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Thinking ahead for Europe

The EU's Response to the Financial Crisis: A mid-term review

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Two years after the London G-20, the EU is making good progress towards delivering on the commitments it undertook to implement by the 2013 target date. Important steps have been taken on the institutional side, and regulatory changes are moving ahead. On some issues, such as remuneration, the EU has made even more pronounced headway than the US. But some sensitive matters remain, such as bank resolution and structural changes.

By early 2011, the EU's response to the financial crisis was well advanced. The 'de Larosière institutions' had been established, and proposals related to the G-20 commitments to regulate all markets, products and institutions and further streamline the single market had been adopted or were under serious discussion.

The rapid adoption of most proposals, all of them in single readings so far, indicates the sense of urgency felt by the European Parliament and the Council. Both institutions, together with the European Commission, have performed a huge task in delivering on the commitments made. The continuing sovereign debt crisis in several European countries has added even greater urgency to the need to fulfil these commitments.

The question that remains is whether most of the measures will be fully implemented and operational by 2013, as promised. The amount of regulation has increased immensely, with more to come in primary and secondary legislation. In addition, the new European Supervisory Authorities (ESAs) have been mandated to implement a single rulebook, which is facilitated by the Lisbon Treaty's provisions on comitology.

This paper will first present the role of the new ESAs, followed by a review of the measures adopted or currently under discussion, to conclude with a discussion of the financial stability issues raised by the sovereign debt crisis.

The 'de Larosiere institutions'

The new regulations creating the European System of Financial Supervisors (ESFS) were adopted by the EU in time for the new bodies to start functioning in 2011. The final compromise did not fundamentally alter the decision reached by the Council in December 2009, but added further tasks for the authorities, such as the possibility to prohibit or restrict certain financial products or activities (Art. 9), and clarified and strengthened their mandate, such as specifying their role in emergency situations (Art. 18). For the European Systemic Risk Board (ESRB), the most important change was the addition of an 'independent' element, with the creation of a Scientific Committee

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and the requirement to second a delegate of this Committee to the Steering Committee of the ESRB.

A fundamental change as compared to the 'Lamfalussy Committees' is that the authorities have become executive agencies under the control of the European Commission. Before, the Committees – the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR) – functioned fairly independently from the European Commission, but only in an advisory capacity. Now, the authorities will have fully-fledged regulatory and, to some extent, supervisory powers, but they can only exercise them to the extent that they are derived from the powers attributed to the EU under the Treaty. In other words, the authorities' powers are limited to what the European Commission can do under the EU Treaty to contribute to the effective functioning of the internal market. "The purpose and tasks of the Authority – assisting competent national supervisory authorities in the consistent interpretation and application of Union rules and contributing to financial stability necessary for financial integration – are closely linked to the objectives of the Union *acquis* concerning the internal market for financial services" (Recital 17, ESAs Regulation). This touches upon a core issue in EU integration, i.e. the legitimacy of delegated powers to European agencies. The Meroni doctrine, going back to an EU Court judgement on this matter more than 50 years ago, is still with us.

The profound changes that the authorities are bringing about with the aim of creating a more integrated financial market cannot be overstated, The new entities can be considered as embryonic federal supervisory authorities, but their ultimate impact will depend on the management of the authorities and the cooperation they establish with national supervisors. In light of the impressive progress achieved by the Lamfalussy Committees with limited personnel and budget, there are grounds for optimism. Some have suggested that the appointees to the new authorities bring too low a profile for the demands of the job. I would argue that they should be given the benefit of the doubt.

The tasks of the authorities can be subdivided into regulatory, supervisory and institutional functions (see Box 1). The regulatory powers are based upon the need to achieve a much greater degree of regulatory harmonization in the EU through the achievement of a single rulebook. In practice, the single rulebook will be composed of regulatory and implementing technical standards. Both standards can only be adopted by the ESAs to the extent that they are part of delegated powers, based upon Arts 290 and 291, respectively, of the Treaty on the Functioning of the EU (TFEU). Both shall be "technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based" (Arts 10 and 15 ESAs Regulation). Formally, both standards are adopted by the European Commission, following a procedure described in the regulations, and are limited in time, but the powers may be revoked at any time by the European Parliament or by the Council. In practice, the process of regulatory and implementing technical standards will be entirely in the hands of the authorities, with the Commission rubber-stamping the proposals, and limited control by the European Parliament. The ESAs can also adopt guidelines and recommendations, which have no force of law.

The supervisory powers of the new authorities can be subdivided into direct and indirect powers. Indirect powers relate to those that contribute to improve the financial supervision from an EU perspective. They consist of mediation between national authorities and eventual delegation of powers amongst them, the participation in colleges of supervisors and the supervision of supervisors. The latter is probably the most important element, as it allows for effective comparison of the performance of national supervisors (Art. 30), and the possibility to adopt recommendations. The ambition is to arrive at a common European supervisory culture (Art. 31).

Direct supervision is composed of decisions on individual cases in emergency situations and specific supervisory tasks, which at present are most developed for the European Securities and Markets Authority (ESMA). ESAs can only take individual decisions in situations where there is a manifest breach of EU law by national authorities, following the procedure described in Art. 18. However, such decisions may not impinge upon the fiscal responsibilities of the member states (Art. 38), an issue that provoked heated discussions in the EU Council. In practice, it can be expected that

ESAs will take on the role of arbiter in case of disagreements between national authorities.

Box 1. Powers of the ESAs

- Formal rule-making powers
  - Regulatory technical standards (Art. 10)
  - Implementing technical standards (Art. 15)
  - Guidelines and recommendations (Art. 16)
- Mediation, binding delegation between supervisors (Arts 21, 28 and 31)
- Individual decisions in emergency situations (Art. 18)
- Participation in College of Supervisors (and operational standard-setting for Colleges)
- Supervision of national supervisors (Art. 30)
- Control of financial activities and products (Art. 9)
- Sanctioning powers (Art. 30)
- Constitution of supervisory data bases (Art. 8)
- Specific supervisory tasks: ESMA to license credit rating agencies (CRAs), trade repositories and automated publication arrangements (APAs); participate in the supervision of central counterparties (CCPs) and centralized securities depositaries (CSDs); and decide on eligible OTC derivatives for central clearing and EU access of third country hedge funds and managers, under the Directive on Alternative Investment Fund Managers (AIFMD).

That the authorities have already generated considerable momentum is clear from the specific supervisory tasks, which are rapidly emerging, especially for ESMA. The latter has the sole authority to license: 1) credit rating agencies (CRAs) in the EU, 2) trade repositories for OTC financial instruments, under draft European Market Infrastructures Regulation (EMIR) legislation and 3) automated publication arrangements (APAs) or data vendors, under the Markets in Financial Instruments Directive (MiFID) review consultation. ESMA will also participate in the supervision of Central Counterparties (CCPs) under draft EMIR legislation and soon also of centralised securities depositaries (CSDs). Finally, it will, jointly with the Commission, decide which OTC derivatives are eligible for central clearing in CCPs and give advice on access of third-country hedge funds and managers under the AIFMD (Alternative Investment Fund Managers Directive). ESMA is thus certainly an embryonic federal securities authority.

A remaining problem is the division of labour among the three ESAs, and with the European Systemic Risk Board (ESRB). The division of roles amongst the three ESAs is functional, but some tasks may not be easily assigned. This relates for example to certain horizontal financial services matters, such as consumer protection, retail investment products or the supervision of bank-insurance companies. In the US, the creation by the Dodd-Frank Act of a new agency, the Bureau of Consumer Financial Protection, comes close to meeting these demands. As regards interaction with the ESRB (and indirectly the ECB), for some issues, the ESAs' regulations and financial services directives require coordination, whereas for others it is not necessary. It is too early at this stage to say how important the role of the ESRB will be; it all depends upon the authority that it will exert and how its mandate will be fulfilled.

Given the macroeconomic implications of ratings, however, it is surprising that the ESRB has not been given any role in the supervision of CRAs, which is the only exclusive ESA competence for the time being. The assessment of the methodologies used by CRAs is an instance where the ESRB's know-how could be useful. On the other hand, the close participation of the ECB in the stress test in July 2010, demonstrates that in practice, there will have to be close cooperation with the most reputable European financial institution (but also that the ESRB will need to position itself carefully in establishing cooperation with the ESAs).

Another problem arises in the cooperation between the ESAs and the ESRB in the collection

of data. Formally, the ESAs are tasked to "provide a centrally accessible database of registered financial institutions in the area of its competence" (Art. 8), i.e. data that should be shared with the ESRB. "Data related to individual undertakings should be provided (to the ESRB) only upon reasoned request" (Rec. 47, see also Art. 36). It should be recalled that, initially, the ECB wanted this to be a task of the ESRB, but the EU Council decided differently.[1] The ECB has continued to insist that it lacks adequate and timely information on the banking sector, which indicates that information exchange between authorities, as close as they may be, remains problematic. This led in the UK, Belgium and the US to reforms giving the central bank a more important role in prudential supervision.

Notwithstanding the creation of the ESAs as a form of executive agencies of the European Commission, it will be extremely important in the start-up phase that the European Commission respects their independence 'in practice', to allow them to emerge as federal supervisory authorities over time. The former 'level 3' committees always insisted on their independence, which was, in the case of the Committee of European Securities Regulators, embedded in its statutes. The independence as stated in the ESA regulations, however, is limited to the Chair, the supervisory and management board (Arts. 42 and 46), but does not apply to the ESAs as institutions. Respecting the independence of the Committees will be even more important for the supervisory tasks of the new authorities, as the European Commission has limited expertise in this domain.

The G-20 follow-up and completion of the single financial market

As regards regulatory matters, the consensus among the EU member states was greater on the G-20 commitments than on the single financial market improvements. The progress achieved on the former seemed more clear cut than on the latter, which led some commentators to argue that 'Europe' had disappeared as an objective for rule-making. But it also indicates that the European Commission should have acted the same way as the G-20 did at a global level; garnering support at the heads of state or prime minister level for a new 'Financial Markets Action Plan', but this was not done with sufficient determination. Creating the single financial market received very little attention in the Europe 2020 Agenda, in marked contrast to the place accorded the Financial Services Action Plan (FSAP) in the Lisbon Agenda. It was not interwoven into the Europe 2020 objectives of smart, sustainable and inclusive growth.[2]

By early 2011, new rules related to many elements contained in the G-20 commitments have been enacted or proposed, with discussions having reached a well advanced stage (see Annex 2). The only element remaining was the implementation of the new Basel III rules, which were published by the Basel Committee on 15 December 2010. In this sense, the EU and the US, which adopted the Dodd-Frank Bill in June 2010 containing its response to the crisis and the G-20 commitments, seem to be progressing more or less in parallel. On core single market issues, several proposals have been made, but the consensus reached among the member states was less convincing and the compromises less advanced. This was exemplified by the discussions on the reform of deposit protection and the harmonisation of bank resolution schemes, both of which demand a fundamental change if the EU wants to move to a truly single market. Both elements will be discussed briefly below, after a review of the G-20 commitments.

The most important G-20-related measures concern the regulation of hedge and private equity funds in the Alternative Investment Fund Managers Directive (AIFMD), the introduction of a mandatory licence for rating agents in the Credit Rating Agencies Regulation, and the centralised clearing of derivative financial instruments in the draft European Market Infrastructures Regulation (EMIR). The AIFMD, on which a compromise was reached in November 2010, is extremely comprehensive in regulating the alternative investment fund industry, comprising hedge and private equity funds, and private placements. This industry had not been previously regulated at EU level. Although some parts of the industry were

[1] See Lannoo (2009, p. 2).

[2] See Lannoo (2010b), p. 1.

extremely vocal in opposing the proposal, these efforts backfired, leading to a much more detailed proposal (see Table 1).

The clearest example of this failure is the third country rules, which have become ten times as long as they were in the initial Commission proposal! Access by third country alternative fund managers to the EU market is subject to a five-year long transition period, and may still be refused at the end of that period.[3] The issue of third country access had provoked an open letter of protest from the US Treasury Secretary Geithner to Commissioner Barnier. Also the US strengthened the regulation of hedge funds in the Dodd-Frank Act, through amendments of the 1940 Investment Advisers Act, but it maintained important exemptions from registration, such as for venture capital funds.[4]

Table 1. A comparison of EU proposals inspired by the G-20 initiative

	Number of articles	Articles open to delegated acts	Total average word count (including recitals) level 1
AIFMD Commission proposal	56 articles	24	15,271
AIFMD final compromise	66 articles	20	55,464
CRA Commission proposal	36 articles		11,100
CRA Regulation	41 articles	4	21,906
EMIR draft regulation	72 articles	20	19,465
EMIR EP draft	72 articles	20	34,147

Credit rating agencies were the first victim of the crisis, with a regulation adopted in a period of six months – a record by EU standards. The regulation subjects EU-based CRAs to a mandatory licence and strict conduct of business rules, whereas, unlike the US, no rules had been in place before. As with the AIFMD, rules on third country CRAs are highly restrictive, requiring every rating produced outside the EU to be locally endorsed by an EU-licensed rating agent for it to be allowed to be used by banks and investors.

So far, however, the rules do not seem to have deterred market entry, as 23 CRAs have submitted an application for a licence with ESMA, whereas over 90% of the global market is dominated by the 'big three'.[5] Unlike the US, which has mandated the removal of all references to credit ratings in regulatory acts (under the Dodd-Frank Act), the EU has not done so yet, and ratings continue to be used for determining the risk weights in the standardised approach of the capital requirements Directive (CRD, implementing Basel II) and in the credit-providing operations of the ECB. The updated US rules for governing the operations of rating agents – the Nationally Recognized Statistical Rating Organizations , or NRSROs, of which there are now 10 – introduce stricter conduct of business rules, but do not go as far as does the EU regulation. The amendments, proposed by the European Commission in June 2010 and adopted in March 2011, adapt the regulation to the existence of ESMA, but also bring EU rules on ratings of structured finance products in line with US rules.

The key challenge with the **EU's** draft derivatives regulation (European Market Infrastructures Regulation, EMIR) is to find a balance with the US in the requirement of eligibility of derivatives for central clearing, and the governance and risk control procedures of clearinghouses (CCPs). Derivatives are a global business, and slight differences in approach between both blocs can rapidly drive business way. For the time being, US legislation, as contained in the Dodd-Frank bill, is much more detailed than the draft EU legislation, and is seen as more constraining. EU legislation requires derivative financial instruments to be eligible for central clearing (opt-in), a decision that is left to ESMA, whereas in the US a financial institution must explicitly opt out of central clearing. Additional matters of divergence relate to risk standards (minimum capital and margin

[3] See de Manuel (2010).

[4] See Clifford Chance (2010, p. 27).

[5] See Lannoo (2010c).

requirements), governance and membership of clearing entities (or central counterparties, CCPs), where more detailed rules may make interoperability between systems more difficult. The related trading rules (price transparency) will be tackled in the MiFID review, on which a consultation has started, but may prove to be even more difficult to settle. Non-equity financial products are today not subject to formal price transparency requirements in trading, as the products are much less homogeneous and trade less frequently than equity.

The biggest difference with US financial sector legislation so far is on structural matters, where the US has adopted the 'Volcker rule', which restricts proprietary trading by banking groups, and prohibites federal assistance to any swap dealer or major swap participant. Nothing similar has been decided in the EU so far, nor is anything comparable pending. There is only a convincing report of the Vickers Committee in the UK, tasked by the coalition government to examine, among other things, the separation of banking activities that could bring the issue back on to the table in the EU. The first draft of the report, however, released on April 11th, proposed no fundamental structural changes.

On single market-related measures, there is less consensus among the member states on the necessity for further reforms. Two examples should suffice. Regarding the reform of deposit guarantee schemes (DGS), although the Commission was moderate and did not propose a single EU-wide fund, for example, as the European Parliament had done so in its reading of the ESAs, even mutual borrowing between national funds – a step towards joint liability and a single fund – went too far for several large member states, including Germany and France. A minimum level of *ex-ante* funding of DGS, as is in place in the US, was not debatable either. The related discussion on bank resolution was still at the level of consultation at the time of writing, but promises to be just as difficult, if not more so. As long as there is no unified approach to problem banks, there will be no level playing field, and no single market. Hence banks headquartered in member states with bigger treasuries will have an advantage over those from smaller states. The EU's state aid policy can only bring limited corrections to bear in this case.

A symbolically important measure is the EU-wide regulation of mortgage credits, on which a proposal was made by the European Commission on 31 March 2011. Real estate bubbles are seen as one of the causes of the financial crisis, and the non-existence of EU-wide rules contributed to the disintegration of the single financial market. Problems in some markets no longer remained confined to national boundaries, but had EU-wide ramifications, either affecting banks headquartered in other jurisdictions, or deteriorating the country's fiscal position as a result of bank bail-outs. A harmonising effort is part of the measures to improve and further align banking supervision in the EU, and to avoid spill-overs for lax regulation of mortgage credit markets in certain jurisdictions, affecting the reputation of the sector as a whole.

On Basel III, it is incorrect to say that nothing has been done so far. The EU has already adopted urgent changes to the capital requirements Directive (CRD) in the CRD II and III that were adopted in the course of 2009 and 2010. Some of these rules, such as the one on the 5% retention for securitization, are also contained in the Dodd-Frank bill. But with the rules on bank remuneration, adopted in July 2010, the EU has dared to legislate in a domain in which the US has not yet ventured. These rules require banks to have sustainable remuneration policies in place and to defer bonus payments over several years. Similar rules are in place in the AIFMD (Art. 13). An issue that will have to be monitored closely in the CRD IV proposals is the degree of uniformity of the new rules, in line with the objective of the ESAs to arrive at a single rulebook. The CRD currently allows for 141 national discretion or implementation options (see the EBA website). The broader question is whether the US will implement Basel III, as it never implemented its predecessor, despite many assurances (see Table 2).

The reduction of leverage and the risk profile of banks is also the objective of the controversial proposals for a bank tax, which are being actively considered by the EU. The EU failed to place this on the agenda of the Toronto G-20 (July 2010), but has not abandoned its resolve, as reflected in recent European Council Conclusions. Several EU member states introduced a form of balance sheet tax (or

financial services contribution, FSC), and the European Commission is now considering two options: a financial activity tax (or a form of value added tax for the financial sector) and a financial transaction tax. The local FSC is seen to be distorting from a single market perspective, but the Commission's challenge will be, given the G-20 reluctance, not to place the EU's banks at a disadvantage globally. President Obama initially proposed a Financial Crisis Responsibility (FCR) fee in January 2010, but the proposal as such was not retained in the Dodd-Frank bill, but rather was watered down to become a contribution of the financial sector to the supervisory set-up.

A remarkable development from a single market perspective is the increased use of regulations rather than directives. A regulation is an EU instrument that is directly applicable, unlike a directive, which needs to be transposed into national law. Although this possibility of relying more heavily on regulations had often been raised before the financial crisis as a means to achieve greater harmonisation, it took a financial crisis to change attitudes. Already, five of the adopted measures have become regulations, with more on the way. As stated above, all of the financial crisis-related measures that have been adopted so far passed in a single reading of the European Parliament and the EU Council, demonstrating the consensus amongst these institutions on the urgency to respond.

While the use of regulations eases the job for the European Commission and the new authorities, as they will be directly applicable, the amount of rules covering the financial sector has grown enormously, and more is to come. Generally speaking, we are only at level 1; we will see more regulatory and implementing technical standards. This raises the question whether all the measures will effectively be in place by 2013, and whether citizens' confidence will be restored.

Table 2. Comparison of the US Dodd-Frank Act and EU regulatory reform

	US Dodd-Frank Act	**EU**
Credit rating agencies	Upgrade of NRSRO regime (Title IX, Subtitle C)	CRA regulations
Hedge funds	Important exemptions remain (Title IV, amending 1940 Investment Advisors Act)	AIFMD, very comprehensive
Clearing derivatives, CCPs, trade repositories	Clearing and exchange trading of most derivatives transactions (Title VII)	Draft European market infrastructures Regulation (EMIR)
Trading derivatives		(MiFID II)
Basel III	? (rules on securitisation, risk retention)	CRD II, III, (IV)
Mortgage products	Mortgage Reform And Anti-Predatory Lending Bill	Draft mortgage credit Directive
Bank structure	Volcker Rule	-
Bank tax	FSC, but scrapped	(FAT or FTT expected)
Remuneration rules	-	CRDIII and AIFMD
Bank resolution	Orderly Liquidation Authority provisions (enhanced powers for FDIC)	? (enhanced powers for ESAs)
Institutional aspects	Financial Services Oversight Council (FSOC), enhanced powers for the Federal Reserve, Consumer Bureau	ESRB, EBA, ESMA, EIOPA

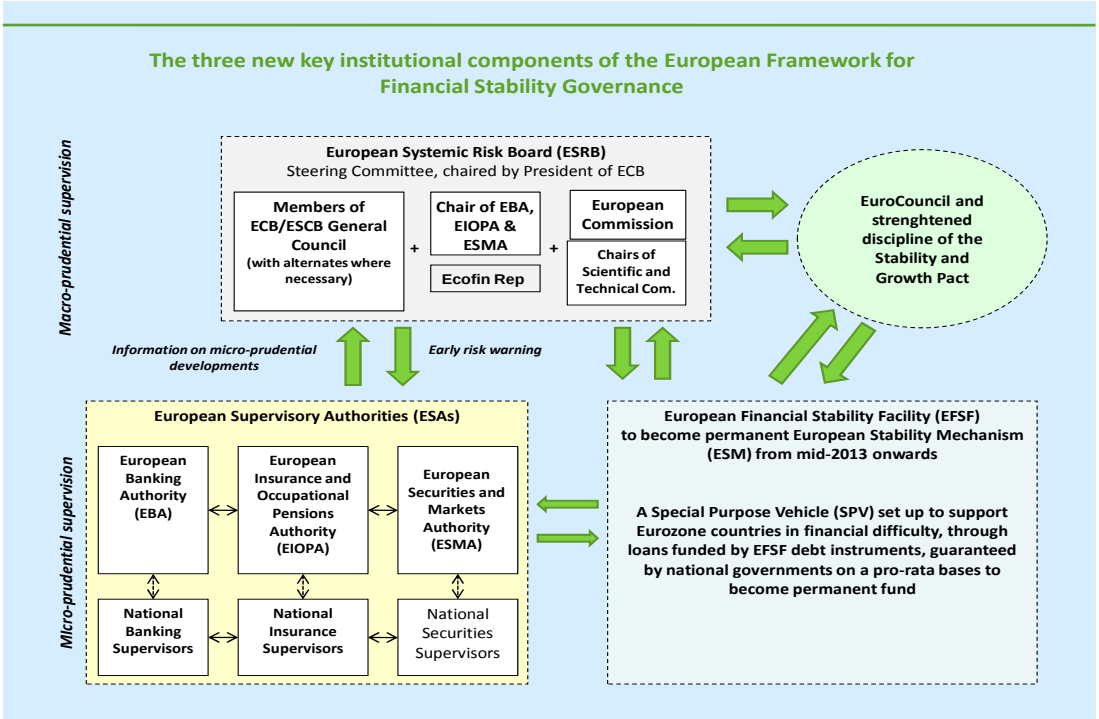
Financial stability matters of the sovereign crises in the eurozone

The sovereign debt crisis in some eurozone countries and the new eurozone stability mechanism (ESM) shed another light on several of the financial regulatory matters discussed above. They reinforced the determination to tackle short-selling and legislate hedge funds, and convinced policymakers of the need for strict supervision of rating agents. They highlighted the continuing fragility of the banking sector in the EU and the dependence of the financial system on the quality of the sovereign. Over the last year, the markets have been reminding policymakers that also from their perspective, a single capital market requires a more integrated fiscal policy. The new European Stability Mechanism (ESM) will be useful to support temporary liquidity shortages also in the affected domestic banking systems, but whether it will help them in the long term remains an open question.

As part of the decision to create a permanent European Stability Mechanism, it was agreed that the private sector will have to participate in debt restructuring programmes of the eurozone sovereigns. To this end, future government bond issuance in the eurozone will need to contain uniform collective action clauses (CACs) from mid-2013 onwards, affecting the terms of payment (standstill, extension of the maturity, interest-rate cut and / or haircut), once a qualified majority decision is reached amongst all creditors. As a result of this agreement, prospectuses for government bonds will also become more harmonised. The European Council has not clarified how the CACs will be introduced in practice, but the easiest form may be an EU prospectus directive for government bonds. The EU's 2003 prospectus Directive took a big step forward towards a single regime for securities issuance in primary markets, but the public sector remained excluded from the scope of the directive. A second part of the ESM agreement may further undermine the domestic banking sectors in the affected countries, however. In order to protect taxpayers' money, the ESM will have a preferred creditor status, and private sector claims will be junior to ESM loans. In practice, this mean that the latter will end up paying the entire haircut in case of a debt restructuring, which will affect the local banking sector (or citizens) as the most important holders of government debt. Local banks' debt securities are locked up as collateral with the ECB, or would lead to huge losses when sold at current prices. And retail investors will only realize this when it is too late.

The benign attitude towards government debt has been helped by lax EU rules, and by the generous ratings given by credit rating agencies. Under the CRD, implementing Basel II rules, sovereigns were assigned a 0% risk weighting, irrespective of the rating, whereas under Basel II, they were 0% until AA-, 20% until A- and 50% from BBB+, the level at which Greek debt is now rated. In its credit providing operations, the ECB has differentiated more between the quality of the sovereign, also dependent upon ratings, but probably not sufficiently. But the market is also to be blamed, with rating agencies giving AA ratings to countries with large unsustainable deficits. However, launching attacks against CRAs, as some policymakers have done, will not improve the situation; rather, as the US did with Dodd-Frank, this can be done by abolishing the reference to ratings in regulation.

Figure 1. The three new key institutional components of the European Framework for Financial Stability Governance



Source: Adapted from Masera (2011).

Conclusion

The combined effect of a new institutional structure and new and more direct rules is introducing a sea change into EU financial markets. It should bring the single financial market project back on track and allow European financial integration to move forward once again. But much remains to be done to make it work on a day-by-day basis, and it is too early to pass judgement on its prospects for success. The response to the financial crisis was a remarkable example of global regulatory cooperation in the G-20, which seems not to have lost too much of its steam yet. The same commitment is not so convincingly evident, however, with regard to remedying the single market imperfections as revealed by the crisis.

The EU's response to the crisis has been complicated by the sovereign crisis. The latter crisis strengthened the EU's resolve to tackle some issues, but complicated a solution for others. A permanent crisis mechanism improves the coherence between euro financial systems in the short term, but may render them more fragile in the long term, because of the CACs and the preferred creditor status. The central role of the ESM for local financial systems will require close cooperation with the new ESFS (see Figure 1). The new governance structure of European financial markets is thus becoming even more complex, with not only the ESAs and the ESRB, but also with the participation of the ESM.

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Annex 1. Excerpt from the London G-20 Summit – Leaders Statement, 2 April 2009

"15. To this end we are implementing the Action Plan agreed at our last meeting, as set out in the attached progress report. We have today also issued a Declaration, *Strengthening the Financial System*. In particular we agree:

- to establish a new Financial Stability Board (FSB) with a strengthened mandate, as a successor to the Financial Stability Forum (FSF), including all G20 countries, FSF members, Spain, and the European Commission;

- that the FSB should collaborate with the IMF to provide early warning of macroeconomic and financial risks and the actions needed to address them;

- to reshape our regulatory systems so that our authorities are able to identify and take account of macro-prudential risks;

- to extend regulation and oversight to all systemically important financial institutions, instruments and markets. This will include, for the first time, systemically important hedge funds;

- to endorse and implement the FSF's tough new principles on pay and compensation and to support sustainable compensation schemes and the corporate social responsibility of all firms;

- to take action, once recovery is assured, to improve the quality, quantity, and international consistency of capital in the banking system. In future, regulation must prevent excessive leverage and require buffers of resources to be built up in good times;

- to take action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over. We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information;

- to call on the accounting standard setters to work urgently with supervisors and regulators to improve standards on valuation and provisioning and achieve a single set of high-quality global accounting standards; and

- to extend regulatory oversight and registration to Credit Rating Agencies to ensure they meet the international code of good practice, particularly to prevent unacceptable conflicts of interest."

Annex 2. Financial crisis-related regulation at EU level

Measure	Purpose	Status	Context
Credit rating agencies regulation	• Introduce single licence • Adapt to existence of ESMA, rating of structured finance products	• Adopted April 2009 • Amendments June 2010, adopted March 2011	G-20
Capital requirements directive (CRD) amendments: • Securitisation, large exposures • executive remuneration, trading book and complex products • leverage ratio, capital buffers, liquidity regulation	• min. 5 % retention ('skin in the game'), higher capital charges for re-securitisation and market risk, change of large exposure rules • part of the bonus packages need to be deferred; higher capital charges for securitisation • higher capital charge for trading book, more and better capital, minimum liquidity	• Directive (CRD II, adopted September 2009) • Directive (CRD III, November 2010) • Consultation (April 2010), draft directive July 2011 (?) (CRD IV)	G-20
Alternative investment fund managers directive (AIFMD)	Regulate non-regulated segment of fund industry (hedge funds and private equity)	adopted November 2010	G-20
Depositaries of funds	Segregate fund managers from depositaries	Consultation (May 2009)	Single market
Regulation on OTC derivatives, central counterparties and trade repositories (European Market Infrastructure Regulation, EMIR)	Transparency, mandate central clearing for eligible OTC derivatives, licence for trade repository	Draft September 2010	G-20
Short selling regulation	Prohibition of naked short selling of all types of financial instruments, including credit default swaps on government debt securities	Draft September 2010, adopted May 2011	Single Market
European Systemic Risk Board regulation	Indentify macro-financial risks	adopted November 2010	G-20
European Banking Authority regulation	Coordinate banking regulation and supervision	adopted November 2010	Single Market
European Insurance Authority regulation	Coordinate insurance regulation and supervision	adopted November 2010	Single Market
European Securities Markets Authority regulation	Coordinate securities markets regulation and supervision	adopted November 2010	Single Market
Omnibus directive	Adapt existing rules to ESFS	adopted November 2010	Single Market
Deposit guarantee schemes directive	• Increase minimum level to €50,000 • Further harmonisation	• adopted October 2008 • draft 12 July 2010	Single Market
Investor compensation schemes directive	• Further harmonisation	• draft 12 July 2010	Single Market
Market in financial instruments directive review (MiFID II)	Extend price transparency to non-equity products, further regulation of trading platforms	Consultation December 2010	Single Market / G-20
Crisis resolution procedures	Coordinate national winding-up rules for banks	Consultation (October 2009, May 2010, January 2011)	Single Market / G-20
Bank tax	Coordinate national rules	(consultation expected Summer 2011)	Single Market
Mortgage lending	EU-wide harmonisation	Draft directive (March 2011)	Single Market