stronger EU capital markets may play an important role in the recovery phase.”

Other actions already taken in this area include the creation of SME Growth Markets under MiFID II. In this context, ESMA will soon launch a public consultation on an assessment of the functioning of the regime for SME Growth Markets. This consultation will include some suggestions to further promote the development of such markets in the EU.

Finally, regarding the role of supervision, it is well known that differences in supervisory practices increase the costs of doing business across the EU, and constitute a substantial barrier to cross-border investments. Over the past two years, the EU institutions have taken gradual steps towards expanding direct supervision at EU level. As a result, an increasing number of supervised entities will fall under ESMA's remit in the ►

► years to come. This concerns both EU and third-country market participants.

While the ESAs' review has introduced some useful changes to the supervisory convergence tools available to ESMA, these

are less ambitious than those originally proposed. As such, there are further opportunities to enhance ESMA's supervisory convergence role further via a refined toolkit, especially regarding its ability to ensure the implementation of common supervisory practices. ●



Sebastián Albella Amigo

Chairman, Spanish Securities and Exchange Commission (CNMV)

Rethinking CMU: the importance of local markets

Although many of the specific objectives initially envisaged in the context of the CMU project have been reached, we are still far from achieving a truly integrated efficient capital market in Europe. Additionally, there is a need to rethink and relaunch the whole project considering challenges arising from Brexit.

Therefore, it is time to propose additional actions. From my point of view, the key priorities for the next phase of the CMU should be three: increase the equity market share in funding, tax harmonisation and supervisory convergence.

Firstly, the need to foster market-based finance for companies is especially acute on the equity side. Being listed broadens the possibilities of financing, boosts the level of professionalism and rigour in management, is an incentive to grow, gives prestige, strengthens the brand, helps to attract and retain talent, etc. and, since it is compatible with maintaining control, is a very natural solution for successful family businesses of a certain size.

More listed companies also mean more transparent companies and even a somewhat more democratic society: it means that there are more companies within reach, either directly or through funds, for any investor. For these reasons, any restrictions on the capacity of firms to access capital markets should be removed and no extra restrictions or conditions should be imposed on companies associated with the fact of being listed.

Secondly, there is also a need to make progress on tax harmonisation. Current different tax regulations distort financial decisions, reduce efficiency in capital markets and influence too much cross-border capital flows. There is room to reduce the vast differences across Europe in the tax treatment of financial markets' transactions and SME investments. Heterogeneity in this area creates too diverging

distribution models for financial instruments (insurance, banking and securities products).

Finally, the CMU project needs to emphasise the convergence of supervisory practices. In order to homogeneously apply the European rulebook it is of paramount importance that ESMA intensifies its efforts in supervisory convergence by using in all appropriate cases the tools and powers granted by law. Regarding the home/host supervisory model in the EU, it would be an improvement if the host NCAs were provided with the appropriate information on the activities carried out in their jurisdictions. The establishment of formulas for cooperation between home and host authorities is essential in order to avoid a "race to the bottom".

Additional actions to relaunch CMU must coexist with strong local financial markets.

This is especially relevant in a context in which there is certainly a need to create an integrated, competitive, deep and liquid capital market, but this should not imply the creation of a single or dominant financial centre or the weakening of the main European local markets, i.e. any additional actions to relaunch CMU must coexist with strong local financial markets.

They benefit medium-sized companies that are large enough to tap local capital markets, without preventing them from looking for capital across borders. Geographical proximity lowers transaction costs, helps to overcome cultural barriers of entrepreneurs and helps investors to understand the businesses that they are financially supporting. ●



Rimantas Šadžius

Member of the Court, European Court of Auditors

EU auditors call to address essential limitations of ESAs

The EU was plunged into a pool of uncertainty this year with regards to the financial sector as it continues to try and find tools to offset the massive economic fallout of the coronavirus crisis – which could likely require a global effort. The negative impact of the pandemic on the financial markets is evident, pushing to obscure transformations and making future structural changes inevitable (as of now). However, a need for sound supervision will surely stay instrumental, and thus, past lessons in building a harmonized approach to the EU-wide financial sector still need to be learned.

Common rules for the entire EU financial sector, or the single rulebook, are meant to ensure a more effective level playing field and prevent negative cross-border spillovers stemming from possible regulatory arbitrage. However, despite a large number of regulations and directives put in place since 2009, the bulk of direct supervisory controls and enforcement responsibilities still rest with national competent authorities and supervisors. As a result, even with more intensive coordination and approximation of national laws to reinforce the internal market, the rule framework remains fragmented due to different transposition or interpretation of rules, different supervision approaches, and most importantly, very limited EU level enforcement instruments.

So far, all three ESAs acting within their mandates can be praised to have indeed effectively contributed to a smoother functioning Single Market for financial services. At the same time, we can observe that in terms of the types of possible response to various developments in the financial area, the EU is constrained in its competences defined within the Treaties, although notably, EU legislators enjoy ample degree of flexibility in these issues. At present, strong national interest and a legally permissible degree of arbitrage (in setting national regulations, supervisory practices or enforcement approaches) related to the financial sector limit the possibility to take fully effective and proactive measures at EU level, because a difficult consensual approach in many cases has to be applied. Therefore, to overcome persisting strong national borders and to make the single rulebook work, ESAs should evolve from being “de jure” authorities to “de facto”.

The mandate and role of ESAs as centralized bodies for capital markets and conduct-of-business supervision were discussed intensively recently. In its audits of EIOPA and EBA, the

European Court of Auditors has identified a number of serious, systemic gaps in the supervision of the EU’s banking and insurance sectors. In our work, for example, we pointed out a too limited role of ESAs, especially EIOPA and EBA, in supervisory colleges (for cross-border groups). The complicated functioning model of supervisory colleges and even the lack of proper arrangements concerning information exchange could bring about vast inefficiencies.

“To make the single rulebook work, ESAs should evolve from being “de jure” authorities to “de facto”.

We called upon EU legislators to adjust accordingly the respective regulations and frameworks. We recommended, among other measures, to rethink both the governance and powers of the ESAs. Of course, another question is what should come first: whether it would be optimal to grant ESAs more powers before fixing identified issues in their governance and resources.

Along with the banking and insurance sectors, we also feel there are similar issues in the area of securities markets, investment funds, etc. Thus, we are about to start an audit of performance of the EU framework for non-bank finance intermediation to be able to provide a more detailed picture of it to EU legislators. ●