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## View From AFME

### Strengthening the ESAs and supervisory convergence in Europe: reflecting on progress and next steps

by Pablo Portugal

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As the European Supervisory Authorities (ESAs) mark their ten-year anniversary this year, the European Commission's recent [consultation](#) on supervisory convergence and the single rulebook provided an opportunity to reflect on their functioning and the evolution of financial markets supervision in the EU.

The latest review of the founding regulations of the ESAs, which concluded in late 2019, led to targeted changes to the tasks, powers and governance of ESMA, EBA and EIOPA. While it is premature to provide a full assessment of the impact of the changes, recent developments have provided practical experience on the effectiveness of current arrangements, including areas for potential improvement.

#### An effective response to the Covid-19 crisis

The unprecedented challenges arising from the lockdown measures in early 2020 were a major test to the resilience of EU financial markets and the ability of the ESAs to react to urgent situations in a timely and effective manner.

The Covid-19 emergency showed that the ESAs have the capacity to respond quickly to major challenges in financial markets, and put forward measures to coordinate actions at the EU level.

The clarifications and regulatory forbearance statements issued by ESMA during this period were critical to help firms manage resources and avoid unnecessary stability and operational risks at a time of heightened market volatility. Market participants also welcomed the guidance on the recording of telephone communications, the postponement of certain measures and pronouncements pledging to ensure open and functioning markets, among other actions.

The EBA, meanwhile, took several steps to provide operational relief to banks. These included calls to supervisors for flexibility and pragmatism in the application of the prudential framework, while banks welcomed guidance in relation to debt moratoria and accounting issues, as well as the postponement of the 2020 stress test to 2021.

One area for further consideration is the use of the "no-action letters" procedure that was introduced following the ESAs review. As [acknowledged](#) by ESMA, its experience during the COVID-19 crisis illustrated the limitations of this mechanism under the current legal framework. During the crisis ESMA continued to issue "de-prioritisation of enforcement" statements which do not have

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the same status as the no-action relief tools available to authorities in other major jurisdictions. These non-binding statements issued by ESMA, while very important, do not offer a guarantee that national regulators will act in a harmonised manner and mean that market participants still face the potential need to liaise with several competent authorities on whether they intend to follow the advice of the ESAs, in addition to managing any emerging divergences. Further reflection is needed on the design of a more effective tool that would allow the ESAs to address sudden market developments and provide a higher degree of legal certainty to market participants.

### **Enhancing supervisory mandates and supporting the competitiveness of EU markets**

As markets and supervisory needs continue to evolve, it is important to consider how the mandates of the ESAs should be adjusted to reflect evolving priorities in the financial sector. The focus on the Capital Markets Union (CMU) project creates a strong case for embedding the promotion of competitive and efficient EU financial markets in the mandates of ESMA and the other ESAs, alongside their existing core mandates. The importance of competitiveness is manifested in a number of areas. For example, an efficient and competitive securities trading ecosystem leads to better outcomes for end-users, and is important to attract global market participants and promote the growth of EU financial centres.

As part of the focus on competitiveness, the policy outputs of the ESAs should give greater emphasis to economic analysis and impact assessment. Recommendations issued by the ESAs to the Commission – for example, ahead of a legislative review – carry significant weight and play a major role in the formulation of legislative proposals and the work by the co-legislators. It is therefore important that the ESAs regularly conduct cost-benefit assessments of high-impact proposals and technical standards they put forward in order to understand their impact on investors and the general functioning of markets, including on their efficiency and liquidity. By way of example, AFME members believe that aspects of the securitisation Level 2 framework have led to unduly complex and costly requirements that outweigh the benefits for market participants.

The mandates of the ESAs could formally also reflect the aim of ensuring that all outputs are consistent with and serve to advance the CMU. Regulatory frameworks should be tested against the objectives of making market-based mechanisms attractive and encouraging participation in the EU's capital markets.

In the sustainability area, a welcome aspect of the 2019 ESAs review was the requirement for ESMA to take into account risks related to environmental, social and governance related factors in performing its tasks. The increased demand for reliable and comparable ESG data and ratings should lead to reflections on extending ESMA's direct supervisory powers to cover providers of such services.

### **Supervisory convergence in Europe – an ongoing process**

In its report of June 2020, the CMU High-Level Forum rightly highlighted that “high-quality, well-resourced and convergent supervision based on a single rulebook is a key pre-requisite for a well-functioning Capital Markets Union.”

These needs remain more pressing than ever as EU policymaking focuses on scaling up the capital markets ecosystem, deepening financial integration, advancing the green and digital transitions and navigating a complex international landscape. The trend pointing towards a more multipolar wholesale markets environment in the EU, featuring a range of financial centres serving as hubs for various activities, reinforce the need for consistent and coherent supervisory approaches across Member States.

While it may be too soon to undertake another comprehensive reform of the ESAs' founding regulations, targeted efforts should continue towards promoting an inclusive and transparent approach to supervisory convergence. Reinforcing certain aspects of the ESAs' working practices and strengthening mechanisms for the assessment of outputs and consultation with market participants is particularly important to ensure that supervisory objectives are achieved, and outcomes are conducive to stronger EU financial markets.

In conclusion, in the decade since their establishment, the ESAs have made a number of achievements and delivered significant progress towards more robust and integrated regulation and supervision in Europe. In today's financial markets environment it is increasingly recognised that their role is fundamental not only to the preservation of stability and investor protection but also to the promotion of an efficient, competitive and sustainable financial system in the EU, objectives that should be at the heart of the European policy agenda in the coming years.

Read [AFME's response](#) to the Commission's consultation on supervisory convergence and the single rulebook.