Financial Law Institute

Working Paper Series

WP 2009-05

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October 2009

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Abstract

To be published in

Instituut
FINANCIEEL RECHT
FINANCIAL LAW
Institute

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UNIVERSITEIT GENT

Global and Regional Financial Regulation, the viewpoint of a European Securities Regulator.

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That the financial activity has become increasingly international, or more precisely cross border, can be observed every day. This applies equally to the financial markets, the instruments and the major financial institutions, leading to the strong interdependence of the financial economies that was witnessed during the present crisis. As a consequence, contagion effects, as we have witnessed, are numerous and instant. All markets have an interest that the other markets do not accumulate risk, as this may jeopardize their own existence. Therefore all markets should have an interest in being well informed about the major developments in their neighbouring markets, identify the major or systemic risks, and urge the other states to take the necessary steps to mitigate or eliminate these risks. However, on a worldwide scale, and without strong global institutions with real decision-making power, one will have to do with more or less voluntary cooperation. "Voluntary" does not always mean that one single state can simply get away from disciplining action from the international fora.

1. In the globalised world, worldwide and local action go hand in hand

In the absence of a worldwide regulator - the creation of form of it cannot be excluded one day - one has to develop global regulation starting essentially from a national or regional basis, leading in a convergent movement to more widely applicable, possibly global standards. At the same time, regulation should leave sufficient room for national policies to be pursued, provided risks are kept under adequate control. A "one size fit all" approach would in itself contain a risk of herd behaviour, and hence may exacerbate risks.

Global standards, recommendations, policy guidelines or similar other normative instruments were up to now essentially developed by national regulators, acting in common, in several international bodies. National regulators do not act in a vacuum: due to their numerous contacts they develop common analyses, attitudes and policies towards the ongoing developments. It is striking how frequently the same problems are being tackled more or less the same way both in the US and in the EU, and that often at the same time. More broadly, there is an increasing need for acting together not only regionally, or on a transatlantic basis, but also worldwide.

This present crisis has, more than any previous one, illustrated this need for worldwide engagement: several important initiatives are now being undertaken to insure that policies are, if not common, at least aligned. The most important initiative has been the recent creation of the G.20, and its decision to install a Financial Stability Board, as a successor of the Financial Stability Forum[2], "established to

[1] This paper has been written in a personal capacity.

0. [2] The FSF has adopted several documents dealing with the financial regulation and supervision Among the recent ones: Recommendations for Addressing Procyclicality in the Financial System; Principles for Sound Compensation Practices; Principles for Cross-border Cooperation on Crisis Management.

address vulnerabilities and to develop and implement strong regulatory, supervisory and other policies in the interest of financial stability".
The European Union and its member states have taken an active part in these worldwide discussions, and are in the process of further contributing to the international cooperation, both in terms of analysis, of devising policies and elaborating specific remedies to combat the consequences of the ongoing crisis. The FSB has become the overall coordinating body, where all important worldwide regulatory bodies converge and coordinate their action. Members include apart form the representatives of the major economies, the leading international organisations and the main international standard setters[3]. One can expect over time that this board will set the general policy guidelines directing the action of the regional and national regulatory organisations. But the Board will also be the meeting place where concerns about menacing developments in one or other major jurisdiction should be discussed and action addressed. Therefore the Board should have its own research and investigation competence.

However the Board has only the authority of its members, and implementation of its "recommendations" will be the acid test. Over time its action should develop towards stronger cooperation and effective coordination in action: originally this was not very different with the Basel Committee.

2. Aligning micro and macro supervision.

National authorities have been increasingly developing cooperation systems, sometimes institutionalising them at the national level. One of the more interesting developments in this respect is the introduction, in many jurisdictions, of a closer linkage between micro and macro supervision. Indeed one of the core observations from the present crisis was the absence of a strong input from the systemic risk analysis in micro-prudential supervision. This attitude was linked to a strong belief in the self-cleansing function of the markets.

Although many reports have listed the numerous dangers to financial stability in the years preceding the crisis, there was no clear unisono signal about the origins of the impending collapse[4]. The risks flowing from subprime investments e.g. were not flagged nor included in the analysis made by the supervisors directly involved in the prudential supervision, whether these were central banks, in charge of systemic risk surveillance, or separate prudential supervisors. In several jurisdictions, special organisations will now be created to follow up on systemic risk: this is the case in the US with the Federal Reserve in charge of following up on systemic institutions, and the Financial Services Oversight Council coordinating the action of the different supervisory agencies, in the EU with the European Systemic Risk Board, in the UK with the upgraded Tripartite financial stability committee and even in Belgium, with the planned introduction of a Systemic Risk Board. In each case, these bodies will be focusing on the identification of systemic risks, and should give the necessary messages to the prudential supervisors about potentially deleterious developments. But except in the Belgian case, the systemic risks boards will only have the power to recommend action, not to mandate it. And the line between general policies, as opposed to policies relating to the financial sector, will be a fine one. Stemming from a global policy concern, the implementation remains national – or at most regional – but over time will call for stronger cooperation and monitoring at the global level.

[3] For the composition of the FSB, see www.financialstabilityboard.org/members/links.htm
[4] see the introductory chapter "rescue, recovery, reform" of the BIS 79th Annual report, 2008

3. Different forms of existing international cooperation.

Cooperation among national supervisory authorities has been in place for many years and has taken different forms, both at the global and regional level.

The Basel Committee, established at the Bank for International Settlement, has developed since many years policies and guidelines addressing the prudential regulation of banks. Although its best-known products – Basel I and II - have received much public attention, many other important statements should be mentioned. The authority of the Basel Committee statements does not reside in its legal basis, but in the support of the members of the Committee, i.e. the central banks and prudential regulators of the most important jurisdictions of the world[5].

In the fields of securities regulation and insurance, similar initiatives have been developed, although these are less authoritative. The International Organisation of Securities Commissions or IOSCO has developed common standards on a wide range of issues affecting investor protection, securities activities and markets. Here again, its core regulatory committee is composed of the most important jurisdictions in the field of securities, recently enlarged to more closely follow the G.20 composition[6]. Members are not technically bound by its statements, but these are frequently invoked as a basis for taking national regulatory action. An often used Multilateral Memorandum of Understanding insures signatories to obtain information from fellow supervisors, e.g. on securities scams, or on market abuse cases. Recently a monitoring process has been agreed, allowing IOSCO to follow up more closely on the implementation of its standards and recommendations.

IOSCO has developed an interesting model for insuring stricter compliance with its core principles, essentially based on peer pressure. IOSCO members exchange information and cooperate on the basis of a Multilateral Memorandum of Understanding. All members have to adhere to this MMOU, but before they can become signatories, candidates have to submit themselves to a strict vetting process, undertaken by an international technical panel. This process creates significant pressure on members to insure that they regulatory system conforms to the requirements of the MMOU. It has lead to a significant upgrading of the regulation in certain states, sometimes with active assistance by the Organisation.

In the insurance field, the International Association of Insurance Supervisors plays a similar role. In addition, supervisory cooperation among insurance supervisors has been strongly developed on the basis of different worldwide protocols.

4. International dialogue

International bilateral dialogue should be mentioned separately and has become very significant these last years.

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[5] Under its present, recently extended composition, the Basel Committee counts the following members: Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

[6] The technical committee of ISOCO counts 17 ordinary members.

As far as the EU is concerned, the *regulatory dialogue* has been very active in the contacts with the US, Switzerland, and more recently with other jurisdictions like China, India, Brazil, …as well[7] This dialogue takes places at two levels: there is the policy level, in which the European Commission takes the leading role for the European Union, and the more technical discussions, in which specialised bodies like CESR are active. In the case of the dialogue with the US, and apart from the accounting issues[8], a EU-US Financial Markets Regulatory Dialogue [9] has been put in place since 2004[10] As recently as the 1st of February 2008 the EU Commission and US SEC issued a joint press release on mutual recognition in securities markets, where the two parties agreed to deal i.a. with the access of EU regulated markets to US brokers and dealers, and vice versa. More advanced projects have been going on between the US, Australia and Canada, whose legal systems are closer to the US system. The severity of the crisis has however obliged regulators to postpone these activities. They would have implied a thorough analysis of each other regulatory framework and the common assessment of a sufficient if not high degree of equivalence. One can expect these discussions to be resumed once the crisis has subsided: mutual recognition is indispensable in today's intertwined financial world, but presupposes a sufficient degree of confidence in the effectiveness of each other supervisory systems.

Apart from the regulatory dialogue, one should also mention the *supervisory dialogue*, taking place at different levels: at the central level CESR is in contact with its American counterparts, SEC, CFTC and Finra, or with the Swiss Financial market Authority or Finma, while regular contacts are organised within I0SC0. This illustrates that these exchanges of views takes places in different circles, that are partly overlapping and insure that coordination on a very large basis is continuously taking place.

The issue of *mutual recognition* with third states continues to be on the table of CESR, coordinating the action of its members in their dealings with these jurisdictions. In practice, national supervisors are often confronted with practical issues of recognising other states' decisions. To better understand the issues and possibly establish priorities, CESR published a call for evidence on "mutual recognition with non-EU jurisdictions"[11] targeting also non-European financial centres. Indeed, according to the present rules, it is e.g. up to each CESR member to determine whether the information contained in a foreign prospectus can be considered equivalent to the common standard. The CESR document mentions that there are several approaches to deal with differences in regulation[12]. Some of these may lead to practical agreements how to deal with detailed aspects of cross border transactions.

Unless rooted in legal provisions, as is the case within the EU, mutual recognition does not do away with national differences. Signatories remain free to develop their own policies, their own regulations, and often without consultation with their fellow regulators. More adequate procedures should be agreed on, allowing to inform the other parties of ongoing developments that may call for

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[7] See the Commission site for an overview of actions undertaken: ec.europa.eu/internal_market/finances/global/index_en.htm

[8] about which further.

[9] http://ec.europa.eu/internal_market/ext-dimension/dialogues/index_en.htm

[10] See for details: June 2004, ec.europa.eu/internal_market/finances/docs/general/eu-us-dialogue-report-state-of-play_en.pdf

[11] June 2009 CESR 09-406 b.

[12] The approaches are: Standardisation, i.e. a development of common approaches or international standards; Exemptions, i.e. providing exemptions from national rules to foreign entities where imposing such rules would be disproportionately burdensome; Recognition, i.e. accepting compliance by a foreign entity with its home country standards through mutual recognition.

regulatory action, to identify more clearly the differences of approach and the need for maintaining these differences and inform or consult early about unilateral actions. The mutual recognition process should not be limited to a passive finding of equivalence in regulation, but consists of an active search for common or at least compatible solutions.

In some fields a further step has been undertaken by adopting similar standards applicable in several jurisdictions. The International Accounting Standards are the case in point. Originally developed by a private body, they became the applicable standard for corporate accounting and reporting in the EU under the name of the International Reporting Standards (IFRS). On the basis of an agreement between the FASB and IASB, it was agreed that both IFRS and US Gaap would over time converge and that in the meantime both standards would evolve in a synchronised manner[13]. This roadmap led to significant results, most tangibly with the abolition in the US of accounts restatements for EU issuers publishing according to the IFRS in the US[14]. The attempt to introduce, possibly on an optional basis, IFRS for US issuers has been temporarily suspended as a consequence of the financial crisis. Many other jurisdictions have in the meantime signed up to the application of IFRS, such as Japan (2011), China, India etc. One can expect IFRS to become the worldwide standard on corporate reporting. Whether all jurisdictions will largely speak the same language will also depend on their implementation and monitoring.

It is not sufficient to adopt standards among supervisors, these also have to be updated, and effectively applied. Therefore some monitoring mechanisms are necessary. In specific fields monitoring instruments have been developed, at the international or regional level, to determine to what extent the mutually agreed standards are being implemented, and what adaptations are needed with a view of both efficiency and convergence. The IMF has developed worldwide programmes, known as Financial Sector Assessment programs (FSAP). Sectoral initiatives related to the IOSCO Credit Ratings Agency Code of Conduct, whereby an IOSCO task Force analysed to what extent the major credit agencies had implemented the code. Now that in many jurisdictions, national regulations on Credit Rating Agencies have been adopted, there will be a renewed need for organising multinational coordination. Systematic monitoring takes place by CESR, for EU based regulations, or by the PIOB, with respect to international auditing standards[15] With respect to the implementation of the different standards, IOSCO has instituted a Supervisory Cooperation Task Force[16], that will look both at the way the national rulebooks have implemented the common standards, but also at the actual practices of supervisors. These monitoring mechanisms are about the closest form to an international regulatory body that have been developed.

Looking at the complex overall structure, one sees a definite development towards more international coordination and even regulatory policy making. Implementation remains national, but

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[13] IP/02/1576, Brussels, 29th October 2002, http://europa.eu/rapid/pressReleasesAction.do?reference=IP/02/1576&format=HTML&aged=0&language=EN&guiLanguage=en

[14] IP/07.1705, http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1705&format=HTML&aged=0&language=EN&guiLanguage=en

[15] The Madrid based Public Interest Oversight Board approved in 2008, 25 International standards on Auditing (ISAs) and one International Standard on Quality Control :PIOB Annual report 2008

[16] See IOSCO, Code of Conduct Fundamentals got Credit rating Agencies, December 2004; Review of Implementation of the IOSCO Fundamentals of a code of Conduct for credit rating agencies, February 2007, and Review of the implementation of the IOSCO code of conduct, www.iosco.org/library/pubdocs/pdf/IOSCOPD249.pdf

a certain number of instances are actively monitoring the regulatory development, and in some cases the actual implementation as well.

5. Europe's traditional approach to regulatory convergence

These efforts to strive for greater equivalence of financial standards, linked to decisions of mutual or sometimes unilateral recognition, will have to be stepped up once sufficient attention can be mobilised after the crisis. In the European Union, mutual recognition has been the basis of much of financial regulation: freedom of establishment and freedom to offer services, two pillar of the EU Treaty, are materialised by offering recognition to firms, products or services, originating from other states, and meeting the requirements laid down in the EU legal instruments as applied by the home state supervisor. It is on this basis that banks can open branches in other EU states without almost any formality, or that investment funds, or other securities can be offered on the basis of a prospectus approved by the home state of the issuer. Only in exceptional circumstances can the host state refuse access to the foreign bank, or product, and close its border while informing the home supervisor about its reasons. In the present crisis especially in emergency situation, some cases have happened where host states have intervened without fully respecting these rules. So e.g. have some host states restricted host banks to pool their liquid assets with the home parent bank. This raises questions about the limits of mutual recognition[17], and the exceptional circumstances under which host supervisors might limit the Treaty's fundamental freedoms.

According to the present EU regulatory scheme, EU financial regulation is the product of directives and regulations, proposed by the Commission and adopted by Council and Parliament. In 2001, it was agreed that directives could delegate more detailed provisions to the decision of the Commission, acting with the consent[18] of a regulatory committee, composed of representatives of the member states. These are the so-called Level 1 and Level 2 directives, or regulations. Sometimes these directives are the transposition of regulatory bodies that have been agreed at the international level: the Basel II Accord has been transposed by an EU directive, which was then later transposed in the national legal systems of each of the 27 member states[19]. Often member states succeed in introducing specific derogations, reservations, national discretions or opt outs in the directive. Unnecessary to say that this regulatory process is quite burdensome, and that the risk of differences in transposition, if not simply of translation is quite considerable. As a consequence, the European financial regulatory system is far from effectively harmonised and not conducive to the creation of an internal financial market.

Several approaches have been tried to improve and achieve less diversity. Regulations, that do not need to be transposed, but are directly applicable in the legal order of the members states have been tried in a number of fields[20]. But diversity has not entirely disappeared, due to differences of interpretation, to differences in national practices, and so on. Pre-transposition coordination is supported by the Commission, with some success.

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[17] More specially about home-host competences
[18] To be precise: the Commission would not go against the will of a significant number of member states.
[19] But the movement also goes in the opposite direction: the Solvency II directive for insurance undertakings, is the most advanced instrument these days, and will be studied by regulators worldwide. The same applies for Mifid.
[20] E.g. the accounting standards IFRS are technically endorsed by the Commission, and lead to a formal regulation: see art 3, Regulation 1606/2002 of 19 July 2002, where the endorsement procedure is described as a Commission decision "on the applicability within the Community of international accounting standards". The minimum political requirements are mentioned in article 3.2,

An intermediate step towards the creation of a European supervisory regime has been the creation of the so-called Level 3 Committees, starting in 2001 with the Committee of European Securities Regulators (CESR). Similar committees were set up later for banking (CEBS) and insurance (CEIOPS). These committees are composed of the 27 national competent authorities in their respective fields and embody the cooperation among them. Initially their activity mainly related to advisory work for the Commission that was rolling out the 2000 Financial Services Action Plan. Later on the committees developed their own cooperation and convergence work, agreeing on common guidelines, interpretations, recommendations or standards. Peer review work was developed and for specific subjects[21] operational cooperation was started This work has paved the way for the next step, the creation of European authorities with regulatory and -more exceptionally – pan-European supervisory powers.

In order to streamline interpretations CESR has developed several Questions and Answers pages, published on its website reflecting the common views of the CESR members that are the result of sometimes extensive discussions. However, in some cases, not all members have been able to subscribe to the majority position even with respect to EU regulations: this is than clearly stated in the Q&A[22]. Only the European Court of Justice could give a final and authoritative interpretation of the regulatory provisions involved.

In order to achieve a higher degree of harmonisation, CESR has engaged several programmes to identify differences in national rules. A review panel collects and analyses the information about national regulations and practices and identifies the cases where implementation has been divergent. These Peer Reviews are transmitted to the European institutions, expecting appropriate action by the Commission within the directive review exercises. A common supervisory culture is strived ad by organising common training and exchange of staff.

CESR also engages in drawing up recommendations, practical guidelines, or other instructions relating to the application of Community rules. National supervisors are expected to adopt corresponding provisions in their national legal system, or at least take notice of them in their supervisory practices. Some of these recommendations are quite substantial: one can refer to the Recommendations of the European System of Central Banks and the Committee of European Securities Regulators (ESCB-CESR) on Securities Clearing and Settlement, published in June 2009, and containing guidelines for supervisory action in these fields.

In the field of supervision of financial institutions, there have been since a long time numerous forms of voluntary cooperation between supervisors with respect to supervisory duties, both in the field of prudential supervision, and of conduct of business. Cooperation usually takes place on the basis of memoranda of understanding, agreements whereby supervisors outline the way they will deal with each other, how they will exchange information and agree on supervisory actions. These MOU's may be bilateral or multilateral[23]. Recently it has become customary, or even mandatory to organise cooperation among supervisors on the basis of a college of supervisors where delegates from all or from the main supervisory bodies will coordinate their action, exchange information,

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[21] Especially CESR-Pol, investigating cross-border market abuse cases, and CESR-Fin, looking at disclosure and accounting issues.

[22] See e.g. Frequently Asked Questions regarding Prospectuses, Common positions agreed by CESR Members, 10 February 2009, Q. 54 on Interim Financial Statements,“ Pro forma financial information included in a prospectus on a voluntary basis”

[23] CESR, Multilateral memorandum of understanding on the exchange of information and surveillance of securities activities, May 4, 2005.

from the supervisor of the parent to the supervisor of the subsidiaries and vice versa, and may decide upon common action[24]. However, these colleges do not have formal decision making power: only in the EU insurance[25] and in the banking directives, have advisory powers been provided.

6. Towards a European System of Financial Supervision.

Although the action of CESR is widely considered beneficial, there are some inherent weaknesses in this approach. In some cases its guidelines are not taken heed of, in others they are implemented in different ways. The guidelines are addressed to national supervisors, and confer no private rights to individuals. Market participants should be able to fully rely on the stated position of CESR as this has been adopted by the members. There is also the need to adopt more detailed common guidance: market participants confronted with different provisions in 27 markets are often at a loss about the need to conform to each of these national regulations. It seems impossible to deal with these needs in Level 1 or even Level 2 directives: faster action is needed, solutions should be developed at the technical level and more detailed or specific guidance should be given.

Therefore a new approach has been outlined in the de Larosière Report, approach that is now endorsed by the Commission, the Economic and Financial Council and finally by the European Council of Head of States and Governments. This approach has been outlined in a model for a European System of Financial Supervision. The model cannot be analysed except by taking into account the specific structure of the European Union, where 27 member states cooperate, on the basis of the Treaty provisions, maintaining their separate identity and institutions i.a. in the fiscal field. Schemes essentially have to be conceived in a "bottom up" approach, and not, as in the US, "top down".

According to the proposed scheme[26], the existing level 3 Committees (CESR, CEBS and CEIOPS) would be upgraded to European bodies, with certain limited rulemaking power. They would be called "authorities", although this term is undefined. The abovementioned detailed guidance could be adopted and declared binding in all 27 national systems. However, this will not be the autonomous act of the new authority, but has to be "endorsed" by the European Commission[27]. The end product would hence be a European regulation, applicable directly in all member states. The question therefore arises to what extent the endorsement procedure would impinge on the authority's freedom and independence: comparing with the endorsement procedure in the accounting field, it should only be in very extreme circumstances that the Commission would reject the proposed regulation of one of the three authorities.

The proposed scheme also declares the authorities in charge of "binding mediation". The concept certainly needs some further analysis, as according to the Commission Communication, it relates to cases in which two supervisors cannot reach an agreement on a matter of common interest or concern. In case of lasting disagreement, a panel composed of members of the Authority would propose a decision to the membership that is binding on the two parties involved. One can see cases essentially in the cross border context where home and host supervisors have differences of opinion, and where a third party could usefully mediate, and if no solution can be found, would have to decide. One will understand that this type of "mediation" is not a mere "arbitration" stating what is

[24] The recent directives CRD and Solvency II contain more advanced provisions in this respect.
[25] See e.g. Solvency II Directive, art 235 and 238, Text adopted by the European Parliament on 22 April 2009
[26] See Commission Communication of 27 May 2009.
[27] Comp. the procedure followed with respect to the IFRS, fn 21.

the status of the applicable law. Mediating about issues that have not explicitly been dealt with in the directives will go beyond the mere application of the law. Review should be provided for, in which case the EU law would be the only applicable yardstick.

How to ensure effective application of the common rules? It is not sufficient to state that the rules are applicable as a formal EU regulation, one also has to look at the outcomes: how do national supervisors apply the rules? Here the existing systems of peer review would be applied. If a finding were made of a clear breach of a community rule, including those of the authorities, the enforcement power would ultimately lie with the Commission, on the basis of art 226 of the Treaty. However, the authorities could be instrumental in investigating the case, attempting to find a voluntary solution with the member before the Commission undertakes legal action. In case of refusal, the authorities would inform the Commission, who will ultimately decide to engage formal proceedings.

So-called day-to-day supervision would not be included in the mandate of the new authorities: here the powers would still remain at the national level, with a participation, as observers, of the authorities in the supervisory colleges. This horizontal split of competences between rulemaking (European) and supervision (remaining national) has especially been inspired by the fear for fiscal consequences. Looking at the past year this risk should not be taken lightly, although in the field of securities supervision, the probability that fiscal consequences would be trigger is less likely.

It was decided at the level of the European Council that the supervision of credit rating agencies would take place at the European level, more specifically by CESR. This would be the first case where effective supervision will be undertaken at the European level. The circumstances are quite peculiar: the rules have been adopted in a EU regulation, more specifically dealing with mutual recognition, while they will mainly be applicable to three non EU rating agencies. With giving direct supervisory powers to a European agency, the proposed system makes a significant step towards a European supervisory body.

The ultimate political objective consists of the creation of an internal financial market in Europe, open to worldwide capital flows, through harmonisation, convergence and more unified rulemaking, but without fully abandoning the specificities of each jurisdiction.

7. To conclude.

Financial policies attempt to address issues at three different levels: formulation of policies, rulemaking and supervisory enforcement, including cooperation.

The formulation of global policies has improved significantly these last years, and has accelerated significantly with the financial crisis. The wider the geographical coverage the higher the level of generality. With the G 20 initiative and the growing financial interdependence, the policy level seems to have shifted to the worldwide level, although its work remain high level and is largely influenced by regional inputs. Regionally, new policies are being developed, leading sometimes to a competitive race with other regions. In some cases, this will result in rendering access to other markets more difficult, raising the spectre of discriminatory practices. This new wave of regulation may offer an interesting entry door to renegotiate old and new discriminatory restrictions for accessing each other markets.

The level of rulemaking is considerably less firmly organised: the transmission of the global policies into effective action runs through the national legislative apparatus and becomes exposed to the

necessities of local politics. In this respect the situation within Europe differs from that of other jurisdictions, in that legally binding instruments translate the policies into imperative instructions (directives, addressed to members states, or regulation, directly applicable to all citizens). Worldwide agreed standards – e.g. the Basel II Accord – are not always followed up, e.g. Basel II in the US, putting in danger global policies.

The third level of action relates to supervisory cooperation: here more success has been booked. Many Memoranda of Understanding are effectively operational. Action is undertaken against non-cooperative jurisdictions. In the EU a higher level of cooperation is embodied in the standing so-called Level 3 Committees. To be mentioned here are the multilateral regulatory monitoring exercises, undertaken by IMF (Financial Sector Assessment Programme), to which now all major nations have signed up. Within the EU it is planned to have the outcomes (i.e. the Peer Reviews) lead to corrective action (i.e. to oblige states to adapt their rules).

The weakness of the global regulatory process essentially resides it seems in the second level, this in the translation of the global policies into concrete action. In some fields considerable results have been achieved: money laundering is a good example where worldwide agreements on action and even enforcement exist, a model that could inspire action in other fields. In the fiscal field, tax evasion is now more effectively combated. But in other fields the balance is delicate: in developing accounting standards, much centrifugal force is regrettably developing. And audit review and auditing standards are similar cases.

To improve global financial regulation, it is essential that a more intense dialogue be developed between persons responsible for developing regulation in several parts of the world, and that at a very early stage. Better understanding of each other objectives, approaches and even techniques may avoid differences that are often inefficient, costly and ultimately detrimental to international capital flows[28]. Globalisation of the markets will make this type of coordination increasingly necessary, while differences will immediately lead to regulatory arbitrage. It should result in sharing awareness and good understanding of each other concerns, and develop comparable rules, or at least avoid contradictory rules or loopholes. Moreover regulation should not be used not abused for gaining competitive advantages.

It seems inevitable that over time, in our increasingly globalised world, we have to develop, within the general guidelines formulated by the world's political authorities, common minimum standards for framing financial activity, as this will become essentially global and the need for securing safe and efficient functioning of our interdependent financial system is more clearly perceived. But equally important is the effective implementation of these standards, and that should be a priority task for regulators.

[28] Efforts have been made by the private sector to flag differences e.g. in threshold for significant shareholdings, that create substantial administrative burden in processing transactions.

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