

The supervisory convergence and the single rule book European Commission's targeted consultation MEDEF comments

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The European Commission launched on March 12 a consultation on the convergence of the European supervisory authorities (ESAs) and financial regulation in the Union (single rule book).

After 10 years of existence and in the aftermath of Brexit, this reflection, proposed by the European Commission, seems very welcome to us. It should indeed make it possible to better adapt the European financial supervisory authorities to the new context and to the current and future challenges of the Capital Markets Union. The issue is to contribute effectively to economic recovery and, beyond, strengthening the ecosystem of financing for the economy and more particularly for companies.

As a representative of French companies, on this consultation, MEDEF thus wishes more particularly to underline two major issues:

1) Strengthen the quality of the supervision architecture to face the challenges of the UMC in the future

Regulation and its enforcement are major competitive and attractiveness factors. It is imperative that our companies benefit from an efficient financing ecosystem compared to their non-European competitors. Likewise, European financing players must be able to develop their capacity to support businesses in an efficient and competitive regulatory and supervisory framework. The vitality of the national and European financial ecosystem is essential for the vitality of our businesses.

Thus, financial supervision policies must be fair, balanced and competitive. This objective must be improved for the EU, in order to ensure a level playing field with non-European ecosystems and jurisdictions.

This supposes an adequacy of the resources mobilized with this objective and a precise monitoring of the risks of distortion with the other jurisdictions at the same time as an operation of our supervision combining agility and flexibility to adapt the European rules.

Implementation deadlines set at level 1 frequently disregard the amount of work ESMA and the Joint Committee need to carry out to have a proper assessment of legal options and how to reconcile them with the ambitions of Capital Markets Union. Despite its highly-skilled staff and leadership, ESMA cannot properly contribute to efficient capital markets ('functioning of the internal market'), equal treatment of investors regardless of their location in the EU ('quality and consistency of supervision'), or supervisory robustness ('enforcement of EU rules on supervision')."

Consequently:

- ESMA's mandate should include competitiveness, similarly to that of its UK and US counterparts.
- Policy convergence should never mean uniformity. The European supervisory authorities have their own expertise and specific features of their activities. This consideration does not concern national authorities who must seek convergence and harmonization in their practices.
- Delegated acts and other acts at level 2 or 3 must comply with the principles of subsidiarity and proportionality, notably as regards administrative burden. Crucial is for acts at levels 2 or 3 to not go beyond acts at level 1.
- ESMA should establish an appropriate methodology to set clear objectives regarding the scope of the regulation and the concrete objectives to be followed by the national supervisory authorities. Reflection is therefore essential on the relevant levels of responsibility between supervisors at European or national levels;
- The quality of ESMA's standardization work (technical advice, RTS, etc.) could be enhanced.

It is therefore necessary to identify the most relevant level of regulation and / or supervision, European or national, in order to fully comply with the principles set out in the Treaty. on the European Union: subsidiarity and proportionality being among the most important.

Consequently:

- Same banking activities, presenting similar risks, must be subject to the same rules;
- When level 2 rules are needed to implement the rules defined in level 1, level 1 rules must be applicable only after the finalization and publication of the corresponding level 2 rules in the Official Journal of the EU.
- In the exceptional case of a serious threat to the fundamental objectives posed by contradictory or dysfunctional rules, it must be possible to temporarily suspend the application of the rules at level 2, or even at level 1, to avoid harming the functioning of the EU market and the competitiveness of EU entities. Therefore, ESMA should be empowered to issue proper no-action letters.
- The Q&A mechanism should be made quicker, as Q&As are often stuck with too long a delay in obtaining responses from the European Commission.
- The ESAs should better take into account feedback from stakeholders and engage with more occasions than public consultations.

2) Better supervise (systemic) ESG data providers

The role of extra-financial data and their impact on corporate financing is becoming increasingly significant. The influence of agencies, most often non-European, is therefore major and will become systemic in the near future.

In this context, it is imperative that the burden placed on companies by controlling extra-financial data remain sustainable. ESMA's responsibilities for supervising ESG data providers should be extended, in order to be able to assess their methodologies and pricing.

In conclusion and more generally, in agreement with the financial players, regulators and market organizations, we would like to emphasize several points:

- Standardization is not an objective in itself: Authorities, in different sectors, can have different lives;
- The slowness or cumbersome sometimes observed in the enactment of certain texts, in particular levels 2 and 3, at a time when London is now in a position to be able to adapt its national regulations very quickly to its own objectives, as well as the preservation of competitiveness of the Capital Markets Union, is a major risk in terms of preserving the competitiveness of the European market. The priority of the objective of competitiveness must be recalled for the reforms which will be implemented soon;
- The role of the various authorities must be clarified, not so much by listing their prerogatives as by a method for analysing and monitoring the evolution of their role and scope: ESMA must be privileged if the Union is the level where the activity to be regulated is developing, but the principle of subsidiarity must be affirmed with national level supervision if the local actors are the most important.