

The Future of European Financial Markets Regulation and Supervision

As part of my brief intervention and since I am an economist and not a lawyer by profession I will try and bring an economists perspective on the future direction of EU Financial Market Regulation & Supervision. Since I am not (nor desire to be) a politician and since also I cannot (nor want to) comprehend the political/sovereignty issues involved in what I will say, I will do what most economist do, -assume that they do not exists!!!!

I will also not deal with the more mundane issues that EU will have to address in the future just as a mater of keeping up with the real world:

- Issues like ensuring a level regulatory level playing field between insurance providers and investment services providers;
- Issues like the complexity of financial firms that operate through a web of subsidiaries, associates, joint ventures e.t.c. across Europe and worldwide, whose legal structures are driven by tax reasons and whose operating structures differ from the legal structure since this is primarily driven by efficiency consideration;

- Issues like ensuring a level playing field between firms that are licensed and supervised under the UCITS directives and firms that are licensed under the ISD;

What I will deal with is the regulatory and supervisory problems that I expect to begin to appear as EU markets strive to achieve the goal of the single market. To bring the issues to the fore imagine that you are a management consultant working for McKenzie (I would have said Andersen Consulting a year ago!!!!) and you were asked to design the regulatory and supervisory framework of the EU single financial market. After diligently performing your analysis it is time to present your ideas to public scrutiny. Here is what you say:

- There should be a Central Authority - Brussels (notice that I said Brussels on purpose since the workings of the EU institutions, the Council, the Commission, and the European Parliament are not in the scope of this McKenzie assignment – Lanfulusy dealt with them) which issues “mandatory guidelines” about financial markets regulations that will be called Directives/ Implementing measures, Level 1, 2, 3 etc.

- These “guidelines” will have to be transposed to national Laws/ Bye Laws e.t.c. by 25 “regional” assemblies that will be called the Legislative Assemblies of Member States. The transposition will be made (for the convenience of the natives) in the language of the region. The geographic jurisdiction of each region is accidental-determined by historical events –wars, attritions e.t.c. but does not have any relevance or correlation to financial markets and does not take into account whether these markets are separate or already integrated.
- There will be 25 “regional” enforcing agencies called Capital Markets Commissions or Securities Commissions that will be charged with the enforcement of these transposed Directives. There will be agreed minimum standards of investigative powers that these Commissions will have, but each one can have its own enforcement processes and, more importantly, they can have different powers to fine. If these Commissions are to exchange information with other Commissions in the EU, (say during an investigation) this should be done on the basis of a “Treaty” called M.O.U. that these Commissions will mutually sign. Over half of these Commissions will also have jurisdiction over Banks and

Insurance Companies but the bodies that deal with these matter at European level will still be separate!

- These should be 25 “regional” court systems with different procedures, rules of evidence e.t.c. interpreting the “National” Laws (written, remember in the local language), both in terms of judicial review of enforcement actions by the Securities Commissions and for civil remedies of investors lawsuits against, issuers, financial firms, directors etc. Each court system can have its own “norms” determining the size of civil damages it awards!

The question that arises is how long do you expect to remain in the employment of McKenzie after the presentation – 1 minute, 1 hour or 1 day? Seriously through, I think that this “tongue in cheek” analogy shows how long we have to go in financial markets regulation before we achieve the single market in financial Services.

From what I said before, I believe that in the near future we will hear a lot more about the efficiency of the EU’s regulatory structures, the efficiency of member state legal systems, the damages they award, we will hear of EU wide recognition of court judgments and

interpretations, the harmonization of fining powers and fines and the harmonization of enforcement proceedings.

As the European markets merge more and more and the national barriers begin to fade cooperation among enforcing agencies will become more and more crucial and cracks will begin to appear in the M.O.U. set up. Territorial jurisdiction issues will begin to become more important when, a given offence takes place or has an impact across member states, or as investment firms expand through branches or subsidiaries across Europe or as issuers begin to raise capital from various member states and as the boundaries that helped define jurisdiction in the past get eroded by communications technology or and the global nature of markets. There will then be talk of a Pan European securities market regulator... and that in turn will bring the issue of what kind of body this will be, since most EU member states have already merged their capital market supervisors with insurance and banking...

The point that I want to make is that the regulatory structure that we have built (through the process of political compromise, minimum EU wide standards, mutual recognition) might not be sufficient to cope

with a true unified European market, but it is more like “a camel – which is a horse designed by a process of political compromise”. At some point it will have to change and become a horse if it is expected to run alongside the fast changing financial world.