

EU Supervisory Cooperation Scaled Back at the Expense of Capital Markets Union

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It appears that the crisis is over and there is no further need to make financial integration a priority. At least this is one way to interpret the European Commission's 8% cut to the public contribution to the European Supervisory Authorities (ESAs). While the Authorities are still in the process of implementing huge blocks of legislation and with new expectations created by capital markets union, the ESAs have effectively been forced to scale back their operations. The cuts foreclose any possibility to develop new initiatives on the consumer protection front and effectively declare an end to the ESA Review. Given that the budget cut is a *fait accompli*, the best response would be to merge the three authorities into one body, but this is impossible for political reasons.

The European Supervisory Authorities – namely the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) – were established in 2011 in response to the financial crisis. Their remit is to provide advice to the European Commission on implementing legislation, to mediate and delegate tasks between supervisory authorities and to take EU-wide supervisory initiatives. Five years on, the ESAs, with a staff of about 140 persons each and a budget of about €30 million each (or €20 million for EIOPA), have processed an enormous workload, above all on the regulatory side.

To appreciate the workload of the three ESAs, it is illuminating to look at the number of regulatory and implementing technical standards (RTS and ITS) as well as the technical advice and recommendations they have produced over the last year, and are still expected to produce in the current year (as reported in the table below). ESMA is in the midst of submitting advice to the European Commission on the MiFID technical standards, and is starting on the CSDR (central securities depositories Regulation). The EBA is halfway through the task of advising on the technical standards for the CRD (capital requirements Directive) implementation, and is just starting with the bank recovery and resolution Directive (BRRD). And EIOPA is in the midst of Solvency II standards. The authorities could be criticised for having contributed to the regulatory tsunami, but it was the member states that decided in 2009 to move to a single rulebook, leading to the ballooning of 'level-2' rulemaking of the EU Council and the European Parliament. And if it were up to the European Central Bank (ECB), the SSM needs even greater alignment of rules to facilitate the supervisory work, as observed by the Chairman of the ECB's Supervisory Board Danièle Nouy in presenting the first Annual Report.

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Workload of the European Supervisory Authorities, 2013-15

Authority	2013				2014				2015			
	TS	TA	GR	Total	TS	TA	GR	Total	TS	TA	GR	Total
EBA	21	1	8	30	51	0	20	71	37	18	21	76
EIOPA	39	3	34	76	23	2	36	61	13	5	5	23
ESMA	6	7	9	22	13	11	6	30	97	41	5	143
Total	66	11	51	128	87	13	62	162	147	64	31	242

Notes: TS = Regulatory and Implementing Technical Standards (RTS & ITS); TA = Technical Advice; and GR = provision of Guidelines and Recommendations. The workload is based on the mandatory and discretionary activities indicated in the work programmes of the EBA and ESMA. EIOPA has provided the workload-data upon request from CEPS, which was necessary because the work programme of EIOPA follows a different format. Only the activities with an explicit and clear deadline in the indicated year are included and when two procedures are mentioned, the activity is counted in the first category. Hence, the data reflect the planned activities of the ESAs, which does not necessarily reflect the actual activities conducted by the ESAs. The limited information on the actual activities conducted shows that the ESAs in their first years of existence have produced less than planned.

Source: ESAs.

Moreover, the ESAs perform a crucial role in determining the equivalence of rules in third countries, in the peer review of national supervisors, and in enforcement and convergence of supervisory methods. The ESAs should also take more initiatives on consumer and investor protection matters, where they are authorised to take EU-wide initiatives. Although this possibility has hardly been explored so far, such activity may increase as a result of the new PRIIPs (packaged retail investment and insurance-linked investment products) Regulation. The latter allows the ESAs to prohibit the marketing, distribution or sale of certain financial products under certain circumstances.

At the start, the ESAs were expected to carry out proper supervisory tasks, but these have been scaled back. This is not to say, however, that there is no need for them. The direct supervisory tasks are the most developed for ESMA, which is the unique supervisor for credit rating agencies (CRAs) and trade repositories, both of which also provide some funding for the agency. The supervision of central counterparties (CCPs), market data providers and consolidators (APAs and CTPs under MiFID) and benchmark setters was also initially envisaged, but this responsibility has been taken away in Commission proposals at the request of the member states – yet another sign of the diminished importance attached to putting in place a solid crisis response.

In its review of the ESAs, the Commission stated that the agencies need to find more sources of their own financing, i.e. private-sector funding. This is difficult to defend, however, since the vast majority of their tasks consist of technical standard-setting, in which the ESAs are essentially acting as an agency of the European Commission. Securing private-sector sources of funding and contribution keys is also not easy for EU-wide bodies. The EBA and EIOPA, for example, are confronted with a large and heterogeneous financial sector, spread across many different legal entities. The problem for ESMA as a market supervisor is deciding what and whom to ‘tax’ in order to raise operating expenses. For purposes of comparison, consider that the US Consumer Financial Protection Bureau, which was created by the Dodd Frank bill, now employs about 1,500 persons and wields an annual budget of \$618 million for 2015, financed by the Federal Reserve Board.

Another issue that needs to be addressed is the governance of the ESAs, which have the member states on their governing boards, with each one casting one vote. The representatives of the ESAs, i.e. the chairman and the managing director, have no voting rights. This compares with the supervisory board of the SSM where the ECB has six voting members, in addition to the 19 member state's representatives.

Making capital markets union a success can only happen by reinforcing supervisory cooperation and creating enforceable rules, which in turn require strong institutions. Scaling back the ESAs is entirely counterproductive, from that perspective. We may have well established institutions at the national level, but capital markets union requires EU-wide rules for issuers, investors and intermediaries alike. The fact that many IPOs, at least in their retail segment, are still directed at national markets provides ample evidence that this set of conditions is far from having been met. And the cut to the ESAs' budgets does not bode well that the situation will materially improve any time soon.