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IMPROVING THE EFFECTIVENESS OF THE EU CAPITAL MARKETS LAW (LESSONS FROM FINANCIAL REGULATION?)

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Abstract

The effective enforcement of EU Capital Markets Law is critical for ensuring financial stability, protecting investors, and maintaining fair and competitive markets throughout the European Union. This document identifies key challenges in the current regulatory landscape, including the complexity of laws, the diversity of enforcement practices across member states, and the lack of harmonization in financial regulations. We propose a comprehensive approach to enhance enforcement effectiveness through simplification of the legal framework, adoption of preventive regulatory measures, and improved coordination among national and EU-level supervisory authorities. These strategies are designed to reduce the regulatory burden, facilitate compliance, and ensure more uniform enforcement across the EU. Key recommendations include:

1. **Simplification of Regulations**: Streamline existing laws and regulations to eliminate redundancies and clarify obligations, making them easier to enforce and comply with.
2. **Preventive Approaches to Regulation**: Shift the regulatory focus from a primarily reactive to a more proactive stance, emphasizing early detection of potential compliance issues to prevent violations.
3. **Enhanced Supervisory Coordination**: Foster closer collaboration among the EU's financial supervisory bodies to ensure consistent application of regulations and share best enforcement practices.

The ultimate goal of these recommendations is to create a more integrated, efficient, and effective regulatory framework for the EU's capital markets, aligning with broader efforts to strengthen the European financial system and enhance its global competitiveness. This document lays the foundation for a series of actionable steps that policymakers and regulatory authorities can adopt to achieve these objectives.

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The entire working paper series can be consulted at www.fli.ugent.be

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Improving the Effectiveness of the EU Capital Markets Law

(Lessons from Financial Regulation?)

Eddy Wymeersch, Universiteit Gent

Executive summary

The effective enforcement of EU Capital Markets Law is critical for ensuring financial stability, protecting investors, and maintaining fair and competitive markets throughout the European Union. This document identifies key challenges in the current regulatory landscape, including the complexity of laws, the diversity of enforcement practices across member states, and the lack of harmonization in financial regulations. We propose a comprehensive approach to enhance enforcement effectiveness through simplification of the legal framework, adoption of preventive regulatory measures, and improved coordination among national and EU-level supervisory authorities. These strategies are designed to reduce the regulatory burden, facilitate compliance, and ensure more uniform enforcement across the EU. Key recommendations include:

4. **Simplification of Regulations**: Streamline existing laws and regulations to eliminate redundancies and clarify obligations, making them easier to enforce and comply with.
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The ultimate goal of these recommendations is to create a more integrated, efficient, and effective regulatory framework for the EU's capital markets, aligning with broader efforts to strengthen the European financial system and enhance its global competitiveness. This document lays the foundation for a series of actionable steps that policymakers and regulatory authorities can adopt to achieve these objectives.

1. The first question is therefore what are the EU capital markets laws?

The EU is composed of 23 Member States, covering a large part of the Western and Central European continent, and part in the East, contingent to Russia, with most countries included, all governed by democratic principles, and much attached to the fundamental liberties and freedoms. Some states covered are not part of the Union; this is the case with the UK, Switzerland, but also Norway, this as an associated Member. The Balkan countries have not -yet- become a member, Kosovo, a candidate, Montenegro, Serbia may become a member in the not-too-distant future. The Union is not only based only on territorial proximity and integration, but also on common principles, striving for peace and security, respecting fundamental rights and personal freedom. These are among its core values, guaranteed by elections-based democracy. But it not a homogeneous region, also due to its geographical location. Diversity of cultures, of languages and traditions, of religious or philosophical opinions, make up a wide and rich variety of lifestyles. Their legal systems are not identical but commonly related by identical principles. Also, Europe is not an isolated continent: it lives in close contact with North and South America, but also with Asia, the far East and India, but also with Africa.

Many of these factors are not irrelevant in the analysis of the today's financial world, its structure and its regulatory patterns, and the impact on its effectiveness. Major financial centres are allowed to apply them differently. In addition, the national laws, which remain further applicable, also present differences, most strikingly in the fiscal and financial regulatory fields, leading to structural effects in the investment policies. The reflections about the EU-wide harmonisation of the existing legal regimes for financial institutions and their application practices have been stimulated by different supervisory practices as developed by the national authorities competent for the supervision of each of these sectors. These authorities are often in close contact with the financial sector which they supervise and can therefore take better account of the specificities of the national issues while presenting different outcomes which have been analysed and compared in legal academic writing. They also have dedicated contacts e.g., in consultative panels. The present system of financial regulation is quite complex, in some fields difficult to apply due to the innumerable number of regulatory provisions, the repeated changes and the lack of clarity of the individual provisions. These points have been mentioned in the consultations which the Commission organises before adopting new directives and have led to a strong call for simplification of the applicable requirements[1]. Therefore, the first step for making the existing regulatory system more efficient and better performing is to analyse how the existing framework can be simplified. This could be done, not only by a substantive analysis of the justification of the individual provisions, but also by better coordination of the existing instruments which have been adopted over time. These provisions are applied in each of the Member States, necessarily leading to small differences in interpretation differences which are best overcome. The usual approach for rendering the present regulatory system more effective consists of increasing the powers of the enforcement bodies. However, these bodies have already wide powers, at national level and coordinated at the EU wide level, such as the EBA, ESMA and EIOPA. The wider extension of their powers would trigger structural changes in the supervised markets. Also, there are several calls to reduce the supervisory burdens, but these are not often followed up.[2]

2. Could a preventive approach not be helpful, at least for some issues?

Mieux vaut prévenir que guérir! It would be useful to have the present regulatory approach, which often acts ex-post, complemented by increasing the responsibility and accountability of the internal decision-making bodies within the companies. This implies not only a clearer

1 see SME and its insistent call for simplification

2 See for the listing rules: Listing Act Package: on 1st February 2024, Parliament and Council reached a provisional compromise on the listing act with changes to the Prospectus requirements, the exemptions, a new EU growth issuance document, the MAFR, Prospectus exemptions, etc.

definition of the tasks of the persons presently responsible within the companies for ensuring the implementation of the applicable rules, but also by developing the necessary mechanisms for the identification of possible disfunctions. In the field of greater incidents, " significant harms" as these are sometimes called, in many cases these might have been identified by applying appropriate internal mechanisms, identifying potential major risks[3], such as clear internal "insiders lists "[4]- or the organisation of risks committee which could follow up the increasing difficulties in companies leading to their insolvency. A company which has been repeatedly sanctioned for regulatory violations, e.g., may point to a far going weakness what may lead to undermining the confidence in the financial institution and their activities[5]. there are clear examples, even in the banking field. In the aera of systemic risk, this approach has been widely accepted, but it should apply also for other major risks.

Is it efficient to only curb regulatory violations ex post, or - shortly- are ex ante action not better suited to avoid the evil? The supervisory practice tries to address both; it largely imposes requirements that aim at preventing significant risks, but additional sharp eyes would be welcome[6].

Reference can be made here to the CSDD - the "corporate sustainability due diligence directive", recently adopted - where the boards are legally bound to 'due diligence' processes for identifying "potential harms" in the fields covered by the sustainability directive[7]. By doing so, they will not only prevent causes of "potential harm", but also develop instruments for reducing the impact in case the harm occurs. This technique could usefully also be used in the financial field: afterwards, once the debtor has collapsed, one will analyse the moments at which the bank, as a powerful creditor, could have intervened and brought the company to adopt a different line of action. There are no reasons why the EU national competent authorities should not require formal comparable procedures: in fact, the bank supervisors exercise close supervision on the financial institutions and the quality of their performance, including their risk awareness and related actions, and develop stringent standards for determining points of weakness in a bank's actions, but are these observations sharp enough? Early preventative active action is always to be preferred to ex post remedial action.

An example: The demise of an important Belgian bus construction company, reportedly mainly due to disputes between the family shareholders, and finally leading to its insolvency could have triggered early negotiations led by expert negotiators to find a long-term solution.

[3] think about the Genova Morandi Bridge where the deficiencies, reportedly had been identified some time before.
[4]see article 18, Market abuse directive 596/2014 of 16 April 2014. The list will be transmitted to the supervisory authority.
[5] In one leading institution, a bank has been sentenced for multiple violations leading to numerous heavy fines which ultimately may have affected its solvency.
[6] See Euronext Playbook for Incident Management, Euronext Regulated markets and MTFs, February 2022.
[7] See also for similar duties applicable to the Systemic risk board, ESRB.

The banks involved could not only have menaced with the consequences of a likely insolvency but have required the appointment of a "compromise" team a long time in advance, with ample negotiating expertise - e.g. in family matters - in trying to avoid this collapse. If this type of remedial action would be recognized as part of the bank's diligence duties, it would be a significant extension of the duties of the financial sector in defending 'the public interest' and might therefore be supported by the supervisory authorities for the same reasons. The public interest is more than complying with the regulation.

In the financial markets' regulation, there quite a few regulatory safeguards which are destined to prevent collective, or individual harm: trading access is limited to investment firms and banks, so that all other investors will pass their transactions to these intermediaries, which are subject to a demanding safeguarding regime, in the interest of both the investors and the markets. One of these safeguards is the requirement to centralise securities trading at market venues and to submit these to the standardized conditions: this is a protection against different risks, e.g., a safeguard against price fragmentation, against price manipulation and more generally market abuse, including insider trading. This one of the reasons why "investor to investor" trading - although not forbidden - is not favored: dealing on the securities the markets give better protections of different kinds.

3. Centralisation of securities trading

One of the most visible structural weaknesses of the EU capital markets is their division, because they are functioning as different markets and at different prices and conditions, but also exposing investors to different structural risks. The markets are owned by different entities, all functioning according to their separate legal system and procedures, according to their own views and priorities, and in many cases weakly interrelated. Part of these differences may be attributed to their historical origin, each country developing its own market to serve its local economy. European regulation has reduced the differences in the models along which they have been structured, subjecting them largely to the same organisational and administrative rules – e.g., applying Mifid II, the directive on the markets in financial instruments, where the basic rules on their organization have been laid down- but has allowed each market to be organised separately, according to the view of the local stakeholders. As a consequence, some markets have been more successful, and more prosperous than others, others losing market activity due to delistings, and having difficulties getting new entrants in their trading list. The loss of securities being listed is a real problem in many EU markets, reducing their dimension and the choice offered to investors as to the diversity of possible business investments[8]. Large companies prefer to be listed on the largest markets also because

[8]See C. Watling, A tale of two cities: the rise and fall of listings, OXERA,https://www.oxera.com/insights/agenda/articles/a-tale-of-two-cities-the-rise-and-fall-of-listings; Swetha Gopinath and Michael Msika, Why the UK's Stock Market Lost Three-Quarters of Its Activity, Bloomberg,19 April 2023; *Updated on 2 June 2023*; Simon Foy, London Stock Exchange to lose £9bn packaging giant in latest blow to City 7 September 2023
Focus, Number of listed companies, .https://focus.world-exchanges.org/articles/number-listed-companies, WFE Research team, May 2022

these attract most investors and offer the best perspectives for raising additional capital. Weaker markets do not attract top performers. Therefore, we have an interest in the EU to develop strong and stable markets, adequately regulated and effectively supervised, and without major incidents, as have occurred in some countries from time to time.

Europe's markets are independent entities, with separate personalities, and some interaction. The core question remains whether the present organisational pattern is in the interest of the European union as a whole, mainly serving the individual interests of the participating Member States in which these markets are located. Therefore, the question is being raised whether these markets should better be interconnected into a Europe-wide market, not necessarily one single market but at least a series of markets with close relations among themselves and with largely exposed to comparable regulations, solving the same questions and arriving at largely comparable views.

4. Cross-market information flows are therefore important drivers

Investors in one market can learn what has been the going on in the other markets, but mostly only after the facts. Information in the press is often too late to assess the position of a certain market segment: prices will have moved, in some case considerably, making further trades a no go. Taking part in the developments in another market, by buying or selling shares, is even more time consuming, or not possible except by calling assistance of an investment firm in that other market. Direct knowledge of the price evolution of a certain share or on the ongoing developments in that market, demands a lot of patience, unless by opening continuous contacts with investment firms active in that other market. Investors often prefer to invest in their local market, which they know best, having direct access to information, follow their local advisors, which protect them against missing opportunities and without being mistaken about the price evolutions, they had been following as investors. This leads to caution and mistrust, and avoidance of foreign markets, what results in the market fragmentation, what prevents the functioning of an EU-wide share market. Investors therefore stay at home, often preferring less risk intensive investments as bonds, or investment funds. Stronger EU financial markets including securities markets are necessary building stones for strengthening the EU economic system, attracting capital for building a stronger economy and allowing larger means for the traded companies and their products. This funding point was recently underlined in the statement by the ECB[9].

E Y Observatoire des offres publiques d'achat en France 2023, January 2024; About 60 % of the companies subject to a take-over bid have been withdrawn from the trading list in Paris . In Belgium the FSMA, between 2014 and 2023, has dealt with 47 take-over bids, many being delisted.

[9] ECB, Statement by the ECB Governing Council on advancing the Capital Market Union,7 March 2024, referring to a "European Unified Ledger" and single pool of euro liquidity. The ECB will explore together with financial market stakeholders the potential use of new technology for issuance e, tradeoff and settlement.... leading to a digital capital market union.

The development of an integrated European securities market would imply that the present different securities markets, here focusing mainly on shares, would function as a "single market", or at least an integrated platform, where most of the European shares should be available to all investors and could be acquired in largely similar Europe-wide procedures. This might presume that the present stock exchanges would merge into one single platform, a "single European market " where most listed securities, essentially company shares, could be acquired by investors from all over Europe. As one of the widest and best diversified share markets, it would attract investors from all over the world. The market would consist of all European shares today traded in the participating markets, ideally governed by largely identical company laws, and relating regulations, with comparable financial disclosures and applicable accounting standards. The degree of harmonisation should strive to be maximal, conveying an identical status to the securities traded. All the supervisory regimes applicable to the trading in the shares should be largely equivalent and offer the same safeguards, offering investors - EU or overseas - the same guarantees. Starting from an analysis of the present situation, this would largely be a daydream, in fact a nightmare for investors.

Several of the world's most important securities markets in the world have achieved a high degree of integration, essentially by overcoming their division by installing active - mostly electronic - communication lines but keeping their proper characteristics.

In the EU, the underlying interests are however too diverse that the hypothesis of a "single market" would be realistic, and in practice too difficult to achieve. A simpler, but equally effective approach could consist of connecting the different markets as one single network, in which investors could act, irrespective of their national origin, allowing the same advantages as being presented on a physically single market. This would imply wide transparency of prices offered or demanded, simple and effective trading rules while execution of transactions to take place by an effective availability system of available funding, in exchange for delivery of the securities, object of the transactions. The interconnection of the existing securities markets is likely to be a complex exercise, probably raising objections for different reasons, such as complexity, fear of foreign domination, and national interests. But some of the markets have already started to develop networks for exchanging information, even for cross-border trading, and in some cases in an electronic format. (see below)

In several other fields the Council tabled proposals on different other stages of the trading process: this is the case for the "clearing" of securities bought or sold[10], for the CCPs and their supervision[11] Integration has been going on for quite some time.

[10] For the development of a common rulebook a separate new working party will have to be constituted, comprising the national supervisory authorities, the national markets, and parties active in the markets. investors and other affected parties.

[11] and the need for market participants of "substantial systemic importance" subject to a clearing obligation to have an operationally active account at the CCP, see Council and Parliament Press release 7 February 2024.

5. Interconnected securities trading systems - an overview

In the field of securities trading, several of the leading stock exchange operators have started interconnection systems, or plan to do so. This type of integration has been going on for quite some time, but it is not always clear how far the integration effectively goes, and which fields it covers. Stock exchanges were originally organized as self-regulatory organizations owned and operated by their member traders, brokers, and market makers. Trading took place in a central trading "floor", where pricing was the result of discussions between brokers, supported by instant information, e.g., on TV screens. The trades were then processed in the back office and later settled in a central securities depository utility. These functionalities became increasingly automated due to the more and more intensive use of electronic communication.

Most securities trading still takes place on the major stock exchanges. Many of these have established links among themselves.

- The NYSE[12], the largest exchange in the world, with a market capitalization of $25.56 trillion as of December 2023. is an American company, owned by the Intercontinental Exchange (ICE[13]), which owns the NYSE and Euronext, the latter of which with trading floors listed in Paris, Amsterdam, Brussels, and Lisbon.
- NASDAQ Composite is the second-largest public stock exchange with end of December 2023 a market cap of $23.41 trillion. Nasdaq Inc. is a publicly traded company, which also owns the Philadelphia and Boston stock exchanges. Its namesake Nasdaq owns seven Nordic and Baltic exchanges, collectively known as the OMX Group, (starting 2008.) Its attempt to acquire the parent company of the London Stock Exchange (LSE) failed.
- The Japan Exchange Group, $6.14 trillion market cap acquired the Tokyo Stock Exchange and Osaka Stock Exchange. In 2019, the London Stock Exchange and Shanghai Stock Exchange created a connection so that international investors could invest in China's growth and Chinese investors could directly access LSE-listed companies.
- The London Stock Exchange is one of the world's oldest exchanges, with a $3.42 trillion market cap as of September 2023. It is owned by the London Stock Exchange Group, which is itself a publicly traded company. It is rather an independent market entity but with activity in related fields such as clearing derivatives.

[12] Nasdaq is the second-largest public stock exchange with a December 2023 market cap of $23.41 trillion; it also owns the Philadelphia and Boston stock exchanges as well as its namesake Nasdaq, Inc. also part of Nasdaq OMX Group, in 2008 groups seven Nordic and Baltic exchanges,.

[13] New York Stock Exchange was purchased by. Intercontinental Exchange (ICE) as part of the NYSE Euronext acquisition in November 2013 for $11 billion.

Among the European stock markets, some exchanges have established communication networks between some of the stock exchanges belonging to the same group:

Deutsche Börse has developed its T7® trading platform covering Eurex, the Xetra® and Börse Frankfurt venues and commodities derivatives trading. It offers streamlined processing and reporting, between Frankfurt, Eurex and Vienna. Euronext as owner of the share markets in Paris, Brussels Amsterdam, Lisbon, and Oslo[14] has created Euronext Continental Cash (CCP) on 6 November 2023[15]. It produces a streamlined processing and reporting, real time live market data. Euronext Best of book market give all bids and offers, price levels and quantities, and the number of orders at each price of the price levels[16] Euronext also published an overview of the different classes of shareholders in its CAC 40 and SBF 120[17], identifying even the percentages held by the largest individual shareholder groups.[18]

In several other fields the Council tabled proposals on different other stages of the trading process: this is the case for the "clearing" of securities bought or sold[19], for the CCPs and their supervision[20] Integration has been going on for quite some time.

The European Energy Exchange (EEX) and the Nodal Exchange for electric power, as well the cash market exchanges in Budapest, Ljubljana, Malta, Prague, Sofia, Vienna, and Zagreb use Deutsche Börse's T7 trading infrastructure. Processing and reporting are streamlined. It is used for derivatives markets by EEX and Nodal Exchanges, and by Frankfurt Stock Exchange and Vienna Stock Exchange for cash trading[21]

The Eurex T7 Gui Enhanced Trading Interface (Eurex ETI)[22] provides for order handling execution notifications requests for quotes, and basket trading for derivatives request.

[14] Since 2019 the Oslo Stock exchange, acquired in a bidding process of Euronext v. Nasdaq.

[15] Euronext cash market data, offering all pre-trade and post-trade data from the cash markers on equities on MTFs, bonds and warrants, reflecting information on 1.900 listed issuers worth close to €6.6 trillion in market capitalisation as of end December 2023., https://www.euronext.com/en/data/market-data/market-data-products/cash-market-data.

[16] see further "Euronext's Central Order Book". This electronic information page contains the bid and ask price, the qualities for each and the transactions executed at each of the price levels; see: https://corporate finance Institute.com: "Order book" . Euronext Best of Book is a best execution service for retail investors with the best prices for their equity.

[17] Societe des bourses francaises 120, an index for the French shares

[18] See also EAC-2024-CAC 40 SBF 120 Shareholders-Study Euronext.pdf

[19] For the development of a common rulebook a separate new working party will have to be constituted, comprising the national supervisory authorities, the national markets, and parties active in the markets. investors and other affected parties.

[20] and the need for market participants of "substantial systemic importance" subject to a clearing obligation to have an operationally active account at the CCP, see Council and Parliament Press release 7 February 2024.

[21] see https://www.eurex.com/ex-en/support/technology/t7

[22]https://www.eurex.com/ex-en/support/technology/connectivity/Connectivity-Support-2393262?frag=2393268. The project is to be finalized around the end of the year.

Deutsche Börse has already in 2001 developed XETRA[23], as a trading venue, allowing for continuous trading with auctions and designations sponsors who pools binding purchase and selling prices on a continuous basis, ensuring additional liquidity and fair pricing. The technology is used in Vienna, and in several Central European stock exchanges (E.g., Prague, Budapest, Irish and also for Eurex Bonds).

LSEG London is also working on projects in the electronic communications. On February 22, 2022, it acquired TORA, a cloud based technology provider with seamless access to, and interoperability with the datasets and analytic, and. which will provide solutions for the order and executions management systems (OEMS) and portfolio management systems. Pre- and post-trading services are offered through different service providers, eg with Italian Monte Titoli.

This incomplete and not very precise overview of the existing linkages between the main markets in the EU give an image of the possibilities of creating a Europe wide network of communication, usable not only for data transfers, but also for exchange of securities orders and for their trading. The introduction of a European network would require some adaptation but would not be a revolutionary change. This short overview illustrates that there is already quite a number of bridges between the largest worldwide securities markets, mainly the share markets, and that these are likely to facilitate a further integration of their markets.

6. European initiatives

The European Council has called for several specific proposals dealing with an improvement of the EU regulatory regime, calling i.a. for the further development of a common rulebook, and more especially important for the present subject, for a stronger interconnection of the EU markets; it took further position on the ESAP developments and on the mandatory participation of the substantially systemically important market participants to take part in the EU CP, further calling for an improvement in the clearing services and several other items. In its statement on "Building the EU Capital Market Union" [24], as part of the 2021 capital market union package, the Council made a statement that the EU wanted to create a truly single market for capital across the EU with the objective "To integrate national capital markets into a genuine single market"**.** A better integrated market and further harmonisation and convergence of the listing requirements were mentioned among to priorities. This position

[23] Xetra is Deutsche Börse fully electronic trading venue for Xetra and Börse Frankfurt https://www.xetra.com/xetra-en/newsroom/circulars-newsletters/xetra-circulars/Introduction-of-T7-Release-12.1-3723368. It services the cash markets in the exchanges in Budapest, Ljubljana, Malta, Prague, Sofia, Vienna, and Zagreb.

[24] What the EU is doing to deepen its capital markets - Consilium.pdf, 25 November 2021, https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/what-capital-markets-union_en

was further detailed in a statement of the Eurogroup[25] outlining the principles for further action.

"We invite the European Commission and Member States to assess and, if appropriate, address obstacles that could hinder mergers and acquisitions or other forms of integration of market infrastructure, including stock exchanges, with the view to strengthening European centres of expertise. We also invite the European Commission to monitor any outstanding issues following the adoption and implementation of the Listing Act and of the "consolidated tape", including the identification of areas where further developing the consolidated tape could be beneficial to market integration."[26]

"The EU economy needs this type of integration of the EU securities markets, to allow it to expand, and be more successful. This is after all a public interest objective. Up to now this cross border investment is only undertaken by the knowledgeable investors, or by institutional investors, such as investment funds, or similar common investment ventures."

The consolidated tape matter has also been discussed in extenso in academic writing [27] Therefore more interlinking between the different markets is to be pursued, offering a wider investment perspective, thereby allowing these markets to grow in volume with more investors becoming active, offering more financial support to the investee companies. The success of the EU economy needs this type of integration of the EU securities markets, to allow it to expand, and be more successful. This is after all a public interest objective. Up to now this cross-border investment is only undertaken by the knowledgeable investors, or by institutional investors such as investment funds, or similar common investment ventures.

Linking the different national stock exchanges and markets has been going on for quite some time.

Aware of the advantages of a cross-border extensions of their business model some share market firms have developed links between the different national markets they own: Euronext eg, as owner of the share markets in Paris, Brussels Amsterdam, Lisbon (Oslo) has created Euronext Euronext Continental Cash (CCP) on 6 November 2023[28]. Euronext Best of book

[25] Statement of the Eurogroup in inclusive format on the future of Capital Markets Union,11 MARCH; 2024, https://www.consilium.europa.eu/en/press/press-releases/2024/03/11/statement-of-the-eurogroup-in-inclusive-format-on-the-future-of-capital-markets-union/

[26] This allusion to the consolidated tape does not necessarily indicate support for an integrated trading model, but might only refer on a consolidated repotting model.

[27] See e,g, O.Wyman , Caught on Tape, A consolidated tape for Europe, by D Peterhoff, T Wuergler and M. Burkl, CFA ; EU Commission Article 14 Consolidated tape, action 14 of the CMU action plan, finance ec..europa.eu

[28] 1,900 listed issuers worth close to €6.6 trillion in market capitalisation as of end December 2023., https://www.euronext.com/en/data/market-data/market-data-products/cash-market-data

market give all bids and offers, price levels and quantities, and the number of orders at each price of the price levels [29]

Euronext also published an overview of the different classes of shareholders in its CAC 40 and SBG 120, identifying even the percentages held by the largest individual shareholder groups[30] Euronext e.g., as owner of the share markets in Paris, Brussels Amsterdam, Lisbon, Oslo has created Euronext Euronext Continental Cash (CCP) on 6 November 2023**[31].** Euronext Best of book Market gives all bids and0 offers, price levels and quantities, and the number of orders at each price of the price levels. [32] Euronext also published an overview of the different classes of shareholders in its CAC 40 and SBG 120, identifying even the percentages held by the largest individual shareholder groups[33] Euronext has one clearing house for cash markets to foster a unified European financial market and ecosystem for Q3 2024, and positions Euronext across the entire trading value chain to create value for clients.

Euronext Brussels cash markets ((CCP)) on 6 November 2023 France, Ireland, the Netherlands, and Portugal on 27 November 2023 clears equities, ETFs, structured products, warrants, and bonds across six Euronext markets. 2 million transactions on a daily basis for its 52 European and local clearing members operate clearing activities for cash, listed derivatives and commodities markets by the end of 2024, providing one single platform for clients to manage their collateral, and access information on collateral, risk, and clearing. unified equity and derivatives default fund[34]

The market for Italian derivatives is likely to join.

These technological innovations are significant steps forward on the path of the integration of the EU securities markets. They have their limitations, mainly being limited to Euronext members and trading through the traditional channels. At least, once executed they will be cleared through the central Euronext clearing facility, what will give safety to the investors

[292929] see further "Euronext's Central Order Book". This electronic information page contains the bid and ask price, the qualities for each and the transactions executed at each of the price levels, FASTNED, https://live.euronext.com/en/popout-page/getOrderBook/NL0013654809-XAM; FOR ADYEN; https://live.euronext.com/en/product/equities/NL0012969182-XAMS

[30] See also EAC-2024-CAC 40 SBF 120 Shareholders-Study Euronext.pdf

[31] 1,900 listed issuers worth close to €6.6 trillion in market capitalisation as of end December 2023., https://www.euronext.com/en/data/market-data/market-data-products/cash-market-data

[323232] see further "Euronext's Central Order Book". This electronic information page contains the bid and ask price, the qualities for each and the transactions executed at each of the price levels, FASTNED, https://live.euronext.com/en/popout-page/getOrderBook/NL0013654809-XAMS; for ADYEN; https://live.euronext.com/en/product/equities/NL0012969182-XAMS

[33] See also EAC-2024-CAC 40 SBF 120 Shareholders-Study Euronext. See also EAC-2024-CAC 40 SBF 120 Shareholders-Study Euronext.pdf

[34] Euronext announces the successful expansion of Euronext Clearing as pan-European clearing house for Euronext cash markets, https://www.euronext.com/en/about/media/ euronext-press-releases/euronext-announces-successful-expansion-euronext-clearing

about their ownership. It is unclear whether they are also used for actual trading. The EU council has also expressed it attention for the improvement of the EU clearing services. [35]

A next step would be that the interconnection network allows to execute the orders directly in the network, allowing investors to immediately react on the offers in the system. This is the way the US system works, leading to high efficiency and speedy trading, with immediate delivery and payment.

Transactions executed on exchanges are reported and published on the consolidated tape, an electronic system that provides real-time trade data for listed securities. Additionally, traditional exchanges are considered "lit" markets; quotation information is publicly displayed, and every market participant can take part in trading on both sides (buy or sell) by acting on the publicly available trading information and to report post-trade data.[36]

All customer trades, regardless of where they're executed, are subject to SEC and FINRA rules and regulations designed to protect investors, including those pertaining to best execution and more. FINRA runs dozens of complex surveillance patterns to detect a wide variety of compliance issues and suspicious conduct to protect investors and to maintain the integrity of U.S. financial markets.

The NYSE is an auction market that uses specialists (designated market makers), while the Nasdaq is a dealer market with many market makers in competition with one another. At the NYSE, at market open and close, the auction method is how NYSE stock prices are set. Market participants transact trades directly with each other.

7. The interconnection of the different securities markets in the EU

The present interconnection of the different securities markets does not imply that transactions can easily be executed between these markets. As these markets use different methodologies, agreement have to be found to combine both methods of order execution.

[35] See Capital Markets Union: Council and Parliament agree on improvements to EU Clearing services, see press release 7 February 2024.. For internal cross-\border clearing Euroclear is the largest international central securities depository and clearing institution (CSD) , acting for Euroclear bank and for many, worldwide active CSDs

[36] FINRA: FINANCIAL INDUSTRY REGULATORY AUTHORITY is a not-for-profit organization that oversees U.S. broker-dealers.

The interconnection of the different securities markets is usually referred to as the "post-trade consolidated tape", as it mainly related to reporting on trades that have been executed[37]. It does not imply that transactions can easily be executed between these markets.

To achieve real integration of the European Securities markets, steps have to be planned to integrate execution by installing appropriate pre-trade programs which would allow technology assisted trading between the different market participants. As has been mentioned above, several of the active markets have already established electronic links, mainly for exchanging information. This feature has to be upgraded to the exchange of orders, thereby allowing execution directly with parties in the other markets. In that case, a real integrated European securities market will be achieved. Some will remark that the present markets use different trading methods, but these are not necessarily incompatible, although they may require small adaptations. It seems likely that most investment firms will prefer an order driven market, big, larger intermediaries may specialise in a quote driven system. Some centralised functions will have to be developed, so as price reporting and publication of the prices to the public, while execution of the agreed transactions should take place in the existing clearing procedures and institutions. The electronic networks will have to be installed - or upgraded- between the parties involved, and the national markets and their supervisors will have to agree about the methods for initiation and executing securities orders, and their registration and post-trade settlement. Therefore, these methods have to be defined in detail.

The development of an integrated securities market system may be considered as a big step forward in the use of the securities market and will certainly benefit many investors and intermediaries. But the big advantages are of a macro nature; as has been developed by Christine Lagarde, the ECB chair, the advantages of the UMC, the Union des Marchés de Capitaux, this integrated capital market will be more attractive for companies planning a listing of their shares, attracting more capital to finance their business expansion and to support the economic growth, thereby also allowing to more effectively control environmental and climate risks. The present EU capital markets are too small and too fragmented to support these large ambitions, leading to company emigration and listing overseas, reducing the listings on EU markets[38]. This would benefit the Monetary union and provide a stronger safety net in case of economic or banking crisis. It would also overcome the increasing fragmentation of the worldwide economy in competing blocs.

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[37] This was also the reading of Chr Lagarde, the ECB president, in her speech on 17 November 2023;' Une révolution kantienne pour l'union des marchés de capitaux, calling for ' la création d'un système européen consolidé de publication (*consolidated tape*)"

[38] see Euronews business: I.Lahiri, The great delisting: Why European companies are moving to US exchanges https://www.euronews.com/business/2023/11/23/the-great-delisting-why-european-companies-are-moving-to-us-exchanges But many delistings are due to other causes, such as take-overs, mergers, acquisitions , etc.,

8. Information to investors

The European Council also called attention to the need to dispose of sufficient information. Company related information is already made available on the basis of company law, and market regulation and will be processed through the ESAP, the European Single Access Point.[39] The Council[40] proposed improvements of the ESAP,[41] where all information to be made public in application to the European directives and regulations should be made easily accessible. It is proposed that the sustainability information would also be posted in the ESAP. For market participants, accessibility is crucial and should allow EU-wide access, also for information relating at all companies or entities active in the EU.

The different securities trading methods imply a number of further instruments for making the system effective. The European Union has in addition paid attention, especially in the 2021 Capital Markets Union Package to several other topics which are destined to increase **the attractiveness of funding for companies through better integrated market infrastructure in the EU and through further convergence and harmonisation of listing requirements across European exchanges** [42]**.** To be mentioned in this context is also the intention to simplify the listing rules for companies, particularly small and medium-sized enterprises (SMEs)

Several items deserve attention in the Council opinion:

The most significant one is the proposal to launch a "consolidated tape". a US expression[43] for a common information or trading tools relating to the securities traded on several markets, the data which are then 'consolidated" in a single "tape", or communication tool, accessible to all market participants, which is considered to be a major step forward in creating European securities market. The consolidated tape was already mentioned in the Mifid II directive, as an instrument ' to make it easier for market participants to gain access to a consolidated view of trade transparency information that is available" ... and ' **to increase market transparency and facilitate access to market data**[44]**.** The party in charge of developing the Tape is the person authorized under the directive to provide the service " collecting trade reports for financial instruments listed in Regulation (EU) No 600/2014 from regulated markets, MTFs, OTFs and

[39] See OFF journal, *OJ C 290, 29.7.2022,;* https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-single-access-point-esap, defined as " a tool that is contributing to a more sustainable, digital and inclusive economy, to strengthening digital sovereignty, and to a better integration of capital markets"
[40] Council adopts regulation easing access to corporate information for investors
[41] https://www.eesc.europa.eu/en/about ; COM(2021) 725 final 2021/0380 COD; see: EESC opinion: European Single Access Point (ESAP) https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-single-access-point-esap
[42] See Communication from the Commission, A Capital Markets Union for people and businesses-new action plan; https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:590:FIN
[43] Consolidated Tape System (CTS) is defined on Wikipedia as : the United States electronic service, introduced in April 1976, that provides last sale and trade data for issues admitted to dealings on the American Stock Exchange, New York Stock Exchange, and U.S. regional stock exchanges. EuroCTP is a joint venture established in 2023 by 14 bourses, which aims to provide a consolidated tape (CT) in financial trading within the EU.[5] This forms part of the European Commission's Capital Markets Union.. The UK has put in place a Consoldated tape similar to the EU'. For the list of the founding exchange: see Wikipedia. EuropCTP. starting 16 February 2023.
[44] As mentioned in the 2021 Capital Markets Union Package , press release 25 November 2021

APAs[45] and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument" [46]

9. Pre- v post-trade

Another instrument to be increasingly activated is the ESAP (European Single Access Point): Council proposed to adopt a regulation easing access to corporate information for investors and made public in application to the European directives and regulations. It is proposed that also the sustainability information would be posted in the ESAP. For market participants, accessibility is crucial and should allow EU-wide access, also relating at all companies or entities active in the EU.[47]

The Clearing services will also have to be improved in the EU[48] by "**streamlining and shortening procedures**, **improving consistency** between rules, **strengthening CCP supervision** and requiring market participants subject to a **clearing obligation** to clear a portion of the products, which have been identified by ESMA as of "substantial systemic importance", through active accounts at EU CCPs." To secure payment against securities, an active account requirement, or (AAR) at an EU CCP with a joint monitoring mechanism will be introduced[49] The clearing houses are supervised by the central banks, the NBB for Euroclear Belgium and Euroclear bank. Their clearing process is fully automated.

Another Council proposal relates to the further developing the "common rulebook" as well as examining a broad range of options to enhance supervisory convergence through a more efficient and effective use of the existing powers of the European Supervisory Authorities and a possible targeted strengthening of their role and governance arrangement. It will be interesting to follow in which way these proposals will go, as full centralisation will raise objections from the national markets. The topic is especially delicate to the regulation and supervision of the consolidated tape.

Further Council Proposals related to the insolvency [50] and the accounting[51] regulation.

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[45] "Approved publication arrangement" an organization authorized to publish trade reports on behalf of investment firms according to Mifid II Article 4(1)(52)

[46] Preamble 115 e,s, and art 53, Mifid II

[47] see; Council adopts regulation easing access to corporate information for investors; https://www.eesc.europa.eu/en/about ; COM(2021) 725 final 2021/0380 COD; see: EESC opinion: European Single Access Point (ESAP) https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-single-access-point-esa

[48] Council reaches agreement on improvements to EU clearing services (press release, 6 December 2023).

[49] see 2021 Capital Market union package, Press release25 November 2021.

[50] **On insolvency Targeted convergence of national corporate insolvency framework**

[51] On accounting**: Further harmonising of the accounting frameworks in a targeted manner,** without increasing administrative burden, to allow in particular small and medium sized businesses (SMEs)

10. The integration of market infrastructure

The proposals tabled by the Council have been placed under the objective of the "I**ncrease the attractiveness of funding for companies through better integrated market infrastructure in the EU and through further convergence and harmonisation of listing requirements across European exchanges".**

The central question as to how the future supervision of the interconnected framework will be supervised has not been analysed in detail. A central instrument affecting all or most of the EU market having adapted the framework, it would be logical that supervision will be exercised by a central body such as the European Securities Markets Authority, or ESMA. Some members states, and especially local securities firms will be less happy as this centralisation will intervene with their local function as dealers with securities. Therefore, some part of the oversight has to be exercised at the local level; the choice which securities will be included in the framework, and whether in the quote or the order part of it, may depend on the issuer, and the composition of their ownership and the will to keep control of it. Similar considerations may apply on the practices for execution transactions on the platforms- including market abuse and market manipulations, see the mentioned in the press release the Council and Parliament,[52] consideration related to local factors[53], may impede one or the order. valuation of the guarantees kept at the depository guarantee system.

These arguments plead for a dual supervisory role, comparable with the supervisory role of the ECB and the national central banks. The Council and Parliament formulated it as follows: **to strengthen the role of ESMA** providing it with a coordination role in emergency situations, while providing clarity that ultimate decision-making powers are the responsibility of the national competent authorities.

11. General Conclusion

The complexities of the EU's financial regulatory framework pose significant challenges to achieving a truly unified capital market. Despite these challenges, the ongoing efforts to harmonize and simplify regulations are critical to enhancing market efficiency and compliance across member states.

[52] Referring to the introduction of a general ban on "payment for order flow" (PFOF), 2021 capital markets union package, press release 25 November 2021, and with reference whether in the order quote or in the order section
[53] Press release 7 February 2024; Such as difficulties' and the functioning or the input to the consolidated tape, or disputes about the conditions of the trade, all a matter for the local market. But disruption in or break-down of the consolidated tape, are the matters to be dealt with at EU Level, under the guidance of ESMA, where needed with the assistance of the national supervisors.

Our analysis indicates that a strategic blend of simplification, increased preventive measures, and robust supervisory coordination can significantly improve the effectiveness of the regulatory system. Simplification of the existing legal framework should focus on reducing the number of regulations and clarifying existing provisions to make them more understandable and easier to apply. This will aid in reducing the administrative burden on financial institutions and allow them to focus more on compliance and less on navigating regulatory complexities.

Moreover, enhancing the preventive aspects of regulation can shift the focus from merely reacting to breaches towards preventing them. This approach should be complemented by stronger accountability mechanisms within financial institutions, ensuring that internal controls and risk assessments are proactive and effective.

Enhanced coordination among EU supervisory bodies is also essential. By ensuring that these bodies work in concert, rather than in silos, the EU can achieve more consistent enforcement across different markets and jurisdictions. This would involve not just sharing information and best practices but also aligning on enforcement actions and regulatory expectations.

Finally, while the extension of powers to enforcement bodies like the EBA, ESMA, and EIOPA has been beneficial, it is equally important to assess the impact of these powers continuously. Ensuring that these bodies do not become overburdened is crucial to maintaining their effectiveness. Therefore, a balanced approach that also considers reducing supervisory burdens, where practical, should be pursued.

In conclusion, the path to a more integrated and efficient European capital market system lies not only in strengthening the powers of regulatory bodies but also in simplifying the regulatory landscape, adopting proactive regulatory measures, and fostering better coordination among supervisory authorities. These steps will not only enhance the effectiveness of the regulatory system but also support the EU's broader objectives of financial stability and market integrity.

The **Financial Law Institute** is a research and teaching unit in the Faculty of Law and Criminology of Ghent University, Belgium. The research activities undertaken within the Institute focus on various issues of company and financial law, including private and public law of banking, capital markets regulation, company law and corporate governance.

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