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REPORT ON SIMPLIFICATION OF EU FINANCIAL LAW

Gortsos, Ch. V., Annunziata, F., Ramos-Muñoz, D., de Arruda, Th., Mitrovic M. and Schinerl, F. (coordinators)

Avgouleas, E., Buckley, R., Grünewald, S., Joosen, B., Lastra, R.M., Löw, E., Lehmann, M., Plato-Shinar, R., Siri, M., Smits, R., Wymeersch E., Zatti, F. and Zetzsche, D.A.

EBI European Banking Institute

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January 2026

[1] This Report has been prepared under the auspices of the EBI Academic Board. In this academic spirit, the views expressed reflect a broad consensus among the authors, while allowing for individual nuances on specific points. These views do not necessarily reflect an institutional position of the EBI or its Academic Board. At the same time, the Report sought to incorporate, as extensively as possible, the perspectives of the entire EBI academic community. For this purpose, successive drafts of the Report, as well as its final version, were shared among the members of the EBI Academic Board, whose views were onboarded. This public version of the Report is the result of this process of open exchange.

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List of Defined Terms

Accounting Directive	Directive 2013/34/EU on annual financial statements, consolidated financial statements and related reports of certain types of undertakings
ACPR	Autorité de Contrôle Prudentiel et de Résolution *(France)*
AI	Artificial Intelligence
AIFM	Alternative Investment Fund Manager
AIFMD	AIFM Directive (Directive 2011/61/EU)
AMC	Asset Management Company
AMF	Autorité des marchés financiers *(France)*
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism
AMLA	Anti-Money Laundering Authority
AMLAR	Anti-Money Laundering Authority Regulation (Regulation (EU) 2024/1620)
AMLD	Anti-Money Laundering Directive
BCBS	Basel Committee on Banking Supervision
BIS	Bank of International Settlements
BRRD	Bank Recovery and Resolution Directive (Directive 2014/59/EU)
BSI	Balance Sheet Items
CapEx	Capital Expenditure
CASPs	Crypto-Asset Service Providers
CCB	Capital Conservation Buffer
CCPs	Central Counterparties
CCyB	Countercyclical Capital Buffer
CEBS	Committee of European Banking Supervisors
CEIOPS	The Committee of European Insurance and Occupational Pensions Supervisors
CEPR	Centre for Economic Policy Research
CEPS	Centre for European Policy Studies
CESR	Committee of European Securities Regulators
CET1	Core Equity Tier 1
CFT	Countering the Financing of Terrorism
CGFS	Committee on the Global Financial System
CJEU	Court of Justice of the European Union
COREP	Common Reporting

CPMI	Committee on Payments and Market Infrastructures
CRA	Credit Rating Agency
CRD I	Capital Requirements Directive No I (Directives 2006/48/EC and 2006/49/EC)
CRD IV	Capital Requirements Directive No IV (2013/36/EU)
CRD VI	Capital Requirements Directive No VI (Directive (EU) 2024/1619)
CRR	Capital Requirements Regulation (Regulation (EU) No 575/2013)
CRR III	Capital Requirements Regulation No III (Regulation (EU) 2024/1623)
CS3D	Corporate Sustainability Due Diligence Directive
CSDR	Central Securities Depository Regulation (Regulation (EU) No 909/2014)
CSRD	Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464)
CSV	Comma Separated Values
DLT	Distributed Ledger Technology
DLTR	DLT Regulation (Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology)
DNSH	Do No Significant Harm (principle)
DORA	Digital Operational Resilience Act (Regulation (EU) 2022/2554)
DSA	Digital Services Act (Regulation (EU) 2022/2065)
EBA	European Banking Authority
EBC	European Banking Committee
EBF	European Banking Federation
EBI	European Banking Institute
ECB	European Central Bank
ECLI	European Case Law Identifier
ECOFIN	Economic and Monetary Affairs Council Configuration
ECON	Economic and Monetary Affairs
EDIS	European Deposit Insurance Scheme
EEA	European Economic Area
EEC	European Economic Community
EGOV	Economic Governance Support Unit
EIOPA	European Insurance and Occupational Pensions Authority
EIOPA Regulation	Regulation (EU) No 1094/2010 establishing EIOPA
EMD II	Electronic Money Directive II (Directive 2009/110/EC)
EMIR	European Market Infrastructure Regulation (Regulation (EU) No 648/2012)

EMT	Electronic Money Tokens
EMU	Economic and Monetary Union
ESAP	European Single Access (data) Point
ESAs	European Supervisory Authorities (EBA, ESMA, EIOPA)
ESC	European Securities Committee
ESFS	European System of Financial Supervision
ESG	Environmental, Social and Governance
ESMA	European Securities and Markets Authority
ESMA Regulation	ESMA Regulation (Regulation (EU) No 1095/2010)
ESRB	European Systemic Risk Board
EU	European Union
FATF	Financial Action Task Force
FBF	*Fédération Bancaire Française*
FCPs	Fonds Commun de Placement
FICOD	Financial Conglomerates Directive (Directive 2002/87/EC)
FIDAR	Financial Data Access Regulation (not yet adopted)
FINMA	Financial Market Supervisory Authority *(Switzerland)*
FMA	Financial Markets Authority *(Austria)*
FRIAs	Fundamental Rights Impact Assessments
FRTB	Fundamental Review of the Trading Book
FSAP	Financial Services Action Plan
FSB	Financial Stability Board
GDPR	General Data Protection Regulation
GFC	Global Financial Crisis
GIRR	General Interest Rate Risk
GPAI	General-Purpose AI
G-SIBs	Global Systemically Important Banks
G-SIIs	Global Systemically Important Institutions
IADI	International Association of Deposit Insurers
IAIS	International Association of Insurance Supervisors
IASB	International Accounting Standards Board
ICOs	Initial Coin Offerings
ICT	Information and Communication Technology
IDD	Insurance Distribution Directive (Directive (EU) 2016/97)

IFAC	International Federation of Accountants
IFD	Investment Firms Directive (Directive (EU) 2019/2034)
IMD	Insurance Mediation Directive (Directive 2002/92/EC)
IMF	International Monetary Fund
IORPD I	Institutions for Occupational Retirement Provision Directive No I (Directive 2003/41/EC)
IORPD II	Institutions for Occupational Retirement Provision Directive No II (Directive (EU) 2016/2341)
IORPs	Institutions For Occupational Retirement Provision
IOSCO	International Organization of Securities Commissions
IROs	Impacts, Risks, and Opportunities
ISD	Investment Services Directive (Directive 93/22/EEC)
ITS	Implementing Technical Standards
JSTs	Joint Supervisory Teams
KID	Key Information Document
LAC	Loss-Absorbing Capacity
LCR	Liquidity Coverage Ratio
LGD	Loss-Given-Default
MAR	Market Abuse Regulation (Regulation (EU) No 596/2014)
MDA	Maximum Distributable Amount
MiCAR	Markets in Crypto-Assets Regulation (Regulation (EU) 2023/1114)
MiFID I	Markets in Financial Instruments Directive No I (Directive 2004/39/EC)
MiFID II	Markets in Financial Instruments Directive No II (Directive 2014/65/EU)
MiFIR	Markets in Financial Instruments Regulation (Regulation (EU) No 600/2014)
MoU	Memorandum of Understanding
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
MTF	Multilateral Trading Facility
NBFI	Non-Bank Financial Intermediation
NCAs	National Competent Authorities
NIS2	Network and Information Systems Directive No 2 (Directive (EU) 2022/2555)
NRAs	National Resolution Authorities
O&Ds	Options and Discretions
OECD	Organisation for Economic Cooperation and Development
OJ	Official Journal (of the EU)

OpEx	Operating Expenditure
O-SIIs	Other Systemically Important Institutions
OTF	Organised Trading Facility
P2G	Pillar 2 Guidance
P2R	Pillar 2 Requirements
PAIs	Principal Adverse Impacts
PD	Probability of Default
PRIIPs Regulation	Packaged Retail and Insurance-Based Investment Products Regulation (Regulation (EU) No 1286/2014)
PSD II	Payment Services Directive II (Directive (EU) 2015/2366)
PSD III	Payment Services Directive III *(currently: Proposal COM (2023) 366)*
PSR	Payment Services Regulation *(currently: Proposal COM (2023) 367)*
ROFIEG	Regulatory Obstacles to Financial Innovation
ROPA	Record Of Processing Activities
RTS	Regulatory Technical Standards
SFDR	Sustainability-Related Disclosures Regulation (Regulation (EU) 2019/2088)
SFTR	Securities Financing Transactions Regulation (Regulation (EU) 2015/2365)
SICAV	Société d'Investissement à Capital Variable
SIU	Savings and Investments Union
SMEs	Small and Medium-Sized Enterprises
SNCIs	Small and Non-Complex Institutions
SOEs	Selected Obliged Entities
Solvency II Directive	Directive 2009/138/EC
SRB	Single Resolution Board
SREP	Supervisory Review and Evaluation Process
SRM	Single Resolution Mechanism
SRMR	Single Resolution Mechanism Regulation (Regulation 806/2014)
SRT	Significant Risk Transfer
SSM	Single Supervisory Mechanism
SSMR	Single Supervisory Mechanism Regulation (Council Regulation 1024/2013)
STS	Simple, Transparent, and Standardised
SVB	Silicon Valley Bank
SyRB	Systemic Risk Buffer

Taxonomy Regulation	Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TLAC	Total Loss Absorbing Capacity
UCITS	Undertaking for Collective Investment in Transferable Securities
US	United States

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Judgment of the Court (Grand Chamber) of 23 October 2007 in Case C-112/05, *Commission of the European Communities v Federal Republic of Germany*, ECLI:EU:C:2007:623

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Judgment of the Court (Grand Chamber) of 3 October 2013 in Case C-583/11P, *Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union*, ECLI:EU:C:2013:625

Judgment of the Court (Grand Chamber) of 22 January 2014 in Case C-270/12, *United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union*, ECLI:EU:C:2014:18

Judgment of the Court (Fourth Chamber) of 28 January 2015 in Case C-375/13, *Harald Kolassa v Barclays Bank plc.*, ECLI:EU:C:2015:37

Judgment of the Court (Grand Chamber) of 19 December 2018 in Case C-219/17, *Silvio Berlusconi and Finanziaria d'investimento Fininvest SpA (Fininvest) v Banca d'Italia and Istituto per la Vigilanza Sulle Assicurazioni (IVASS)*, ECLI:EU:C:2018:1023

Judgment of the Court (Fourth Chamber) of 25 March 2021 in Case C-501/18, *BT v Balgarska Narodna Banka*, ECLI:EU:C:2021:249

Judgment of the Court (Grand Chamber) of 15 July 2021 in Case C-911/19, *Fédération bancaire française (FBF) v Autorité de contrôle prudentiel et de résolution (ACPR)*, ECLI:EU:C:2021:599

Judgment of the General Court (Second Chamber, Extended Composition) of 11 May 2022 in Case T-913/16, *Finanziaria d'investimento Fininvest SpA (Fininvest) and Berlusconi v European Central Bank (ECB)*, ECLI:EU:T:2022:279

Judgment of the General Court of 12 October 2022 in Case T-502/19, *Francesca Corneli v ECB*, ECLI:EU:T:2022:627

Judgment of the Court (First Chamber) of 12 May 2021 in Case C-709/19, *Vereniging van Effectenbezitters v BP plc.*, ECLI:EU:C:2021:377

Judgment of the Court (Grand Chamber) of 15 July 2025 in Joined Cases C-777/22 P and C-789/22 P, *European Central Bank and European Commission v Francesca Corneli*, ECLI:EU:C:2025:580

Judgment of the General Court of 10 September 2025 in Case T-625/22, *Republic of Austria v European Commission*, ECLI:EU:T:2025:869

Executive Summary

This Report was prepared by the Academic Board of the European Banking Institute (EBI), with the active involvement of the leadership of the EBI's Young Researchers Group and the support by members of its Associate Researchers Group.

It examines the growing complexity of EU financial regulation – across banking, capital markets, payments and insurance laws, and including selected cross-sectoral areas, such as AML/CFT, digital finance and sustainable finance – and develops a structured and conceptually grounded methodology for its possible 'simplification'. It responds to an increasingly shared assessment across EU institutions, supervisory authorities, market participants and academia that, while EU financial regulation has significantly strengthened financial stability, market integrity and the protection of users of financial services, it has also accumulated layers of legal, institutional and procedural complexity that now risk undermining legal certainty, supervisory convergence, competitiveness and innovation.

The Report is situated within the context of the EU's current policymaking debate, notably the Savings and Investments Union agenda, the findings of the Letta and Draghi Reports, and the European Commission's simplification initiatives, and aligns with the widespread recognition that simplification has become a strategic priority for the Union. At the same time, it explicitly rejects any interpretation of simplification as merely deregulation or as a weakening of the core objectives of financial regulation, proceeding instead from the premise that simplification is a necessary condition for preserving the effectiveness, credibility and long-term sustainability of the existing regulatory framework. This duly takes into consideration that the first and foremost objective of financial regulation, being the preservation of financial stability throughout the EU, must be observed, since – ultimately – a key rationale of market regulation (in general) is preventing the occurrence of negative externalities in the form of system-wide crises.

The Report argues that regulatory complexity in EU financial law is systemic rather than incidental, as it has emerged cumulatively over time through successive waves of legislative and supervisory intervention responding to legitimate but heterogeneous policy imperatives, including market integration, promoting the resilience of the banking sector, including by crisis prevention and management measures, technological innovation, sustainability objectives, data governance and financial crime prevention. Each of these waves has added new layers of rules, institutional arrangements and formal procedures to the existing framework, often without sufficient consolidation or realignment of earlier regimes, producing a regulatory architecture characterised by overlapping legal sources, fragmented taxonomies, blurred institutional boundaries and an expanding reliance on highly technical and prescriptive provisions.

This accumulation has increased compliance costs, reduced predictability and rendered the regulatory environment more difficult to navigate for both supervised entities and authorities, without always generating commensurate gains in regulatory effectiveness.

Equally worrying, this dense regulatory web has stolen the focus away from the need to deepen the single market in financial services, the aim that justified EU legislation in the first place, and led to complacency about divergences in national transposition and implementation.

A first set of drivers of complexity is internal to the EU's legal and institutional system and relates in particular to the architecture of supervision and the evolution of regulatory techniques. Persistent asymmetries exist across financial sectors, with the Banking Union representing the most advanced form of supervisory centralisation and having delivered tangible progress in terms of convergence, while capital markets and insurance supervision remain largely decentralised and coordinated primarily through the European Supervisory Authorities (ESAs) and national competent authorities, contributing to uneven supervisory outcomes and sustained market fragmentation. At the same time, the number of supervisory actors has expanded significantly, with EU institutions, agencies and national authorities operating alongside newly created bodies such as the Anti-Money Laundering Authority (AMLA), generating overlapping mandates, parallel supervisory lines and increasingly complex coordination mechanisms, so that the same entity may be subject simultaneously to prudential, conduct, resolution and AML/CFT supervision by different authorities applying distinct legal bases, methodologies and enforcement tools.

A central analytical finding of the Report concerns the erosion of the Lamfalussy process, originally designed to structure EU financial regulation through a clear hierarchy between political choices, technical implementation, supervisory convergence and enforcement. Over time, this hierarchy has become blurred as Level-1 legislation increasingly incorporates highly technical and granular provisions, Level-2 delegated and implementing acts have multiplied and deepened, and Level-3 soft law instruments have expanded in volume and practical impact, often functioning in practice as quasi-binding norms. Recent developments, including case law of the Court of Justice, have reinforced the *de facto* normative relevance of such instruments, contributing to the so-called 'hardening' of soft law and raising concerns regarding legal certainty, accountability, proportionality and access to judicial review.

Substantive fragmentation further amplifies these institutional challenges, as EU financial regulation continues to rely extensively on national transposition, options and discretions, and national private-law regimes, despite the ambition of a single rulebook. Core concepts such as "financial instruments", "credit institutions", or "clients" are defined inconsistently across legislative acts and sectors, often through exemplary or circular formulations rather than principled definitions, while sector-based legislative silos persist even as financial business models become increasingly integrated, resulting in economically similar activities being subject to divergent regulatory regimes.

These features are exacerbated by frequent amendments of core statutes, extensive cross-referencing across legislative acts and a technocratic drafting style embedding complex methodologies directly into primary legislation, collectively transforming large parts of the *acquis* into a moving target that complicates compliance and supervisory practice without necessarily enhancing regulatory outcomes.

Another, albeit practical, consequence of the repeated revision of Level 1 legislation concerns the declining quality of the legislative process, partly caused by insufficient budgetary resources at the various authorities to invest in good quality legislative processes. This leads to voluminous legislative books that are riddled with numerous technical errors and ambiguities, which in turn lead to considerable uncertainty about the interpretation of the law.

Further areas are (even) external to the EU legal system but deeply intertwined with its evolution. International financial standards play a central role, particularly in banking and resolution, and while global alignment is indispensable, repeated transposition of evolving standards has contributed to the technicalisation and expansion of EU primary legislation, with uneven implementation across jurisdictions further complicating the regulatory environment. A factor that is holding back progress in this area is the continuing political uncertainty surrounding the commitment of different countries to implement international standards, with frequent adjustments to agreed deadlines or ongoing changes to the scope of the regulations.

As a result, the EU risks getting caught up in the pursuit of loyal implementation of internationally agreed standards, which will not be uniformly implemented or applied. European banks fear that this will reduce their competitiveness, while authorities are reluctant to concede on the high standards of prudential regulation and supervision. This deepens the schism between industry and public authorities, and increases the likelihood that the industry's political lobbying may ultimately undermine financial stability.

The Report also acknowledges that technological innovation has profoundly reshaped financial markets by enabling new products, integrated service models and reliance on complex ICT infrastructures and third-party providers. The process prompted regulatory responses through both amendments to existing regimes and the adoption of new legislation such as MiCAR and the DLTR, which address genuine gaps but also introduce overlaps and misalignments where they intersect with legacy regimes for payments, e-money or investment services. Data governance and digital regulation represent further sources of complexity, as financial entities must comply simultaneously with sector-specific rules and horizontal regimes such as the GDPR, the AI Act and DORA, with the risk that overlapping obligations would arise in areas including record-keeping, risk assessment and reporting, while approaches towards third-country access gradually push firms to onshore their activities within the Union, adding another layer of regulatory burden and fragmentation.

Recently, the integration of non-financial objectives, most notably sustainability, has significantly expanded the scope of financial regulation, with ESG-related disclosure and governance requirements under frameworks such as the SFDR, the CSRD and the Taxonomy Regulation pursuing complementary policy goals but lacking full alignment in terms of scope, definitions and methodologies, resulting in duplication, increased reporting burdens and legal uncertainty, particularly for cross-sectoral market participants.

Against this background, the Report devotes particular attention to clarifying the concept of simplification, explicitly distinguishing it from deregulation, privatisation of rule-making or 'cosmetic' redrafting, and conceiving it instead as a methodological and architectural exercise aimed at rationalising legal sources, stabilising definitions and taxonomies, and improving coherence across sectors and regulatory levels, with the objective of preserving substantive safeguards while enhancing clarity, accessibility, proportionality and effectiveness. Simplification is furthermore understood as an ongoing governance task rather than a one-off clean-up, requiring discipline both in addressing existing regulation and in shaping future rulemaking. Moreover, simplification should also comprise targeted deregulation and codification efforts where this can be justified.

On this basis, the Report outlines a set of policy proposals encompassing institutional, substantive and procedural dimensions. It calls institutionally for greater clarity regarding the legal status, mandates and accountability of EU agencies and for a more coherent and balanced approach to supervisory centralisation beyond banking. In terms of substance, the Report suggests restoring the hierarchy of sources envisaged by the Lamfalussy process, with Level-1 legislation focused on core principles, Level-2 acts used in a disciplined manner for technical specification and the normative effects of Level-3 soft law appropriately clarified and circumscribed, alongside a comprehensive review and codification of definitions and taxonomies and a reduction of options and discretions where full harmonisation is feasible.

This translates, procedurally, into a systematic mapping of applicable rules across levels and sectors linking each provision to its policy objective in order to identify overlaps, redundancies and inconsistencies. Further, a coordinated reform should be then implemented and complemented by regular, evidence-based review cycles and a particular emphasis on simplifying reporting obligations through integrated systems and common data standards.

The Report concludes that EU financial regulation has reached a critical juncture. Without a deliberate and methodologically sound approach to simplification, further regulatory layering risks undermining legal certainty, supervisory effectiveness and the functioning of the internal market. In this context, properly designed simplification can restore coherence and predictability, reduce unnecessary compliance costs and support innovation and competitiveness entirely contingent on the preservation of the resilience and public-interest objectives of EU financial law. Simplification is not an alternative to regulation but a prerequisite for its long-term effectiveness and legitimacy.

I. Scope, Objectives, and Methodological Approach

1 Over the past few years, simplification has become **a shared priority** across the EU policy and supervisory community. First articulated within the industry, it is now endorsed in reports by the institutions, central banks, EU agencies, and national authorities alike. This report, therefore, does not stand in isolation, but rather seeks to complement and contribute to the broader debate already underway. The following sections briefly map this landscape before turning to a more detailed analysis.

A. The Institutional Context

2 In the EU, simplification has become a **central policy of the new European Commission (2024-2029)**, closely connected to and aligned with the objectives of the Savings and Investments Unions (**SIU**). At the institutional level, the urgency of this agenda has been underscored in several high-profile initiatives – most notably the *Letta Report*,[2] the *Draghi Report*,[3] and the European Commission's Communication entitled *A Simpler and Faster Europe*.[4]

3 The ***Letta Report*** (April 2024) identified the EU's highly complex regulatory landscape as one of the main obstacles to the development and integration of the Single Market. Among its suggestions, the Report calls for an overall reorganisation and simplification of the rules, arguing that greater clarity and uniformity are essential to deepen the Single Market and unlock its potential.

4 Building on this, the ***Draghi Report*** (September 2024) provides a comparative overview of the regulatory burden in the EU and the US. It highlights the lack of a single methodology for assessing the costs and benefits of EU regulation – a gap that, in view of that Report, has contributed to the complexity of and excesses in financial regulation. It also emphasises, in particular, the disproportionate burden placed on small- and medium-sized enterprises (**SMEs**). To address these challenges, the Report proposes three measures: *first*, the appointment of a vice president for simplification; *second*, the adoption of an *ex-ante* unified methodology for future legislation; and *third*, the codification of existing rules. Particular attention is given to the reduction of reporting obligations and, consequently, compliance costs, in an effort to foster SMEs' competitiveness.

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2 Letta E., 'Much More than a Market' (April 2024), https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf.

3 Draghi M., 'A competitiveness strategy for Europe' (September 2024), https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en#paragraph_47059.

4 European Commission, 'A simpler and faster Europe: Communication on implementation and simplification' (February 2025), https://www.europarl.europa.eu/cmsdata/293146/item%2013_Simplification_Communication_en.pdf.

5 The Commission's own Communication, *A Simpler and Faster Europe* (February 2025), supports this approach. It frames **simplification as a key driver of competitiveness** and sets a clear operational target: a 25% reduction in administrative burdens, estimated to yield savings of EUR 37.5 billion for businesses. The Commission outlines two main approaches: *first*, applying stress tests and reality checks to existing legislation; and *second*, reinforcing competitiveness assessments and impact checks for new legislative acts. Concrete initiatives include the first six Omnibus simplification packages, which address a wide range of areas across the EU legislation, as well as, in the field of financial services, targeted revisions of the securitisation framework and of sustainability-related disclosure requirements.[5]

6 Support for simplification has also come from within the **Eurosystem**. In a joint letter to the Commission, the central bank governors of France, Spain, Italy, and Germany called for simpler banking rules – emphasising, however, that simplification must not equate to deregulation.[6] Both the European Central Bank (**ECB**) and the European Banking Authority (**EBA**) have similarly stressed the need for evidence-based reforms that maintain resilience in the banking sector and the ability to effectively supervise credit institutions, while avoiding unnecessary complexity.

7 On the basis of its 2025 Annual Work Programme, published on 26 November 2024, the Single Resolution Board (**SRB**) also decided, *inter alia*, to introduce simplification measures to make the resolution plans more actionable in case of crisis. The Work Programme emphasises a move away from continuous redrafting and increasing document complexity, and toward a more modular and streamlined structure for resolution plans, complemented by updated templates and supporting tools. The SRB highlights a reallocation of resources from plan production toward operationalisation, testing, and execution, reflecting an increased focus on crisis readiness and resolvability.[7] Its most recent related Report, *The SRB's approach to simplification*, published on 18 December 2025,[8] specifies the four core principles guiding its approach and the three pillars of its simplification work (namely, information and reporting requirements, frequency and intensity of planning and testing, as well as clear, predictable and stable guidance).

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5 At: https://commission.europa.eu/law/law-making-process/better-regulation/simplification-and-implementation_en.

6 Escrivá J. L., Nagel J., Panetta F., de Galhau F. V., 'Letter on Regulatory Simplification' (5 February 2025), https://www.bancaditalia.it/media/notizie/2025/Letter_on_simplification.pdf?language_id=1.

7 SRB, 'SRB Work Programme 2025' (26 November 2024), https://www.srb.europa.eu/system/files/media/document/2024-11-26_SRB-Work-Programme-2025.pdf, p. 13.

8 At: https://www.srb.europa.eu/system/files/media/document/The%20SRB%27s%20approach%20to%20simplification.pdf.

8 In 2025, the **ECB** launched a **High-Level Task Force on Simplification**, chaired by its Vice-President and composed of several Euro-area governors and the ECB's Supervisory Board representative.[9] Its remit was to propose simplifications to the prudential regulatory, supervisory, and reporting framework for the EU banking system, while ensuring that the financial resilience of Europe's banking sector is preserved and capital, liquidity and compliance standards are not undermined. Key focus areas include streamlining the existing regulation (notably, the implementation of the Basel III regulatory framework (as in force) of the Basel Committee on Banking Supervision (**BCBS**)) and reducing reporting and supervisory overlaps and inefficiencies.[10] The Task Force was mandated to submit its proposals to the ECB's Governing Council by end-2025, with possible follow-on proposals to the European Commission. This deadline was met and, on 11 December 2025, the ECB published the **recommendations** of its Task Force.[11] The aim of these recommendations is to simplify the EU regulatory, supervisory and reporting framework, while maintaining the resilience of the EU banking system and ensuring that microprudential, macroprudential and resolution authorities continue to meet their objectives effectively.

9 In the same spirit, the **EBA** launched a public consultation, which run until November 2025, aimed at simplifying its regulatory technical standards (**RTSs**) on resolution planning and on the functioning of resolution colleges.[12]

10 **National authorities** have contributed as well. The Bank of Italy (*Banca d'Italia*), in a 2025 Report,[13] advanced pragmatic proposals for streamlining EU prudential regulation. Among its priorities were the rationalisation of EBA mandates under the CRR III and the CRD VI, revisions of the Fundamental Review of the Trading Book (**FRTB**), the review of securitisation due diligence rules, and the reconsideration of the EU's legislative approach to capital requirements. Separately, some of its most senior legal experts produced a more conceptual and reflective **Report**, advocating for a Consolidated European

9 At: https://www.ecb.europa.eu/ecb-and-you/explainers/html/high-level-task-force.en.html.

10 *Inter alia*, the ECB's Vice-President, the Governor of the Banque de France, the President of the Deutsche Bundesbank, the Governor of the Banca d'Italia, the Vice-Chair of the European Systemic Risk Board and a Member of the Supervisory Board of the ECB. Patrice Montagner, 'Interview with Revue Banque' (7 May 2025), https://www.bankingsupervision.europa.eu/press/interviews/date/2025/html/ssm.in250528~b945e7e456.en.html.

11 At: https://www.ecb.europa.eu/press/pubbydate/2025/html/ecb.simplification_supervisory_reporting_framework202512.en.html.

12 European Banking Authority, 'The EBA Consults to Simplify and Streamline Its Technical Standards on Resolution Plans and on the Functioning of Resolution Colleges' (5 August 2025), https://www.eba.europa.eu/publications-and-media/press-releases/eba-consults-simplify-and-streamline-its-technical-standards-resolution-plans-and-functioning.

13 Cannata F., Serafini L., 'A Pragmatic Approach to Simplification: The Case of Banking Regulation in the EU', Occasional Paper No 955, Bank of Italy, July 2025, https://www.bancaditalia.it/pubblicazioni/qef/2025-0955/QEF_955.pdf?language_id=1.

Banking Act, rebalancing CRD IV and CRR provisions in order to promote coherence and simplification in parallel.[14]

11 In addition, a briefing from the European Parliament's Economic Governance and EMU Scrutiny Unit (**EGOV**), *Simplification, not deregulation? Unpacking the debate on simplification and regulatory burden for European banks*,[15] provides important inputs on bank prudential regulation and on the ECB's supervisory practices.

12 Furthermore, the *2025 Annual Progress Report: Simplification, Implementation and Enforcement* by European Commissioner *Maria L. Albuquerque* of 21 October 2025,[16] takes stock of the simplification agenda in financial services over the first half of 2025. It refers in particular to the first sustainable-finance Omnibus package[17] and the June 2025 package on measures to improve the securitisation framework,[18] notes the start of simplification screening of the existing acquis, and points to further initiatives on their way, for instance, in the banking sector.

13 This was followed by the Report of the European Systemic Risk Board (**ESRB**), *Simplification of ESRB tasks through legislative amendments*, which was prepared by the *High-Level Group on the ESRB Review* and was submitted to the ECB on 31 October 2025.[19] This Report identifies the high number of diverse and complex tasks which have been assigned to the ESRB, beyond those set out in its founding Regulation,[20] and recommends that the ESRB Secretariat should "*screen all instances in which EU legislation requires the ESRB's involvement and propose changes to streamline these tasks and reduce the burden on the ESRB*".

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[14] Lamandini M., Perassi M., Ceci S., D'Ambrosio R., Chirico F., Consigliere E., Crapanzano G., Droghini L., Montemaggi S. 'The Case for a Consolidated European Banking Act ("EUBA") A Reflection Paper' Quaderni di Ricerca Giuridica della Consulenza Legale no. 107 (December 2025).

[15] Mazzocchi R., Spitzer K. G., 'Simplification, Not Deregulation? Unpacking the Debate on Simplification and Regulatory Burden for European Banks' (In-Depth Analysis, PE 764.389, European Parliament, Directorate-General for Economy, Transformation and Industry, September 2025), https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/764389/ECTI_IDA(2025)764389_EN.pdf.

[16] At: https://finance.ec.europa.eu/publications/2025-annual-progress-report-simplification-implementation-and-enforcement_en.

[17] European Commission, 'Omnibus package' (Finance, 1 April 2025), https://finance.ec.europa.eu/news/omnibus-package-2025-04-01_en.

[18] European Commission, 'Commission Proposes Measures to Revive the EU Securitisation Framework' (Press release, 17 June 2025), https://finance.ec.europa.eu/publications/commission-proposes-measures-revive-eu-securitisation-framework_en.

[19] ESRB/2025/0123, at: https://www.esrb.europa.eu/pub/pdf/other/ESRB.letter251211_esrbsimplificationnote~7e5c8aa470.en.pdf.

[20] Regulation (EU) No 1092/2010 of the co-legislators of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, [2010] OJ L 331/1.

14 Notwithstanding the above, 'simplification' seems to be a constantly moving target, and new reports, initiatives and proposals are likely to be set forth in the next months,[21] which will need to be followed attentively.[22]

Box 1 – The Supervisory Review and Evaluation Process (SREP) of Tomorrow

The ECB/SSM proposal for a *SREP of Tomorrow* represents a significant simplification effort within EU supervision, aimed at addressing key challenges such as excessive procedural complexity, inefficient resource use, and insufficient risk differentiation. By introducing a more proportionate, multi-year assessment cycle, it reduces the need for uniform annual reviews and allows supervisory intensity to better reflect each institution's risk profile. The reform also enhances coordination across supervisory activities, streamlines communication – particularly for low-risk credit institutions – and stabilises methodologies for setting Pillar 2 capital. Supported by improved digital tools, the initiative improves planning, data use, and transparency, ultimately making supervision more focused, efficient, and usable in practice.[23]

B. *Contribution of industries and market actors*

15 Also important to the debate on simplification has been the input of **stakeholders and market actors**. Two contributions stand out in particular: the *Less is More Report*[24] and the *European Banking Federation's (EBF) Simply Competitive Report.*[25] Both provide critical assessments of the EU's financial regulatory legislation and offer concrete proposals for reform.

16 The ***Less is More Report*** provides a comprehensive critique of the steadily growing complexity of EU financial regulation. It identifies two root causes of this trend. *First*, the inflation of regulatory text, and *second*, the gradual shift of normative authority away from the co-legislators toward EU institutions and agencies. According to the Report, this dynamic has resulted in a form of overregulation, particularly evident in emerging fields like digital and sustainable finance. Importantly, the Report moves beyond a critique to a practical toolbox to reform. Among its recommendations are: (i) drawing clearer boundaries between supervision and regulation, (ii) strengthening

[21] See, e.g., the Report "Principles For Risk-based Supervision: a Critical Pillar For ESMA's Simplification and Burden Reduction Efforts" (https://www.esma.europa.eu/press-news/esma-news/principles-risk-based-supervision-critical-pillar-esmas-simplification-and), which was published on 9 January 2026, after the cut-off date of this Report.

[22] Deliberations on regulatory simplification are currently taking place on a globe scale. See, e.g., the recent (September 2025) "*Regulatory simplification Report*" of the Australian Securities and Investments Commission (https://download.asic.gov.au/media/cz1fc0hi/rep813-published-3-september-2025.pdf). A European observer cannot help feeling slightly envious when looking at what passes for 'lengthy, complex, and hard to find and understand' in Australia.

[23] For a concise overview of the project, see at: https://www.bankingsupervision.europa.eu/press/other-publications/publications/html/ssm.faq_srep~e7acf21c24.en.html.

[24] AEDBF, 'Less Is More: Streamlining Banking Regulation in Europe' (Report, 27 February 2025), https://www.eacb.coop/en/studies/eacb-studies/less-is-more.html.

[25] EBF, 'Simply Competitive – EBF proposals for a simplified European framework' (Report, July 2025), https://www.ebf.eu/wp-content/uploads/2025/07/Simply-Competitive-report-EBF.pdf.

stakeholder engagement in the regulatory process, and (iii) applying more rigorous scrutiny to delegated/implementing acts and soft law.

17 The **EBF**, representing a wide range of banking sector interests, has also put forward tangible proposals aimed at improving regulatory efficiency. Its ***Simply Competitive Report*** is structured around seven thematic areas, covering both primary and secondary legislation as well as supervisory practices and national 'gold plating'. The EBF's approach emphasises the need to streamline compliance requirements, reduce duplicative reporting, and align supervisory expectations across jurisdictions.

18 Other documents, such as the New Financial's ***The Simplification of EU Financial Regulation*** Report, prepared for the Informal ECOFIN meeting in Copenhagen in September 2025, also offer important insights on the topic.[26]

C. *Scope and Methodology*

19 As briefly outlined in the preceding Section, a wide range of actors have advanced proposals to streamline EU financial regulation. Taken together, these initiatives illustrate both the urgency of the debate and its diversity of perspectives. Contrary to the belief of many,[27] **regulation in and of itself does not necessarily lead to a hindrance for innovation and competitiveness**.[28] US capital markets are often cited as being subject to stricter and more rigorously enforced rules than most of their counterparts worldwide,[29] and still they thrive. If designed well, regulation can – just as the Porter Hypothesis

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26 See Wright W., Bierbaum M., Breen C., Thornhill J., 'The Simplification of EU Financial Regulation: Analysis of the Complexity of the EU Regulatory Framework for Banking and Finance, the Impact on the Financial System and Wider Economy, and How to Simplify It' (New Financial Report, August 2025).

27 E.g., Chander A., 'How Law Made Silicon Valley' (2015), *63(3) Emory Law Journal*, p. 639; William Rogerson, 'The Regulation of Broadband Telecommunications, the Principle of Regulating Narrowly Defined Input Bottlenecks, and Incentives for Investment and Innovation' (2000), *1 University of Chicago Legal Forum 119*, p. 128; Epstein R., 'Can Technological Innovation Survive Government Regulation?' (2013), *36 Harvard Journal of Law and Public Policy 87*, p. 97.

28 See Bradford A., 'The False Choice Between Digital Regulation and Innovation' (2024), *19(2) Northwestern University Law Review*, p. 377. According to a recent study, lowering capital requirements is not an effective strategy for improving bank profitability; on this aspect, see Buchholz M., Loeffler A. and Sigel P., 'Do capital requirements and their international differences affect banks' profitability?' (2025) Deutsche Bundesbank Discussion Paper No 31, https://www.bundesbank.de/resource/blob/970134/c393747bdf50fe6b0f9ac9e77501ba91/472B63F073F071307366337C94F8C870/2025-11-04-dkp-31-data.pdf.

29 See, e.g., Coffee Jr. J.C., 'Law and the Market: The Impact of Enforcement' (2007), *156(2) University of Pennsylvania Law Review 229*, p. 309 ("Clearly, the Unites States pursues securities law violations through both public and private enforcement with an intensity unmatched elsewhere in the world"); Ventoruzzo M., 'Comparing Insider Trading in the United States and in the European Union: History and Recent Developments' (2014) *ECGI Law Working Paper No 257*, p. 1 ("In the European Union insider trading has been regulated much more recently than in the United States, and it can be argued that, at least traditionally, it has been more aggressively and successfully enforced in the United States than in the European Union").

suggests[30] – strengthen competitiveness and drive growth in the market.[31] The challenge, therefore, is to define what 'well-designed' regulation means in practice, ensuring that any simplification exercise delivers clarity, efficiency, and competitiveness, while safeguarding the resilience and integrity of financial systems.

20 In this context, the **aim of this Report** is to examine the increasing complexity of EU financial regulation and to contribute to the broader debate on how simplification should be understood and applied. Rather than advocating for deregulation, it explores how a simpler and more coherent legal system can be achieved. Central to this task is clarifying what simplification entails and, equally, what it does not. Its primary objective is to provide a clear picture of the regulatory complexity dynamics and likely consequences on innovation and competitiveness in the Union in its current state.

21 Methodologically, the Report combines **theoretical analysis** with practical **case studies**. The legal analysis identifies the institutional and substantive factors that drive regulatory complexity, from fragmented competences and overlapping mandates to the proliferation of legislative instruments.

22 The **scope of the work** encompasses the four sectors of financial law, namely: (i) banking, (ii) capital markets, (iii) insurance, and (iv) payments. Examples stemming from horizontal regimes, such as sustainable finance (Taxonomy Regulation, SFDR, CSRD) and digital finance (MiCAR, DORA, Pilot Regime, AI Act), are also used to illustrate the challenges of regulatory fragmentation, overlap, and inconsistent outcomes. The new AML/CFT supervisory system, due to its proximity to and impact on financial law, is also briefly examined. On the other hand, other related areas, such as monetary law, corporate law or consumer protection law are not covered by the current study.[32]

23 Building upon this sectoral distinction – banking, capital markets, insurance, and payments – it is possible to identify the **public policy objectives which traditionally justify and orient financial regulation**. Each area is historically anchored in a distinct regulatory rationale: in banking, the preservation of financial stability and the protection of depositors; in capital markets, investor

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30 Porter M. E., *The Competitive Advantage of Nations* (Free Press 1990); for a summary of the main points, see Porter M. E., 'The Competitive Advantage of Nations' (March-April 1990) *Harvard Business Review*, p. 75; for a comprehensive analysis of 140 different studies, see Blind K., 'The Impact of Regulation on Innovation" in Jakob Edler *et al*. (eds), *Handbook of Innovation Policy Impact* (Edward Elgar 2016), p. 450; see further Stewart L. A., 'The Impact of Regulation on Innovation in the United States: A Cross-Industry Literature Review' (2010), https://www2.itif.org/2011-impact-regulation-innovation.pdf.

31 See Hail L. and Leuz C., 'International Differences in the Cost of Equity Capital: Do Legal Institutions and Securities Regulation Matter?' (2006), *44(3) Journal of Accounting Research*, p. 485 (finding that countries with "more extensive disclosure requires stronger securities regulation, and stricter enforcement mechanisms have a significantly lower cost of capital").

32 This is notwithstanding the fact that certain consumer-related aspects, in certain cases linked to prudential regulation, require simplification as well.

protection alongside the efficiency and integrity of markets; in insurance, the safeguarding of policyholders; and in payments, the security, resilience, and accessibility of payment systems. While these objectives remain central, the regulatory landscape has expanded over time to accommodate additional goals that extend beyond the traditional scope of financial regulation. We refer to these as **non-financial goals**, as they relate to but do not constitute the core objectives of financial regulation. They include the integration of the internal market, effective competition, operational resilience in the digital domain, the promotion of innovation, and – most importantly – the alignment of finance with sustainability and climate policies.[33]

24 While the debate on the validity or priority of these objectives is eminently political and does not concern the present study, the concrete question posed to operators of EU financial law is **whether the *means* currently employed to achieve these objectives are appropriate and proportionate**. Successive waves of legislation have multiplied rules, cross-references and layers of guidance, without always ensuring that complexity translates into greater effectiveness. In many instances, the accumulation of instruments has blurred taxonomies, produced inconsistent supervisory outcomes, and weakened the very certainty that regulation is meant to provide.

25 Against this background, this Report argues that simplification does not mean less ambitious, but more effective regulation. **Simplification,** in this sense, denotes the **rationalisation of sources, the clarification of definitions and taxonomies, and the elimination of overlaps**. Whilst this could result in some smart and "targeted deregulation" in some areas, properly understood, **deregulation itself**, which aims at the easing or removal of rules applicable to specific actors or sectors, is not (and may never become) the goal.[34] Instead, simplification should consist of a **methodological review** directed at ensuring that the policy objectives enshrined in the legislation are able to be duly safeguarded by instruments that are coherent, proportionate, and capable of uniform application. The analysis, therefore, rethinks regulation not by going

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[33] On the international dimension of climate change and banking regulation, see Alexander K. and Lastra R.M., 'International Banking Regulation and Climate Change' (2022), https://ssrn.com/abstract=4290785; Colaert, V. 'The Changing Nature of Financial Regulation: Sustainable Finance as a New EU Policy Objective' (2022), *59(6) Common Market Law Review*, pp. 1699-1710; Grünewald S. 'Chapter 19: Sustainability and prudential banking regulation' in Pacces, A., Martino, E., Nabilou, H. *Comparative Financial Regulation* (Edward Elgar 2025), pp. 302-322; and Ramos Muñoz, D. 'Integrating Climate Risk in Banking Regulation' in Alexander, K., Gargantini, M., Siri, M., *EU Sustainable Finance. Regulation, Supervision and Governance* (Cambridge University Press 2025).

[34] Deregulation is often rooted in the belief that fewer rules translate into greater market efficiency. However, experience has shown that, if unstructured, deregulation produces asymmetries, arbitrage, and fragility. A lighter regulatory regime may appear, attractive *ex-ante*, but it often redistributes risks rather than removing them.

through each and every substantive rule, but rather by identifying improvements at the level of institutional design, procedural simplification and legal method.

26 Considering the above, **the rest of this Report is organised as follows**:

Part II provides an assessment of regulatory complexity, analysing both its internal (II.A) and external (II.B) drivers.

Part III justifies the need for simplification (III.A), distinguishing the concept from related yet distinct notions, such as deregulation or self-regulation (III.B), and ultimately, provides a conceptual clarification of what simplification should be (III.C).

Finally, **Part IV** concludes with a set of recommendations.

II. The Systemic Complexity of EU Financial Regulation and the Need for Simplification

27 EU financial law has become increasingly layered and fragmented. The reasons are manifold. Some are **internal** to the system – most notably institutional proliferation and supervisory design choices, sector-anchored legislative packages, as well as misalignment between EU and national rules. Others are **external**, including the impact of international financial standards on the content of substantive EU financial rules or driven by technological innovation, the integration of sustainability considerations and non-financial objectives[35]), and the expanding demands of data governance. Together, these dynamics have created parallel, and at times intersecting, regimes.

28 The underlying challenges can be analysed along two dimensions: on the one hand, they concern **institutional aspects**, understood as the allocation of competences, the organisation of authorities, and the manner in which supervisory mandates are exercised. On the other, they concern **substantive aspects**, understood as the normative content of the rules with which market actors must comply. While analytically distinct, the two dimensions are deeply interrelated: institutional design shapes the interpretation, enforcement and effectiveness of **substantive rules**, just as substantive complexity imposes demands on supervisory structures.

29 For the sake of clarity, the sections that follow will examine internal and external drivers separately, beginning with the internal ones (II.A), before turning to external ones (II.B).

A. Internal Drivers of Regulatory Complexity

1. Institutional Challenges

30 The European financial system fulfils several functions. *First*, in terms of intermediation, it channels savings into investment through **indirect financing** provided by credit institutions, where deposits are transformed into loans and other forms of credit intermediation; *next*, it ensures **direct financing** through capital markets, where securities, funds and other instruments mobilise resources. Both dimensions are indispensable to the Union's overarching objective of ensuring that financial resources are allocated efficiently to productive investment, thereby sustaining growth, stability and

[35] The authors wish to acknowledge and express their support to the analysis of the supervisory community that in its nature climate risks do present microprudential and macroprudential challenges which need to be addressed by robust regulatory frameworks. Consequentially, aspects of the sustainable finance agenda dealing with the assessment and mitigation of climate risk must be framed in justified objectives for broadening the micro- and macroprudential framework.

competitiveness. *Lastly*, it provides payment instruments (beyond fiat money) and services.

Financial integration is the compass of European legislators' efforts.[36] The single market is underpinned by provisions of the Treaty on the Functioning of the European Union (**TFEU**), specifically the freedom to provide services (Articles 56-62), the freedom of establishment (Articles 49-55) and the free movement of capital (Articles 63-65). The integration of European markets has proceeded along two complementary axes. The first consists of the removal of national barriers (**negative integration**). This was achieved primarily through the exercise of the Union's fundamental freedoms, most notably the free movement of capital. The second lies in the harmonisation of national rules (mainly based on Article 114 TFEU[37]) (**positive integration**). Taken together, these dimensions have reduced market fragmentation, created a level playing field for financial actors,[38] and strengthened the Union's position in the global economy.

31 Within this Treaty-based order, **financial legislation has evolved from minimum and partial to maximum harmonisation** and, in some (significant) areas, has progressed further to **directly applicable Regulations**. Early measures allowed Member States a relatively wide discretion, while more recent legislative instruments have instead imposed uniform, sometimes even directly applicable requirements that have reduced national variation. In parallel, the supervisory architecture was significantly reformed to ensure that harmonised rules could also be interpreted, applied and enforced uniformly across the Union. To situate these developments properly, the following section provides a brief historical account of the evolution of EU financial legislation.

1.1. Brief Context

1.1.1. The birth of EU financial law

32 The integration of EU financial markets grew out of the internal market project and initially centred on enabling issuers to raise capital across borders. In banking, the Council's **First Banking Directive** (77/780/EEC) harmonised licensing and supervision for credit institutions operating throughout the

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[36] For more on financial integration in the EU, see Gortsos Ch. V., *Handbook of Banking Regulation Volume 1* (Springer 2023), pp. 201-202.

[37] Even though this Article is a solid legal basis for the harmonisation of EU financial law rules, there is a discussion in scholarship whether harmonisation as a policy goal furthers complexity and functions as barrier to simplification; this is an aspect that requires further consideration.

[38] An aspect of level playing field not further discussed in this Report is that arising from the operation of non-bank financial intermediaries (**NBFI**, formerly referred to as 'shadow banking') under regulatory/supervisory conditions which are not consistent with the "same business – same risks – same rules" principle On this aspect, which has global ramifications see FSB, 'Global Monitoring Report on Non-Bank Financial Intermediation' (16 December 2024), https://www.fsb.org/uploads/P161224.pdf.

Community. The Court of Justice's landmark *Cassis de Dijon* ruling then shifted the paradigm toward mutual recognition and 'home-country control'. Following the Commission's 1985 White Paper on "Completing the Internal Market", financial regulation increasingly rested on the premise that each Member State's rules were, in principle, adequate – subject to minimum EU harmonisation – and that restrictions on free movement were permissible only where Treaty-based or justified by the "general good".[39]

33 This model was consolidated by the Council's **Second Banking Directive** (89/646/EEC), which introduced the freedom to provide services and establish branches by credit (and financial) institutions within the single market by virtue of the principle of mutual recognition – nowadays called the '*single passport*'. Substantive prudential harmonisation underpinned this freedom, notably (and *inter alia*) through the **Own Funds Directive** (89/299/EEC) and the **Solvency Ratio Directive** (89/647/EEC) of the Council, which set minimum capital ratio requirements for credit institutions' exposures to credit risk. Both these Directives transposed the BCBS's "*Basel Capital Accord*" (or Basel I capital adequacy standards) of 1988 into EEC (at that time) law.[40]

34 A similar logic informed securities and funds. The first **UCITS Directive** (85/611/EEC) liberalised cross-border distribution of collective investment schemes via minimum investor protection and a product passport. For issuers, the **Listing Particulars Directive** (80/390/EEC) and the **Public Offering Directive** (89/298/EEC) set minimum disclosure standards and approval mechanisms to facilitate market access. Yet, Member States could still require supplements tailored to local markets (e.g., tax information or notice formalities).

35 The **Investment Services Directive** (93/22/EEC, **ISD**) transplanted the passport/home-supervision model to investment firms. Unlike the listing and offering Directives, the ISD focused on firms and their activities rather than investor protection. It harmonised authorisation and, to a lesser extent, prudential regulation requirements to support home control, but left significant space for national "general good" rules and only minimally harmonised conduct

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[39] On the meaning of the term "movement of capital", see the judgment of the Court (Grand Chamber) of 23 October 2007 in Case C-112/05, *Commission of the European Communities v Federal Republic of Germany*, ECLI:EU:C:2007:623. On the solely vertical direct effect of the principle of the free movement of capital, see the judgment of the Court (Grand Chamber) of 18 December 2007 in Case C-101/05, *Skatteverket v A.*, ECLI:EU:C:2007:804.

[40] At the time, the directives were based on the principle of minimum harmonisation, and a highly diverse set of banking laws in the European Communities resulted in a hodgepodge of rules for banking organisations. One reason was the different organisation of banking businesses in Member States, and the different rules, often based on different purposes. To give an example, some Member States used banking supervision to protect depositors and other creditors, and thus deposit-taking was the key, while in others it was the mere activity of lending that activated banking supervision.

of business requirements.[41] Host authorities retained powers[42] to impose additional conditions, which diluted the effectiveness of mutual recognition and sustained fragmentation despite the formal passport.

36 In response to the obstacles exposed under the ISD, the Commission's **Financial Services Action Plan** (**FSAP**) of 1999[43] at the turn of the century inaugurated a new phase of regulatory policy. Its 42 measures sought to complete market integration across retail and wholesale markets, prudential rules and supervision, and the conditions for a genuine single market. That programme broadened EU financial regulation markedly – covering, among other areas, alternative trading systems, conflicts of interest and client-order handling by intermediaries, periodic and ongoing issuer disclosure, the prohibition of market manipulation, the governance of investment recommendations, and the stabilisation and buy-back of shares – signalling a sharp increase in both the range and sophistication of the acquis.[44]

37 The centrepiece of the architecture upon implementation of the FSAP was the **Markets in Financial Instruments Directive** (2004/29/EC, **MiFID I**), which repealed the ISD. This act adopted a comprehensive approach to investment services and market structure: it set organisational and conduct-of-business requirements for firms, introduced transaction reporting to competent authorities across all financial instruments, and recast the single passport system. On investor protection, it introduced an EU-wide conduct regime built around client classification (retail, professional, eligible counterparty), suitability and appropriateness assessments, best-execution duties and client-order handling.

38 The harmonised conduct standards – applied on a home-state basis – curbed host-state overlays and facilitated cross-border provision of services, aligning the protection of clients with the passport's market integration objective. Taken together, these reforms substantially raised the sophistication of EU market regulation in the service of integration and home country control.

39 As part of the FSAP architecture, and in order to implement the Basel II capital accord of 2004[45] two **Capital Requirements Directives** – 2006/48/EC and 2006/49/EC (collectively, **CRD I**) – significantly revised the EU-wide

[41] Notably Article 11 ISD.

[42] E.g., Articles 17(4) and 18(2) ISD.

[43] Commission Communication of 11 May 1999 "Implementing the framework for financial markets: action plan", COM(1999) 232 final (not published in the *OJ*).

[44] Of relevance was also the Capital Adequacy Directive (93/6/EEC), which established capital requirements for the exposure of credit institutions and investment firms to market risks on the basis of international financial standards of the BCBS.

[45] Basel Committee on Banking Supervision, 'Basel II: International Convergence of Capital Measurement and Capital Standards: A Revised Framework – Comprehensive Version' (2004), then revised to the final 2006 version, https://www.bis.org/publ/bcbs128.htm.

prudential rules for credit institutions to adapt the comprehensively revised Basel Committee international standards.[46]

1.1.2. Developments after the (2007-2009) global financial crisis (GFC)

a) Creation of the European System of Financial Supervision (ESFS)

40 Nonetheless, accelerated law-making, still mediated through **national implementation and enforcement**, did not deliver full convergence. Indeed, the *de Larosière Report* identified excessive divergence as a contributor to the impact of the 2007-2009 global financial crisis (**GFC**) within the EU. Accordingly, in 2009, the Commission proposed a two-tier financial architecture, with the establishment of a European System of Financial Supervision (**ESFS**), consisting of the new European Supervisory Authorities (**ESAs**), for micro-prudential supervision, and a European Systemic Risk Board (ESRB) for macro-prudential oversight. The package, adopted in 2010, reflected the then predominant view that, beyond a macroprudential overlay, microprudential supervision had also to be reinforced to remedy the limitations of the *Lamfalussy* set-up and to raise its efficiency.[47]

41 Within the ESFS, the ESAs – **EBA, ESMA and EIOPA** – succeeded the former Level-3 committees (CEBS, CESR, CEIOPS) introduced by the *Lamfalussy* Committee (2001). Along with the ESAs, components of the ESFS are also the Joint Committee of the ESAs and the competent supervisory authorities of Member States. Originally, the ESFS would operate as a hub-and-spoke system: nationally based supervision coordinated through ESA decision-making and standard-setting. While the model aimed to preserve decentralised enforcement, it introduced targeted hierarchical levers to promote supervisory convergence, and it equipped the Union with instruments – convergence tools, binding mediation, and technical standards – capable of aligning micro-prudential practice with the post-crisis objective of a single rulebook for microprudential rules enhanced with macro-prudential oversight.

b) Regulatory developments in the three pillars of EU financial law

42 In relation to banking, the GFC exposed the need to factor macroeconomic externalities into the regulatory design and, in particular, to strengthen bank prudential rules. In the aftermath of the GFC and the following sovereign/fiscal crisis in the euro area,[48] bank crisis prevention and management strategies

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[46] On the evolution of EU banking law during that period, see Gortsos Ch. V., *op. cit.* (Springer 2023), pp. 214-227 (and the literature cited).

[47] It is noted that, unlike the ESAs, the ESRB is a Union body with no legal personality.

[48] On that crisis, see, *ex multis*, Hadjiemmanuil Ch., 'The Euro Area in Crisis: 2008-2018', in Amtenbrink F. and Herrmann Ch. (eds): *Oxford Handbook on the EU Law of Economic and Monetary Union* (2015), Oxford University Press, Chapter 40, pp. 1253-1362 (also in *LSE Law, Society and Economy Working Papers 12/2019*, https://ssrn.com/abstract=3413000).

became a prominent agenda point for the EU legislator by introducing a resolution framework.[49] The regulatory measures adopted were largely influenced by international financial standard-setters such as the BCBS and the Financial Stability Board (**FSB**). The BCBS's 2010 "*Basel III regulatory framework*" laid the foundation for the EU's Capital Requirements Regulation (**CRR**[50]) and (to a certain extent also) the Capital Requirements Directive (**CRD IV**[51]), while the FSB's 2011 "Key Attributes of Effective Resolution Regimes for Financial Institutions" (the "*Key Attributes*"[52]) led to the adoption of the EU's Bank Recovery and Resolution Directive (**BRRD**[53]).

43 In the field of capital markets law, the response to the GFC – most visibly by the adoption of the **MiFID II/MiFIR** package on 15 May 2014[54] – shifted gear: extending the perimeter to additional firms, instruments and electronic trading, deepening pre- and post-trade transparency and transaction reporting, structuring third-country access, tightening investor protection (including inducements), and introducing product intervention powers for NCAs coordinated with ESMA. This arc marks the transition from Article 114 TFEU on "approximation of laws" oriented to market access, through FSAP's detailed but nationally mediated harmonisation, to the single-rulebook ambition of far-reaching uniformity delivered by regulations, maximum harmonisation directives, detailed delegated and implementing acts (usually – but not in all cases – based on draft regulatory and implementing technical standards of the ESMA) and guidance.

44 EU insurance and occupational pensions law has also been in the focus due to the systemic importance of certain large insurance and reinsurance undertakings, the need to enhance investor protection in that field and the ambition to introduce EU-wide occupational pension regulations for retirement plans that would provide coverage in addition to the first line public retirement plans. The by-product has been the adoption of three legislative acts: *first*, the

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49 On bank resolution, see Avgouleas E., Goodhart C. and Schoenmaker D., 'Bank Resolution Plans as a catalyst for global financial reform' (2013), *9(2) Journal of Financial Stability*. On the financing of resolution actions, see Hadjiemmanuil Ch., 'Bank Resolution Financing in the Banking Union' (2015) *LSE Law, Society and Economy Working Papers No. 6*.

50 Regulation (EU) No 575/2013 of the European Parliament and of the Council (hereinafter 'co-legislators') of 26 June 2013 on prudential requirements for credit institutions (…), [2013] OJ L176/1, as in force.

51 Directive 2013/36/EU of the co-legislators of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions (…), [2013] OJ L 176/338, as in force.

52 These are in force as subsequently supplemented.

53 Directive 2014/59/EU of the co-legislators of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (…), [2014] OJ L 173/190, as in force. On the initial version of the *Key Attributes* and their impact on the content of the BRRD, see Grünewald S.N., *The Resolution of Cross-Border Banking Crises in the European Union – A Legal Study from the Perspective of Burden Sharing*, (Kluwer Law International 2014).

54 Directive 2014/65/EU and Regulation (EU) No 600/2014 of the co-legislators on markets in financial instruments (…), [2014] OJ L 173/349 and 173/84, respectively.

so-called **'Solvency II' Directive**,[55] which repealed all previous legislative acts on the authorisation, operation, as well as prudential regulation and supervision of insurance and reinsurance undertakings; *second*, the **Insurance Distribution Directive**[56] (**IDD**), which repealed, with effect from 23 February 2018, the Insurance Mediation Directive (**IMD**); and *third*, the **Institutions for Occupational Retirement Provision Directive No II**[57] (**IORPD II**), which repealed, with effect from 13 January 2019, the IORPD I.

1.2. The Banking Union and the ESAs: Institutional Asymmetries

45 The historical evolution of EU financial regulation has produced a **multilayered system of supervision**. EU legislation has increasingly harmonised the regulatory *corpus* and shifted certain parts of supervisory responsibilities to the EU level. Nevertheless, supervisory and enforcement powers still reside largely with NCAs, whose institutional arrangements vary between Member States. Some Member States follow an **integrated approach**, entrusting all supervisory functions to a single authority; others apply a '**twin peaks**' model separating prudential from conduct-of-business supervision; while others still rely on a **sectoral model** with distinct supervisors for banking, insurance, and capital markets.[58] This variety adds the **first layer of institutional fragmentation** across the EU.

46 On top of these national structures sits an **EU-level supervisory architecture**: *On the one hand* stands the Banking Union,[59] established amidst the (above-mentioned) sovereign/fiscal crisis in the euro area, which was designed to consist of three pillars: the Single Supervisory Mechanism (**SSM**), the Single Resolution Mechanism (**SRM**), and the still-unfinished European Deposit

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[55] Directive 2009/138/EC of the co-legislators of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance, [2009] OJ L 335/1; see Marano P. and Siri M. (eds), *Insurance Regulation in the European Union – Solvency II and Beyond* (Palgrave Macmillan 2017). This legislative act is in force as most recently amended by virtue of Directive (EU) 2025/2 of the co-legislators on 27 November 2024 "as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks and group and cross-border supervision (…), [2025] OJ L, 2025/2. Member States are required to adopt and publish the legislative, regulatory and administrative provisions necessary to comply with that legislative act by 29 January 2027.

[56] Directive (EU) 2016/97 of the co-legislators of 20 January 2016 on insurance distribution (recast), [2016] OJ L 26/19, as in force.

[57] Directive (EU) 2016/2341 of the co-legislators of 14 December 2016 "on the activities and supervision of institutions for occupational retirement provision (IORPs)", [2016] OJ L 354/37.

[58] For an overview of all these approaches, see Gortsos Ch. V., *op. cit.* (Springer 2023), pp. 37-38 (and the literature cited). On the structure of financial supervision in Europe before the GFC, see Wymeersch E., 'The structure of financial supervision in Europe: about single financial supervisors, Twin Peaks and multiple financial supervisors' (2007), *8(2) European Business Organization Law Review*, p. 237.

[59] See, *inter alia*, Binder J.-H. and Gortsos Ch. V., *Banking Union: A Compendium* (Beck/Hart/Nomos 2016); Busch D., and Ferrarini G. (eds), *European Banking Union*, 2nd ed. (Oxford University Press 2020); D'Ambrosio R. (ed), *Law and Practice of the Banking Union and of Its Governing Institutions (Cases and Materials)* (April 2010) Quaderni di Ricerca Giuridica, Banca d'Italia No. 88.

Insurance Scheme (**EDIS**).[60] Under the SSM Regulation (**SSMR**),[61] the ECB directly supervises significant credit institutions (and some other categories of supervised entities), while NCAs retain significant roles for the direct supervision of less significant ones (upon delegation from and under the oversight of the ECB),[62] in both cases within the SSM.[63] Under the SRM Regulation (**SRMR**),[64] the SRB, in coordination with the national resolution authorities (**NRAs**), is responsible for resolution planning[65] and – with the involvement of the Commission and the Council as well – for resolution action once the three resolution conditions are met.[66]

47 *On the other hand*, the ESAs were established to promote convergence and coordinate national supervisors in their respective fields, with direct supervisory mandates in only a few specific sectors (e.g., credit rating agencies).

48 Between the ESAs, there are material **differences in relation to the supervisory roles** that each has taken on over time. Experience has clearly demonstrated that the supervisory architecture at EU-level directly affects the underlying state of integration at national-level. In the current state of the ESAs' competences, supervisory powers are partially distributed among the Authorities and NCAs. As a result, supervisory divergence is more common in capital markets than in the Banking Union, which weakens the functioning of the single market.

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60 On the EDIS, see, *ex multis*, Brescia Morra C., 'The third pillar of the Banking Union and its troubled implementation', in Chiti, M.P. and V. Santoro (eds): *The Palgrave Handbook of European Banking Union Law* (Palgrave Macmillan 2019), pp. 393-407,

61 Council Regulation (EU) No 1024/2013 of 15 October 2013 "conferring specific tasks on the [ECB] concerning policies relating to the prudential supervision of credit institutions", [2013] OJ L 287/63.

62 Article 6 SSMR.

63 Article 4 SSMR establishes specific 'significance' criteria taking into account the need to differentiate the levels at which credit institutions (and other categories of supervised entities) are being *directly* supervised. This is a basis on which the EU legislators have also built in relation to crypto-assets (as further discussed below). This also what the Commission proposes in its package of 4 December 2025 (as also further discussed below) on capital-markets integration and supervisory convergence in relation to a future, more centralised supervision for EU capital markets.

64 Regulation (EU) No 806/2014 of the co-legislators of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund (…), [2013] OJ L 225/1, as in force.

65 See, *ex multis*, Grünewald S.N., 'Judicial control of resolution planning measures', in Zilioli Ch. and Wojcik K.-Ph. (eds): *Judicial review in the European Banking Union* (Edward Elgar 2021), pp. 395-415.

66 For a detailed analysis of the SSMR and the SRMR, see, *ex multis*, Binder J.-H., Gortsos Ch. V., Lackhoff K. and Ohler Ch. (eds), *Brussels Commentary on the Banking Union* (Beck/Hart/Nomos 2022) (and the literature cited). For an overview of the (extensive) related case law of EU Courts, see, *ex multis* as well, Gortsos Ch. V., *The European Banking Regulation Handbook, Volume II: Substantive Aspects of European Banking Law and Regulation* (Springer 2025), Chapters 2-3, 5-6, 10 and 12 (and the literature cited).

Box 2 – The asymmetry in the EU institutional architecture in relation to prudential supervision in the three key sectors of the financial system			
	Banking Sector	Capital Markets Sector	Insurance Sector
EU-Level Supervision	ECB (Article 127(6) TFEU): (a) “significant” credit institutions in participating Member States in relation to the specific tasks set out in Articles 4(1) and 5(2) SSMR (b) any “significant” holding companies in participating Member States	ESMA (Article 114 TFEU): (a) credit rating agencies (CRAs) (b) trade repositories (c) securitisation repositories (d) data reporting service providers (e) administrators of key benchmarks (f) external reviewers of EU green bonds (g) cross border operating Central Counterparties (CCPs) (h) ESG ratings providers[67]	
National-Level Supervision	(a) “significant” credit institutions in participating Member States in relation to tasks not earmarked as specific (particularly application of macroprudential tools) (b) “less significant” credit institutions in participating Member States (c) holding companies in participating Member States heading groups of non-significant institutions (d) all credit institutions in member-states with a derogation (e) electronic money institutions[68] and payment institutions	all other regulated entities providing services or functions on capital markets (and all markets and other trading venues)	(a) insurance and reinsurance undertakings (b) insurance intermediaries

[67] In its package of 4 December 2025 on capital-markets integration and supervisory convergence (further discussed below), the Commission proposes the enhancement of ESMA’s supervisory powers.

[68] On the dual supervision by the EBA and NCAs under MiCAR when issuing significant electronic money (e-money) tokens (**EMTs**), see Articles 117 *et seq*. MiCAR.

49 With regard to capital markets in particular, although some convergence has been achieved through the delegation of specific direct supervisory powers to the ESMA,[69] several 'inherent', **structural, legal and institutional limitations** continue to hinder the further development of the SIU and the deepening of financial integration within the Union, some of which stem from the provisions of the TFEU itself. In this regard, **market fragmentation** within the EU **remains significant**, with persistent divergences across Member States.[70] Ultimately, these differences undermine the SIU's core objective of fostering a truly integrated European capital market.

1.3. Multiplication of Actors at EU and National Levels

50 In addition to the above, the institutional landscape is further expanding with the **creation of new agencies**, such as the Anti-Money Laundering Authority (**AMLA**)[71] under the AMLA Regulation (**AMLAR**)[72] and the proposed **Artificial Intelligence Board** under the Artificial Intelligence (**AI**) Act.[73] While intended to fill critical regulatory gaps, or solve problems of horizontal coordination (AMLA), their establishment adds yet another entity to an already crowded supervisory environment.

51 The main concern with this multiplication of actors is not only their sheer number but the **lack of clear and consistent coordination** among them, both from a horizontal and a vertical perspective. Without strict mechanisms for cooperation, each institution risks pursuing its own approach and applying different standards. The result is a hodgepodge of supervisory practices that can diverge across sectors, undermining the coherence of the EU's financial legislation.

52 Such institutional complexity bears directly on legal certainty through the medium of interpretation and supervision. The vast corpus of laws and regulations is at times applied by national authorities with different traditions, priorities, and resource endowments. **The result is a lack of convergence in interpretive practice, inconsistencies in supervisory approaches and**

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69 Howel E., 'The evolution of ESMA and direct supervision: Are there implications for EU supervisory governance?' (2017), *54(4) Common Market Law Review*, p. 1027 and Moloney N., '*The Age of ESMA – Governing EU Financial Markets* (Hart Publishing 2018).

70 Further see, Ringe W.-G., 'The Politics of Capital Markets Union: From Brexit to Eurozone' in Allen F. *et al*. (eds), *Capital Markets Union and Beyond* (MIT Press 2019), pp. 341–351.

71 See Allegrezza S. and Bruzzzese G., 'Supervision and Enforcement of EU's Anti-Money Laundering and Countering the Financing of Terrorism', in Annunziata F. and Siri M. (eds), *EU Banking and Capital Markets Regulation, Open Issues of Vertical Interplay with National Law* (Palgrave Macmillan 2025).

72 Regulation (EU) 2024/1620 of the co-legislators of 31 May 2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (…), OJ L 2024/1620.

73 Regulation (EU) 2024/1689 of the co-legislators of 13 June 2024 laying down harmonised rules on artificial intelligence (…), OJ L 2024/1689. See Sciarrone Alibrandi A., Rabitti M., Schneider G., 'The European AI Act's Impact on Financial Markets: From Governance to Co-Regulation' (2023), *EBI Working Paper Series No. 138*.

cultures, and the persistence of overlapping regimes that are applied and enforced differently across jurisdictions. In this context, the influence of national legal traditions, and their historical evolution, is also a factor that tends to increase the level of fragmentation. Paradoxically, this undermines the very aim that has animated EU policy for decades – harmonisation – by eroding consistent application, complicating cross-border business models, and weakening the credibility of a level playing field within the internal market.

53 While initiatives under the SIU strategy will seek to address the limited supervisory convergence by proposing an intensification of EU-level supervision,[74] **the roles, mandates and powers of EU agencies must still be clarified in many aspects**.

1.4. Overlapping Supervision and Challenges to Convergence

54 **Overlaps in supervisory mandates** have become increasingly evident. The ECB, the SRB, the three ESAs, a growing constellation of specialised EU bodies and offices, and the network of national competent authorities together constitute a dense institutional fabric. This polycentricity is not accidental; it reflects the **multiple regulatory objectives** that the Union now pursues – integration, stability, market integrity, consumer protection, effective competition, data governance, financial crime prevention, digital resilience, innovation, and sustainability (see Part I above). Yet, as mandates have proliferated, so too have points of contact and potential friction. Coordination has improved relative to the pre-crisis era, but the practical reality remains one of overlapping jurisdictions, divergent supervisory cultures, and variable appetites for intervention, all of which hinder legal certainty.

Box 3 – Financial conglomerates and consolidated supervision[75]

Overlaps can be naturally identified in the case of cross-border financial conglomerates, which combine credit and deposit-taking with investment services, securities trading and/or insurance activities. Such groups are simultaneously subject to the full set of sectoral rules – CRR/CRD IV for credit institutions, IFD/IFR/MiFID II for investment firms, Solvency II for insurance and reinsurance undertakings – while also falling under the supplementary regime, in accordance with Article 5 of the Financial Conglomerates Directive (**FICOD**).[76]

Although FICOD provides for the appointment of a single coordinator (Article 10), the coordinator's role is narrowly circumscribed: Article 11 confines it largely to information exchange, supervisory overview and the planning of coordinated actions, while Article 12 emphasises the need for continuous cooperation and data-sharing among competent authorities. Substantive supervisory decisions, however, remain with the sectoral authorities themselves. Indicatively, where the ECB is

[74] See Ross V., 'SIU: Are we on the Right Track?' (September 2025), *EUROFI Magazine*, https://www.eurofi.net/wp-content/uploads/2025/09/eurofi-views-copenhagen_web.pdf.

[75] For a more nuanced view, see Colaert V. and Busch D., 'Regulating Finance in a Post-Sectoral World: Setting the Scene' in Colaert V., Busch D. and Incalza Th. (eds), *European Financial Regulation* (Hart Publishing 2019).

[76] Directive 2002/87/EC of the co-legislators of 16 December 2002 on the supplementary supervision of financial conglomerates, [2003] OJ L 35/1, as in force.

the competent authority for a significant institution and the conglomerate has an overhang in banking activities, it may be appointed as coordinator of the conglomerate; otherwise, the role falls to the relevant national authority being the coordinator chairing the colleges of supervisors.

At the same time, the multiplicity of sectors involved ensures that the role of the three ESAs remains prevalent, with certain tasks are allocated to Joint Supervisory Teams (**JSTs**) under FICOD. The result is that sectoral authorities retain their full mandates and powers, with FICOD operating as an additional layer rather than a unifying regime.

55 Experience in financial supervision in recent years seems to indicate that there are **limits to convergence between national authorities**, even in the case of uniform rulebooks. Examples of limited convergence in financial supervision are numerous: the interpretation of what qualifies as delegation in the context of collective portfolio management under the AIFMD regime is noteworthy.[77] While Article 20 AIFMD does provide for general criteria governing the delegation of AIFM functions, supervisory approaches are variegated and lead, in practice, to highly divergent standards.[78] However, the recent amendments to the AIFMD and UCITS directives aim to resolve this diverging interpretation, particularly caused by the post-Brexit dynamics.

56 The Markets in Crypto-Assets Regulation (**MiCAR**),[79] has also become the reason for frictions between Member States in the past few months, with certain NCAs complaining about the absence of a level playing field while, at the same time, questioning the opportunity to centralise supervision.[80] Despite the multiple institutional arrangements foreseen in the novel regime – colleges, committees, and several coordination measures – and even though the underlying discipline is set forth by a directly applicable Regulation, this seems to point, in fact, to a structural limitation of a supervisory system that rests exclusively or primarily on NCA cooperation, especially for cross-border supervision or passporting.

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77 On the AIFMD, see, *ex multis*, Zetzsche D. A. (ed), *The Alternative Investment Fund Managers Directive* (3rd edn, Kluwer Law International 2020).

78 On a contentious ruling by the Austrian Supreme Administrative Court (Verwaltungsgerichtshof – VwGH), see VwGH, 15.6.2023, Ra 2021/02/0176; on this, Toman R. and Schinerl F., '§ 18 AIFMG' in Gschwandtner P. and Mitterecker J. (eds), *Alternative Investmentfonds Manager-Gesetz* (Manz 2024) para 92.

79 Regulation (EU) 2023/1114 of 31 May 2023 "on markets in crypto-assets (…)", [2003] OJ L 150/40, as in force. On this legislative act, see, *ex multis*, Zetzsche D. A. and Woxholth J. (eds), *The EU Law on Crypto-Assets: A Guide to European FinTech Regulation* (Cambridge University Press 2025); Annunziata F., 'An Overview of the Markets in Crypto-Assets Regulation (MiCAR)' (2023) *EBI Working Paper Series No. 158*, https://ssrn.com/abstract=4660379, and Miernicki M. and Schinerl F. (eds): *Handbuch Kryptowerte* (Linde Verlag, Wien 2025).

80 See the letter from Consob, FMA and AMF, 'European Crypto-Asset Markets' Framework: Proposals From The French, The Austrian And The Italian Financial Markets Authorities' (September 2025), where the authorities also state that "[d]espite ESMA's efforts, the first few months of implementation of the regulation have demonstrated significant differences in implementation between jurisdictions and significant coordination costs" and "they also revealed major weaknesses in the text, notably in its approval and supervision mechanisms".

57 In response to the above limitation, a trend seen over the past years has been the enlargement of the roles originally conferred upon the ESAs. Nonetheless, the asymmetries of such trend (see 1.1. above), coupled with the progressive **widening of mandates at Union level, without clarity as to the precise limits of their roles and of the soft law measures they enact**, also represents a source of complexity and ambiguity. ESMA, conceived primarily as a coordinator and rule maker, now exercises a growing catalogue of direct supervisory and intervention powers alongside its soft-law and convergence functions. Beyond exceptional, crisis-contingent directions to NCAs or market participants, ESMA increasingly supervises entities in its own right across multiple, expanding sectors: expanding sectors: trade repositories and Tier-2 third-country central counterparties (**CCPs**) (European Market Infrastructure Regulation (**EMIR**),[81] Securities Financing Transactions Regulation (**SFTR**),[82] securitisation repositories (Securitisation Regulation[83]), benchmark administrators (including "critical" and third-country recognition/endorsement), data reporting service providers and consolidated tape providers (revised MiFIR), DLT market infrastructures (**DLTR**), significant crypto-asset service providers (**CASPs**, under MiCAR), and external reviewers of EU Green Bonds. Each legislative upgrade that adds a new perimeter also multiplies interfaces with NCAs and with other Union authorities, creating composite supervisory chains in which ESMA's acts, national procedures, and sectoral rulebooks intersect.

58 This mandate accretion carries **structural consequences**. *First*, it distributes supervision across shifting lines: some entities are supervised directly by ESMA, others by NCAs under ESMA coordination, and still others by NCAs subject to ESMA product-intervention or short-selling powers. *Second*, it layers sectoral with transversal regimes (e.g., sustainable finance, data and market structure), so that a single activity may be touched by ESMA's direct oversight, NCA's conduct supervision, and separate horizontal regimes. The result is a moving perimeter with concurrent or sequential competences, variable investigative and sanctioning toolkits, and a larger number of interpretive centres for like risks.

59 A similar widening is now visible for EBA: MiCAR pushes the Authority into **direct supervision for the first time**, with a remit over issuers of asset-referenced and e-money tokens that meet specific 'significance' thresholds (as in the case of the SSMR, as discussed). This design raises boundary questions

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[81] Regulation (EU) 648/2012 of the co-legislators of 4 July 2021 on OTC derivatives, central counterparties and trade repositories, [2012] OJ L 201/1, as in force.

[82] Regulation (EU) 2019/2088 of the co-legislators of 27 November 2019 on sustainability-related disclosures in the financial services sector, [2019] OJ L 317/1, as in force.

[83] Regulation (EU) 2017/2402 of the co-legislators of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, [2017] OJ L 347/35, as in force.

where crypto-assets intersect with payments, e-money and prudential regulation, or where banking groups operate token issuance within consolidated structures already supervised within the SSM (by the ECB or by NCAs).

60 The **institutional challenges** arising **from centralising supervision** must also be duly addressed.[84] In this context, while for many the SSM serves as a successful precedent in institutional architecture, recent efforts to push the ESAs and other authorities to similar roles as the one exercised by the ECB pose foundational issues. Differently from the ECB, which is an EU institution pursuant to Article 13(1)(2), sixth indent of the Treaty on Economic Union (**TEU**), these authorities are agencies: bodies existing since the 1950s (currently named Union bodies) and increasingly prolific in the EU, but still not formally defined under the Treaties.[85]

61 Agencies are mentioned in the Treaties (post-Lisbon reforms as an outcome of the 1999 FSAP) as bodies that can adopt an "act of general application", in accordance with Article 277, and are subject to judicial review by the CJEU, according to Articles 263 and 267 TFEU. However, **no specific details on their nature or functioning** are provided. To address such gap, the Commission, the Council, and the Parliament, issued a non-binding Joint Statement on a "Common Approach on EU Decentralised Agencies" to organise the functioning of agencies in the Union. Nonetheless, this document does not legally qualify their nature under EU law.[86]

62 The difference of legal status between the ECB and these agencies entails that the latter, contrary to the former, are bound to the ***Meroni* doctrine**. In accordance with the CJEU's jurisprudence, encompassing decisions in the

[84] See also Ringe W.-G., Morais L. and Ramos Muñoz D., 'A Holistic Approach to the Institutional Architecture of Financial Supervision and Regulation in the EU' in Colaert V., Busch D. and Incalza Th. (eds), *op. cit*.

[85] On EU agencies, see, broadly, Kreher A., 'Agencies in the European Community – a step towards administrative integration in Europe' (1997), *4(2) Journal of European Public Policy*, p. 225; Dehousse R., 'Misfits: EU Law and the Transformation of European Governance' (2002) *Jean Monnet Working Paper No. 2*; Gerardin D., Muñoz R. and Petit N. (eds), *Regulation through Agencies in the EU. A New Paradigm of European Governance* (Edward Elgar 2005); Stefan G., and Orator A., 'Everything Under Control? The "Way Forward" for European Agencies in the Footsteps of the Meroni Doctrine' (2010) *35(1) European Law Review*, p. 3; Simoncini M, 'The erosion of the Meroni doctrine. The case of the European Aviation Safety Agency (EASA)' (2015) *21(2) European Public Law* p. 309; Schneider J., 'A Common Framework for Decentralized EU Agencies and the Meroni Doctrine' (2009) *61 Administrative Law Review* p. 29; Chamon M., 'EU Agencies Between Meroni and Romano or the Devil and the Deep Blue Sea' (2011) *48 Common Market Law Review* p. 1055; Chiti, E. 'An Important Part of the EU's Institutional Machinery: Features, Problems and Perspectives of European Agencies' (2009) *46 Common Market Law Review* p. 1395.

[86] European Commission, Council of the European Union and European Parliament, 'Joint Statement on a Common Approach on EU Decentralised Agencies' (June 2022), https://european-union.europa.eu/system/files/2022-06/joint_statement_on_decentralised_agencies_en.pdf.

Meroni,[87] *Romano*[88] and the *ESMA Short Selling* cases,[89] EU institutions are prohibited from granting wide discretionary powers to EU agencies. Instead, such powers must be "precisely delineated" by law.[90] In reality, however, agencies are becoming increasingly empowered with discretionary margins for the exercise of rulemaking, supervisory, and even enforcement powers.[91]

63 This issue is more than merely a legal detail. It also has repercussions on a political level regarding the constitutional legitimacy of EU agencies and their democratic accountability.

Box 4 – AMLA and ECB (within the SSM)

The advent of AMLA represents yet another example of growing institutional complexity and overlaps, providing a case of EU-level concurrency over many of the same entities already under the ECB's prudential remit. In fact, significant credit institutions directly supervised by the ECB within the SSM will simultaneously be designated as "selected obliged entities" (**SOEs**) for the purposes of their (as well) direct supervision by AMLA within the "AML/CFT supervisory system", producing parallel supervisory lines – prudential and AML/CFT – directed at the same credit institution. The legal architecture acknowledges this overlap: AMLAR requires a formal memorandum to structure cooperation "by 27 June 2025", and the resulting MoU expressly aims to "avoid duplication of efforts" while each authority retains autonomous tasks.

The ECB-AMLA MoU itself, however, reveals the density of operational entanglement. Signed on 5 July 2025,[92] it provides for reciprocal observer status in each authority's decision-making bodies, coordination between parallel joint supervisory teams where both are active on the same institution, and systematic two-way sharing of core supervisory materials (e.g., SREP outcomes in governance/operational risk; simplified supervisory programmes; certain ECB decisions; AMLA's risk assessments and on-site planning). This formalises constant cross-reliance but also multiplies interpretive centres around the same facts and increases the transaction costs of coordination. Concurrency, it also creates collision risks in enforcement posture.

The MoU lists the kinds of measures that may require tight coordination – restrictions on business lines, governance changes, temporary management bans, public statements, pecuniary sanctions, and even proposals to withdraw authorisation for serious AML/CFT breaches. Each measure carries prudential and conduct externalities; when pursued in parallel by different EU authorities, sequencing and prioritisation become determinative of outcome and raise the likelihood of inconsistent supervisory signals to the same entity.

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[87] Judgment of the Court of 13 June 1958 in joint Cases C-9/56 and C-10/56, *Meroni & Co., Industrie Metallurgische, SpA v High Authority of the European Coal and Steel Community*, ECLI:EU:C:1958:7.

[88] Judgment of the Court of 14 May 1981 in Case 98/90, *Giuseppe Romano v Institut National d'assurance Maladie*, ECLI:EU:C:1981:104.

[89] Judgment of the Court (Grand Chamber) of 22 January 2014 in Case C-270/12, *United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union*, ECLI:EU:C:2014:18.

[90] On these cases, see, *ex multis,* Pelkmans, J., Simoncini, M., 'Mellowing Meroni: How ESMA can help build the single market' (2014), *CEPS Commentary*, https://www.ceps.eu/ceps-publications/mellowing-meroni-how-esma-can-help-build-single-market/.

[91] On enforcement, see Crijns J., Haentjens M. and Haentjens R. (eds), *The Enforcement of EU Financial Law* (Hart 2023). See also Clarke B., 'Administrative measures and sanctions in the Banking Union and the Capital Markets Union: status quo and the way forward. Insights from Ireland' in *Capital Markets and Banking Unions, Law and the Courts: Challenges and Perspective, International Colloquium in memoriam of Luís Silva Morais* (February 2025), University of Bologna.

[92] See at: https://www.bankingsupervision.europa.eu/framework/international-cooperation/understanding/html/ssm.mou_2025_AMLA~edbd31538f.en.pdf.

64 Numerous public figures – including ESMA Chair *Verena Ross*,[93] EU Commissioner for Financial Services *Mairead McGuinnes*,[94] and former ECB President *Mario Draghi*[95] – have in recent years called for **greater centralisation of financial supervision in EU capital markets**. Their interventions have reignited the debate on the merits and challenges of a more centralised EU supervisory arrangement in the field.

65 The debate has recently been given further institutional form through the European Commission's package on capital-markets integration and supervisory convergence, which proposes a more centralised supervisory architecture for EU capital markets.[96] The package envisages, *inter alia*, an expansion of ESMA's direct supervisory powers over selected cross-border and systemically relevant market actors, alongside measures aimed at reducing national divergences in authorisation, supervision, and enforcement. The challenges related to centralisation are particularly relevant if the SSM model is to be successfully replicated in other areas of financial law. A comparison between EU integration in capital markets and in banking demonstrates that both sectors have developed differently from an institutional perspective[97] and continue to face structural and regulatory challenges.

66 The debate is further enriched considering the institutional and judicial consequences of a **complex vertical interplay of EU and national laws**. The ECB, under Article 4(3)(1) SSMR, is required to apply national laws transposing EU legislation; the same holds true for the AMLA under Article 5(6) AMLAR within the AML/CFT supervisory system, but in a different institutional set up, the AMLA being an agency and not an EU institution.[98]

[93] See Ross V., 'Putting investors and companies at the heart of effective and attractive EU capital markets' (Eurofi Forum, September 2024), p. 195 ("I firmly believe that more EU-level supervision is an important step towards more effective, fully integrated capital markets"), https://www.eurofi.net/wp-content/uploads/2024/12/speech_verena-ross.pdf and Ross V., 'Keynote speech: Capital Markets Supervision in the SIU Era' (Joint ESM-FBF Conference, Luxembourg, 5 June 2025), ESMA24-225943895-378, p. 4 ("Importantly, ESMA's performance in these roles has demonstrated that EU-level supervision is credible and effective").

[94] Huw Jones, 'EU finance chief says ditch national symbols to boost capital market' (18 June 2024) Reuters (quoting Mairead McGuinness), https://www.reuters.com/markets/europe/eu-finance-chief-says-ditch-national-symbols-boost-capital-market-2024-06-18.

[95] Draghi Report, *op. cit*., p. 65 ("As a key pillar of the CMU, the European Securities and Markets Authority (ESMA) should transition from a body that coordinates national regulators into the single common regulator for all EU securities markets, similar to the US Securities and Exchange Commission").

[96] European Commission, 'Market integration package (2025)', 4 December, https://finance.ec.europa.eu/publications/market-integration-package_en.

[97] Ringe W.-G., Morais L. and Ramos Muñoz D., *op. cit.* (2019), p. 411. See also Thomadakis A., 'Why the EU Doesn't Need a Single Supervisor for Its Financial Markets – Yet', Centre for European Policy Studies, January 2025), https://cdn.ceps.eu/wp-content/uploads/2025/01/No-94-Why-the-EU-doesnt-need-a-single-supervisor-for-its-financial-markets-%E2%80%93-yet.pdf; and Kumpan C., 'Market-based financing in the Capital Markets Union: The European Commission's Proposals to Foster Financial Innovation in the EU' (2017), *14(2) European Company and Financial Law Review*, p. 336.

[98] See on this Allegrezza S., 'The proposed Anti-Money Laundering Authority, FIU cooperation, powers and exchanges of information: A critical assessment' (Policy Department for Economic, Scientific and

Case law of EU Courts in relation to Article 4(3)(1) SSMR lacks a unique, clear methodology and offers limited predictability to both supervisors and stakeholders.[99]

67 The eventual widening of ESMA's supervisory remit in capital markets,[100] without amending the underlying substantive regimes, would mean that the Authority would have to apply not only directly applicable EU law, but also several core statutes – MiFID II, AIFMD, UCITSD, among others – which depend on transposition into national legislation. As a consequence, the implementation of a mechanism akin to Article 4(3)(1) SSMR would **bring about the same challenges currently found in the context of the Banking Union** regarding the interplay between national and EU levels.

1.5. The Erosion of the Lamfalussy Process

68 The supervisory challenges briefly delineated above are compounded by the erosion of the *Lamfalussy* process, which blurs the nature of legal and regulatory acts even further. The 2001 blueprint divided law-making across four levels: '**Level-1**' legislation adopted through the ordinary EU procedures (with a preference for directly applicable regulations to speed effect); '**Level-2**' implementing measures adopted by the Commission under the so-called 'comitology procedure', advised and overseen by new committees (in securities, the European Securities Committee) and expert regulators (CESR), later mirrored in banking and insurance (EBC/EIOPC and CEBS/CEIOPS); '**Level-3**' cooperation – via CESR, CEBS and CEIOPS – sought consistent national implementation through guidelines, joint interpretations and peer review, despite the absence of formal rule-making powers; and '**Level-4**' placed

Quality of Life Policies, European Parliament, July 2022) PE 733.968, https://www.europarl.europa.eu/RegData/etudes/STUD/2022/733968/IPOL_STU(2022)733968_EN.pdf.; Villard K., 'A European anti-money laundering supervisory authority: perspectives and challenges' in *A Research Agenda for Financial Law and Regulation* (Edward Elgar 2025), pp. 179-196.

[99] Judgment of the Court (Grand Chamber) of 19 December 2018 in Case C-219/17, *Silvio Berlusconi and Finanziaria d'investimento Fininvest SpA (Fininvest) v Banca d'Italia and Istituto per la Vigilanza Sulle Assicurazioni (IVASS)*, ECLI:EU:C:2018:1023; Judgment of the General Court (Second Chamber, Extended Composition) of 11 May 2022 in Case T-913/16, *Finanziaria d'investimento Fininvest SpA (Fininvest) and Berlusconi v European Central Bank (ECB)*, ECLI:EU:T:2022:279; Judgment of the General Court of 12 October 2022 in Case T-502/19, *Francesca Corneli v ECB*, ECLI:EU:T:2022:627; Judgment of the Court (Grand Chamber) of 15 July 2025 in Joined Cases C-777/22 P and C-789/22 P, *European Central Bank and European Commission v Francesca Corneli*, ECLI:EU:C:2025:580. See, Zilioli, C. and Wojcik K.-Ph., *op. cit.* (2021), Annunziata F. and Siri M., *op. cit.* (2024), and Lamandini M. and Ramos-Muñoz D., *Finance, Law and the Courts. Financial Disputes and Adjudication* (Oxford University Press 2023), Chapters 4 and 6.

[100] See Ross V., *op. cit.* (2025), and Veron N., '*Breaking the deadlock: A single supervisor to unshackle Europe's capital markets union*', *Peterson Institute for International Economics Working Paper 25-18* (2025), https://www.piie.com/publications/working-papers/2025/breaking-deadlock-single-supervisor-unshackle-europes-capital. For a different view, see Conac P.H., 'Capital Markets Union: What Will It Take to Be a Success' (2025), *1 Journal of Financial Supervisors Academy 92*, pp. 95-96.

primary responsibility for enforcement of EU law on the Commission, with support from national authorities and the Parliament.

69 As noted, in the wake of the GFC, these bodies were recast as the European Supervisory Authorities (ESAs), yet the basic four-level architecture endured. In particular, on the basis of the *de Larosière Report* of 25 February 2009 and taking also into account the amendments to EU primary law by the Lisbon Treaty (which occurred almost concurrently): '**Level-1**' legislation consists of legislative acts in the meaning of Article 289(3) TFEU adopted (in principle) through the ordinary procedure[101] as set out in Article 289(1) TFEU; '**Level-2**' delegated and implementing acts in the meaning of Articles 290-291 TFEU are adopted (in principle) by the Commission (in the case of implementing acts still under the comitology procedure[102]), with the contribution (in several cases) of the ESAs via draft regulatory and implementing technical standards; '**Level-3**' consists of soft law instruments adopted by the ESAs; and at '**Level-4**', the Commission (with support from the ESAs, national authorities and the Parliament) is responsible for enforcing EU law.

Table 1: Procedure for the adoption of legal acts which constitute the sources of European financial law after the entry into operation of the ESFS

	Level 1: legally binding acts	**Level 2: legally binding acts**		**Level 3: non-legally binding acts**
Type of legal act	**Legislative acts** falling within the ESAs' scope of action (Article 289 TFEU)	**Delegated acts** (Article 290 TFEU) usually on the basis of ESAs' draft "regulatory technical standards" (**RTSs**)	**Implementing acts** (Article 291 TFEU) usually on the basis of ESAs' draft "implementing technical standards" (**ITSs**)	Guidelines and Recommendations (ESAs founding Regulations)
Body issuing the legal act	European Parliament and Council (by the ordinary legislative procedure)	European Commission	European Commission	EBA/ESMA/EIOPA (depending on the scope of action)
The role of the ESAs and the Committees	EBC/ESC/EIOPC (*) (as advisory committees) EBA/ESMA/EIOPA (as opinion-giving bodies)	EBA/ESMA/EIOPA (elaborating draft RTSs)	EBA/ESMA/EIOPA (elaborating draft ITSs) EBC/ESC/EIOPC (as regulatory committees) (**)	

(*) European Banking Committee, European Securities Committee, European Insurance and Occupational Pensions Committee **(**)** According to the comitology procedure (Regulation (EU) No 182/2011)

Note: The ECB must be consulted on any proposed EU legal act according to Article 127(4) TFEU[103]

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[101] An exception is the SSMR adopted by the Council through the special legislative procedure (set out in Article 289(2) TFEU) by virtue of Article 127(6) TFEU.

[102] This is governed by Regulation (EU) No 182/2011 of the co-legislators of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ([2011] OJ L 55/131), adopted on the basis of Article 291(3) TFEU.

[103] For a detailed analysis, see Gortsos Ch. V., *op. cit.* (Springer 2023), pp. 413-428 (and the literature cited).

70 Even so, the model's **centralised rulemaking** and **nationally-anchored supervision** pulled in different directions. The *de Larosière Report* diagnosed an over-reliance on microprudential perspectives, insufficient attention to systemic and cross-border risks, weak capacity to challenge national supervisory practices, and poor coordination for cross-border groups – summed up in the adage that credit institutions are "international in life, national in death". The result was excessive leverage and risk-taking not met by commensurate prudential supervision. These lessons drove the post-crisis redesign toward stronger EU-level coordination and a more uniform 'single rulebook', while confirming that supervisory orchestration must match the depth of legal harmonisation if integration is to be both effective and safe.

71 Currently, however, there is an increasing **granularity of primary and secondary legislation**. Level-1 legislative acts – once conceived as principle-bearing statutes – now embed detailed prescriptions that belong traditionally to implementing measures.

Box 5 – Article 325r CRR

A clear example is the CRR, which contains provisions of a highly technical nature, not necessarily fitting into a Level-1 legislative act. Article 325r CRR illustrates this trend particularly well, setting out an intricate calculation formula for delta general interest rate risk (**GIRR**) sensitivities that spans nearly three pages of the regulation. Level-2 instruments, in turn, have multiplied and deepened, producing a dense stratum of technical requirements that evolve rapidly and interact unevenly with national administrative practice. The result is a widening body of hard law whose internal hierarchy is difficult to parse in real time and whose velocity of change strains the capacity of addressees and supervisors alike.

One reason for the inclusion of such formulas directly in primary legislation lies in the restrictive approach of the CJEU on standing.[104] The legislative choice to codify highly detailed formulas in the CRR can therefore be read, at least in part, as a strategy to insulate regulatory design from admissibility challenges. Yet this approach has systemic costs: Level-1 acts become overburdened with technicalities, multiplying cross-references and eroding the distinction between framework principles and implementing measures.

72 A second, distinct pressure comes from **soft-law inflation at Level-3**. Guidelines, opinions, Q&As and supervisory statements now occupy a large part of the effective rulebook. They are pervasive in areas where Level-1 and Level-2 texts are open-textured or incomplete and often become the primary

[104] More specifically, after the 2009 Lisbon amendment, Article 263(4) TFEU relating to actions for annulment provides that any "*natural or legal person may (...) institute proceedings against a regulatory act which is of direct concern to them and does not entail implementing measures*". This entails that individual concern no longer needs to be proven for an applicant to have *locus standi* in such cases, thus circumventing the so-called '*Plaumann* test' (see Judgment of the Court of 15 July 1963 in Case 25-62, *Plaumann & Co. v Commission of the European Economic Community*, ECLI:EU:C:1963:17). The Court swiftly clarified that these regulatory acts do not include legislative acts, meaning that, for the latter, individual concern remains necessary (see the judgment of the Court (Grand Chamber) of 3 October 2013 in Case C-583/11P, *Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union*, ECLI:EU:C:2013:625; see further Gortsos Ch. V., *op. cit*. (2025), pp. 33-34). As a result, the more technical and self-executing the Level-1 provisions are, the more likely they are to be open to judicial review by affected entities.

medium through which obligations are specified. This growth blurs the boundary between interpretation and innovation and creates moving targets for addressees whose obligations are, in practice, shaped by instruments that are not formally binding.

73 Formally conceived as instruments of clarification and interpretative support for Level-1 and Level-2 legislation, they are **not intended to create new legal obligations**. Under Article 16 of the ESA Regulations, as well as Article 54 AMLAR, both NCAs and financial institutions are required to "make every effort" to comply with such guidelines, subject to the possibility of departing from them if duly justified. In practice, however, this margin of manoeuvre is narrow. Many guidelines extend far beyond mere interpretation by introducing detailed technical prescriptions that effectively operate as **quasi-binding standards** of conduct and governance.

74 Sometimes, Guidelines are the symptom of a broader problem: often complex and open-textured provisions in Level-1 and Level-2 legislation are the result of political compromises between diverging views, and Level-3 soft law tries to cover this gap by offering a 'correct' interpretation, which may clarify provisions (positive) or *de facto* create new rules, without immediately raising a conflict. All this suggests a deficit in the use by the ESAs and the Commission of **Level 4**, i.e., actions for breach of Union law, or infringement procedures.[105]

Box 6 – EBA Guidelines (EBA/GL/2017/16)

A prominent example is the EBA Guidelines on probability of default (**PD**) and loss given default (**LGD**) estimation and the treatment of defaulted exposures (EBA/GL/2017/16), which lay down intricate methodologies for risk parameters and internal governance structures. These provisions are not contained in Level-1 or Level-2 legislation, yet they have become the basis of supervisory expectations and benchmarks against which institutions are assessed. While supervisory convergence is a legitimate policy objective, the imposition of uniform internal methodologies across all credit institutions and investment firms – irrespective of size, complexity, or risk profile – raises concerns of proportionality. The proliferation of such 'hardening' of soft law thus blurs the intended boundaries of the Lamfalussy architecture and contributes to the broader structural opacity of the Union's regulatory regime. PD and LGD are part of the CRR definition apparatus (so they are based in Level 1), however, the EBA Guidelines are not based on a clear mandate in the CRR.

75 The **uncertain legal qualification of soft law** compounds the problem. 'Comply-or-explain' expectations, cross-referencing in supervisory methodologies and the practical 'hardening' of soft law – supported by the CJEU's recent case law (see Box 7 just below) – raise unresolved questions about legal effects, justiciability and institutional accountability. Aside from serious institutional issues regarding the *Meroni* doctrine mentioned in the preceding sections, there are clear implications for industry stakeholders and NCAs. Addressees face, in fact, a paradox: non-binding instruments structure

[105] For the Commission, see, *ex multis*, Kelemen, R. D., Pavone, T. 'Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union' (2023) *75(4) World Politics* pp. 779-825.

supervisory expectations, yet avenues for judicial protection are unclear or indirect.

Box 7 – 'Hardening' of soft law

Recent case law of the CJEU has strengthened the practical effect of soft law instruments adopted by the ESAs. For instance, in its *FBF* judgment,[106] the Court confirmed that the validity and interpretation of guidelines adopted by the EBA may be subject to judicial review through the preliminary reference procedure of Article 267 TFEU. Similarly, in the *Balgarska* case,[107] the Court held that national courts must take into consideration a Recommendation issued by the EBA when resolving a dispute. Together, these judgments effectively render the ESAs soft law measures to a status that approaches that of hard law.

76 The cumulative effect is a **distortion of the Lamfalussy process** as initially envisaged and implemented. The intended sequence has collapsed into co-extensive norm production at all levels. Level 1 frequently contains micro-rules and prescriptive annexes; Level 2 has become a source of over-production of granular rules; and Level 3 substitutes for absent standards with quasi-operative prescriptions that are treated as examinable criteria in authorisation, SREP and on-site work. The hierarchy of sources, in consequence, has been significantly displaced.

77 More importantly, notwithstanding this mass of legislation and guidance, **core definitions and concepts remain unclear or even undefined**, cross-sectoral inconsistency is pronounced, and legal uncertainty persists, as shown in the preceding sections. The systemic consequences are noticeable: a moving and internally recursive rule set; dense cross-referencing between and within levels; asynchronous updates that generate misalignments; uneven uptake and enforcement across jurisdictions; and a narrowing of predictable avenues for review as more of the operative content sits in instruments with contested status. The volume and velocity of production are, in themselves, a source of opacity. They raise the cognitive and compliance costs of identifying the applicable norm-set at any given time and complicate the policing of the boundary between interpretation and innovation.

78 In this configuration, the **Lamfalussy process no longer functions as a clear cascade from political objective to technical detail to convergence**. Principles, specifications and supervisory expectations are intermingled; soft law frequently creates rather than clarifies; and the aggregate mass of norms has reached an unbearable density. The upshot is a structural loss of legibility

106 Judgment of the Court (Grand Chamber) of 15 July 2021 in Case C-911/19, *Fédération Bancaire Française v Autorité de Contrôle Prudentiel et de Résolution (ACPR)*, ECLI:EU:C:2021:599. See, *ex multis*, Annunziata F., 'The Remains of the Day: EU Financial Agencies, Soft Law and the Relics of Meroni' (2021), *EBI Working Paper Series No. 106*; and Lamandini M. and Ramos-Muñoz D., *op. cit.* (2025), Chapters 4 and 6.

107 Judgment of the Court (Fourth Chamber) of 25 March 2021 in Case C-501/18, *BT v Balgarska Narodna Banka*, ECLI:EU:C:2021:249. See Lamandini M. and Ramos-Muñoz D., *op. cit.* (2023), Chapters 4 and 6.

and legal certainty – precisely the opposite of what the system was designed to secure.

2. Legislative Fragmentation and Inconsistencies

79 Beyond overlaps in supervisory mandates and the institutional architecture, inconsistencies stem mostly from **substantive regulation**. Even where Union acts are cast as regulations or styled as 'maximum harmonisation', **significant parts of the legal environment remain national**. The interplay between national and EU legal acts must be balanced carefully so as to not create legislative misalignment. Misalignment, in this sense, refers to the risk of different legislative measures not being coordinated, which can lead to overlaps or conflicts. Ensuring the consistency of EU rules is also crucial for fostering cross-border alignment and ensuring the SIU is developed coherently in different Member States.[108]

2.1. The Persisting Issue of Fragmentation

80 **EU and national rules coexist in multiple ways, resulting in an intricate legal system**. To understand EU financial law today, one must also look closely at domestic provisions, many of which predate EU legislative measures and continue to shape their implementation. Even where rules are set at the European level, much of financial law still relies on options and discretions (O&Ds) afforded to Member States and the need for transposition into national codes, often leaving legislators with broad room to adapt and even expand on Union concepts. The very foundations of these complex regulatory regimes are set out not only by Directives – MiFID II and the CRD IV, for instance – but also by certain provisions of Regulations, notably the CRR, grant to NCAs discretion to depart from specific obligations, thus further contributing to a persisting fragmented landscape.

Box 8 – Financial instruments

A prominent example of this difficulty is the fundamental pillar of EU financial regulation – the definition of "financial instruments".[109] A significant part of EU financial law is built around the concept of a financial instrument.[110] The term not only lends its name to some of its most important acts – namely the Markets in Financial Instruments Directive and Regulation (MiFID/MiFIR) but

[108] Similar Annunziata F., 'Retail Investment Strategy' (2024) *Study Requested by the ECON Committee*, p. 39, https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740090/IPOL_STU(2023)740090_EN.pdf.

[109] See Annunziata F., 'Taxonomy of Crypto-Assets and Financial Instruments: Where do We Stand?' (2024) *Bocconi Legal Studies Research Paper No. 4989905*.

[110] See, e.g., Hacker P. and Thomale C., 'Crypto-Securities Regulation: ICOs, Token Sales and Cryptocurrencies under EU Financial Law' (2018), *15(4) European Company and Financial Law Review 645*, p. 657 ("From a systematic point of view, most EU securities legislation is clustered around MiFID II"); Lehmann M., 'Art 4 MiFID II' in Lehmann M. and Kumpan C. (eds), *European Financial Services Law* (2nd edn, Beck/Hart/Nomos 2025) para 4 (The term "financial instrument" lies at the heart of European financial services law).

also defines the scope of – amongst others – the Prospectus Regulation,[111] the Markets Abuse Regulation (**MAR**),[112] and the EMIR.[113] Yet interestingly, the term is not defined in the conventional sense.[114] Instead, Annex I, Section C of MiFID II provides what the literature has aptly described as a 'laundry list' of examples.[115] It ranges from transferable securities such as shares and bonds, through money market instruments, investment funds, and a variety of commodity and credit derivatives, and even extends to atypical financial products like emission allowances.

Despite its centrality, much remains unsettled. To begin with, there is no uniform European definition of "securities".[116] In practice, reference to national law seems likely, yet this approach is methodologically uncertain. The definition also contains broad, catch-all phrases for instance "such as", "other securities equivalent" to those listed, and, at times, even circular formulations. Transferable securities, e.g., are defined as *securities* traded on capital markets – yet the question of what constitutes a "security" is left unanswered.[117]

Similarly, in the realm of derivatives, the definition includes "options, futures, swaps […] and any other derivative contracts"[118], which ultimately reduces to a circular proposition: derivatives are any other derivative contracts.[119] To make matters worse, the concept is riddled with excessive cross-referencing, sending readers back and forth between provisions.[120] This stands as a prime example of poor lawmaking. The problem is further exacerbated by overlapping categories. It remains unclear, for example, whether money market instruments fall under the notion of transferable securities, or whether certain investment funds may themselves also qualify as transferable securities.[121] Much depends on the applicable law and on the corporate structures chosen to establish such vehicles.

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111 Regulation (EU) 2017/1129 of the co-legislators of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (…), [2017] OJ L 168/12, as in force – Article 1(1) in connection with Article 2(a) (referring to transferable securities, an important subcategory of financial instruments).

112 Regulation (EU) No 596/2014 of the co-legislators of 3 July 2016, [2014] OJ L 173/1, as in force) – Article 2(1) (the Regulation applies to financial instruments traded on regulated markets, MTF, OTF).

113 Article 1(1) in connection with Article 2(5) (referring to derivative contracts, another important subcategory of financial instruments).

114 Langenbucher K., 'European Securities Law are we in need of a new definition: A thought inspired by initial coin offerings' (2018), *Revue trimestrielle de Droit Financier 40*, pp. 42-43.

115 Lehmann M. and Schinerl F., 'The Concept of Financial Instruments: Drawing the Borderline between MiFID and MiCAR' (2024), *19(4) Capital Markets Law Journal 330*, p. 350.

116 Annunziata F., 'Speak, If You Can: What Are You? – An Alternative Approach to Qualification of Tokens and Initial Coin Offerings' (2020) *17(2) European Company and Financial Law Review* p. 129, 133 and 148.

117 See, *inter alia*, Dybiński J. and Oplustil K., 'Defining Securities in the European Capital Markets Code' in Veil R. (ed), *Regulating EU Capital Markets Union*, vol I (Oxford University Press 2024), p. 263.

118 See Annex I, Section C, points 4, 5, 6, 7, and 10 MiFID II.

119 For a critique, see Callens E., 'Derivative Contracts in EU Law: Never Mind the Definition?' (2022), *22(2) Journal of Corporate Law Studies 641*, pp. 661-675.

120 Even within MiFID II, the reader is confronted with a web of cross-references. One must begin with Article 4(1), point (15) in conjunction with Section C of Annex I, then turn to Article 4(1), point (17) for money market instruments and point (44) for transferable securities. Further, relevant to derivatives (see Annex I, Section C No 6 ("provided that they are traded on a regulated market, a MTF, or an OTF") is Article 4(1), point (24), which in turn refers back to Article 4(1), points (21)-(23).

121 This problem was raised, *inter alia*, in the German-speaking literature. See Toman R. and Schinerl F., '§ 1 WAG 2018' in Klausberger P. and Toman R. (eds), *Wertpapieraufsichtsrecht* (Manz 2024) § 1 Rz 21, 24, and 34. Similarly, see Crown S., 'Scope, Authorisation, and Passporting' in Herbst J. and Lovegrove S. (eds), *A Practitioner's Guide to MiFID II* (3rd edn, Sweet & Maxwell 2018) pp. 54-55 ("It is unclear whether the categories of financial instrument [sic] are mutually exclusive").

As a result, the concept of a financial instrument – and its subcategories – has vague and uncertain boundaries.[122] This lack of clarity is problematic. Market participants need certainty to structure their products, apply for licences, and prepare for market entry in full compliance with the rules. Any misclassification, even if unintentional, can expose them to severe sanctions.

81 Another source of fragmentation stems from the **widespread reliance on O&Ds** embedded in both Regulations and Directives. On paper, Regulations should ensure full harmonisation, given their direct applicability across the Union. However, Regulations themselves contain multiple gateways through which national competent authorities may adapt, waive or recalibrate their application. While these measures are justified in functional terms by accommodating national specificities, collectively they give rise to a hodgepodge of legislation, which is far from the promise of a single rulebook.[123]

82 Sometimes fragmentation is embedded in the provisions themselves. Articles 45f(3) BRRD and 12h SRMR allow resolution authorities to waive Minimum Requirement for Own Funds and Eligible Liabilities (**MREL**) requirements for subsidiaries, provided that both the subsidiary and the resolution entity are established in the same Member State. A separate requirement to assess whether "*there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the resolution entity to the subsidiary*" is also closely linked to national law.[124] Article 12d(5) SRMR subjects the decision to apply MREL requirements envisaged for entities in groups with assets above EUR 100 billion to entities in groups with assets below EUR 100 billion to a request by the NRA ('Fishing Request') when they pose systemic risk, an assessment that relies on the NRA's discretion.[125]

Box 9 – O&Ds in the CRD IV/CRR package

O&Ds find a prominent example in the context of the CRD IV/CRR package. Indicatively, Article 8 CRR empowers authorities to waive liquidity requirements for institutions within a group if intra-group support mechanisms are deemed sufficient, while Article 9 permits the use of "solo consolidation" for subsidiaries under certain conditions. Additionally, although Articles 395-403 CRR set a 25% exposure limit of eligible capital per counterparty to limit concentration risk, national discretions permitted under Article 395(5) introduce further variability.

Equally, the CRD IV embeds a catalogue of discretions, including but not limited to Article 21, allowing authorities to waive requirements for credit institutions affiliated to a central body, and Article 23 offering flexibility on the thresholds for qualifying holdings, permitting national deviation from the harmonised standard.

83 Taken together, these dynamics show that **fragmentation remains a structural feature of EU financial law**. Union measures may aim at

122 On this, see Lehmann M. and Schinerl, F., *op. cit*.

123 See Gortsos Ch. V., 'Options and Discretions under the Capital Requirements Directive IV' (2023), *EBI Working Paper Series No. 155*.

124 See Appeal Panel cases no. 5/2023, paras. 126, 131, no. 1/2022, no. 3/2021, para. 73 or 2/2021, paras. 114-115.

125 See Appeal Panel cases no. 6/2024 and 3/2022.

uniformity, yet they are filtered through diverse national legal systems and traditions. Transposition of directives, national practices such as gold-plating, and uneven judicial interpretation all sustain differences across jurisdictions. What emerges is not a single, seamless regime but a hodgepodge in which financial firms operate under varying supervisory expectations and litigation risks.

Box 10 – Substantive regimes between EU and national rules

In asset management, Union passports (UCITSD/AIFMD) sit atop nationally created vehicles (SICAVs, FCPs, limited partnerships, investment companies with variable capital), with heterogeneous rules on segregation, compartments, delegation and depositary liability. In banking, CRR/CRD IV and the BRRD/SRMR regimes rely on national insolvency baselines for creditor hierarchies, the "no-creditor-worse-off" (**NCWO**) counterfactual,[126] and liquidation proceedings. Deposit Guarantee Schemes and the Credit Servicers/Purchasers regime depend on domestic rules on set-off, security interests and enforcement. PSD II's conduct and refund rules interact with national contract and civil-procedure law for remedies, limitation and evidence. In insurance, Solvency II standardises prudential requirements, but contract, distribution and misselling remedies remain under national private and consumer law; the IDD harmonises conduct and disclosure while leaving the civil consequences of breaches to domestic systems. Accordingly, large tracts of the legal architecture persist as national and non-convergent, creating layers of complexity.

2.2. The Absence of Harmonised Private Law

84 Another central impediment to convergence is the **continued absence of a uniform private law for financial transactions**.[127] Although the SIU aims to introduce sectoral regulation, it still presupposes common baselines in areas such as contract, tort, company and insolvency law, rather than providing them. This results in an incomplete integration project in terms of structure, with harmonised supervisory rules operating on top of heterogeneous civil law systems.[128] This means that formally identical regulatory conditions result in different private law consequences across Member States. This is not an issue of minor importance, as it undermines the effectiveness of EU norms by

[126] On this principle/safeguard, see, *ex multis*, Wojcik K.-P. (2015), 'The significance and limits of the "no creditor worse off" principle for an effective bail-in,' *ECB Legal Conference 2015 – From Monetary Union to Banking Union, on the way to Capital Markets Union: New opportunities for European integration*, European Central Bank, pp. 253-258.

[127] On this, see Lamandini M. and Ramos Muñoz D., 'Bankia, private law disputes in the law of finance and the illusion of a Capital Market Union (and a Banking Union) without fully harmonized civil remedies?' in Lamandini M. and Ramos Muñoz D. (eds), *Effective Judicial Protection and Cross-Border Financial Disputes in Europe* (FrancoAngeli 2025), pp. 259-273; further see Hadjiemmanuil Ch., 'The banking union and its implications for private law: a comment' (2015), *16(3) European Business Organization Law Review*, p. 383.

[128] For practical examples from the field of prospectus liability, refer to Busch D. and Lehmann M., *Prospectus Liability Rules in Europe and Beyond: Towards Uniformity* (Oxford University Press 2025); with a focus on the "plumbing of financial markets", see Haentjens M., *Harmonisation of securities law: custody and transfer of securities in European private law* (Kluwer International Law 2007). See Lamandini M. and Ramos-Muñoz D., *op. cit.* (2023), Chapter 9, for a comparison between the (major) role that courts played in building securities law in the US, and the (minor) role that courts have comparably played in the EU.

dispersing the remedies through which breaches are converted into rights and liabilities.

85 A recurring mechanism of fragmentation is legislative *renvoi* or silence on **civil law remedies**. Core instruments standardise what must be disclosed or how firms must behave, but defer to national law on what follows if these duties are breached. The Prospectus Regulation, for instance, calibrates content and approval but leaves liability elements – fault standards, causation, quantification, limitation – to domestic legal systems; MiFID's conduct rules similarly gesture to national compensation "mechanisms" without defining their contours.[129] Even where Union law favours a more assertive stance (e.g., targeted civil liability clauses in sectoral acts), key concepts have remained embedded in domestic taxonomies.[130] The result is a hodgepodge of thresholds and outcomes for like cases, straining legal certainty, equal treatment, and the credibility of a 'single' market.

86 **Jurisdiction and conflict-of-laws rules** exacerbate fragmentation. Recent case law has localised financial loss in ways that may split fora and governing law among investors and intermediaries, so that a single disclosure failure is adjudicated in multiple courts applying different private law standards.[131] Conversely, choice-of-law clauses favouring English law and courts means that large parts of the market (e.g., in derivatives) will be adjudicated under principles different from those present in EU law, and common to Member States, even if the two parties are domiciled in the EU.[132] From a system perspective, the consequence is not merely higher litigation costs but diminished predictability *ex-ante* and reduced scope for judicial convergence *ex-post*.

87 Party autonomy cannot cure all of these issues. In areas central to finance – **proprietary effects** of transfers, security interests, and insolvency[133] – choice-

129 See Negra F., *MiFID II and Private Law* (Hart 2019); Busch D., 'The Private Law Effect of MiFID: the Genil Case and Beyond' (2017) *13(1) European Review of Contract Law* p. 70; and Lamandini M. and Ramos Muñoz D., *op. cit.* (2023), paras. 10.49-10.92 and ff., and the comparison with the US paras. 10.25-10.36, and 10.37-10.45 for the private law approach in the UK.

130 The variety of approaches to 'weave' similar (client protection) considerations into domestic laws is remarkable in derivatives contracts. See Ramos Muñoz D. 'The Validity of Derivatives Contracts. Legal Doctrine as a Vehicle of Dialogues on 'Speculation' (2025) (6) *EBOR*, pp. 531-565.

131 See Judgment of the Court (Fourth Chamber) of 28 January 2015 in Case C-375/13, *Harald Kolassa v Barclays Bank plc.*, ECLI:EU:C:2015:37 and Judgment of the Court (First Chamber) of 12 May 2021 in Case C-709/19, *Vereniging van Effectenbezitters v BP plc*., ECLI:EU:C:2021:377. On these cases, see Lehmann M., 'Prospectus liability and private international law – assessing the landscape after the CJEU's Kolassa ruling' (2016), *12 Journal of Private International Law*, p. 318; and Lehmann M., 'A new piece in the puzzle of locating financial loss: the ruling in VEB v BP on jurisdiction for collective actions based on deficient investor information' (2022) *18 Journal of Private International Law 1*.

132 See Ramos Muñoz D. 'Cross-Border Derivatives Disputes: Uniform Contracts, Diverse Principles, and the quest for mutual understanding between legal systems' (2025) *EBI Working Paper Series* No. 199.

133 On the issue of forum shopping under the EU Insolvency Regulation, see Ringe W.-G., 'Forum Shopping under the EU Insolvency Regulation' (2008) *9(4) European Business Organization Law Review* p. 579.

of-law is either limited or excluded. **Overriding mandatory provisions** of national law can take precedence over contractual choices and reinstate domestic controls. The interaction of these carve-outs with heterogeneous national private law creates a structural plurality of governing regimes within the Union, even for transactions that are otherwise harmonised at the regulatory level.

88 Finally, the enforcement function of private law is applied unevenly throughout the Union.[134] By leaving remedial design to Member States, the system loses a consistent, decentralised compliance vector: the same regulatory breach can result in different liability thresholds, damage measures, and limitation periods. This variability weakens the systemic effectiveness of harmonised duties, reduces the effectiveness of private enforcement, and perpetuates interpretative and supervisory divergence. Overall, the dual channel of fragmentation – national implementation/enforcement of EU acts, and the persistent **national character of private-law remedies** – paradoxically undermines the harmonisation objective that EU financial policy has pursued so thoroughly.

2.3. Cross-sectoral Inconsistencies

89 In addition to the above, **cross-sectoral inconsistency** and other shortcomings of the current legal design further entrench complexity. EU financial regulation remains organised along sectoral lines – banking, capital markets, insurance/pensions – each with its own legislative 'package' (CRR/CRD IV, MiFID II/MiFIR and the prospectus-transparency-market-abuse complex, UCITSD/AIFMD, Solvency II/IDD), and mirrored institutionally by distinct authorities within the ESFS. While certain instruments and regimes cut across these silos (e.g., financial conglomerates, PRIIPs, and, more recently, transversal disciplines covering digital or sustainability matters), the prevailing architecture remains sector-anchored, with horizontal overlays layered on top. This layering, and the dispersion of core requirements across different Level-1 and Level-2 acts, breeds mismatches and interpretive seams. It is both a source of duplicative efforts, and an invitation to regulatory arbitrage.

Box 11 – Securitisation: between horizontal and sectoral law

Securitisation provides a clear illustration in this respect. Core conduct, transparency, due-diligence and risk-retention obligations are set out in the cross-sectoral Securitisation Regulation, while the prudential capital requirements for credit institutions (including Class-1 investment firms) are governed by the CRR, and the liquidity treatment is addressed separately in the liquidity coverage

[134] On these issues, see, e.g., Sethe R., 'Private Enforcement bei unbewilligten Crossborder-Finanzdienstleistungen' (2024) *Zeitschrift für Schweizerisches Recht* p. 367; and Sethe R., *Anlegerschutz im Recht der Vermögensverwaltung* (Otto Schmidt 2005); on the private enforcement of EU law in general, see Heinze C., *Schadensersatz im Unionsprivatrecht* (Mohr Siebeck 2017).

ratio (**LCR**) Delegated Regulation.[135] This split – horizontal conduct rules overlaid on sector-specific prudential texts – creates applicability and interpretation gaps. Issues arise particularly pertaining to the insurance sector: Solvency II's capital charges for securitisation exposures were only partially and not fully realigned with the STS regime in 2018. In effect, this sector-anchored architecture with horizontal overlays creates exactly the mismatches it purports to alleviate, as obligations split between the Securitisation Regulation, the CRR, the LCR Delegated Regulation and the Solvency II pull in different directions.

The Commission has recently tabled new proposals to revise the securitisation regime, with the declared aim of addressing these gaps and achieving greater consistency – though the effectiveness of such reforms remains to be seen.[136] While this revision is greatly appreciated, one should be wary that certain areas of financial regulation – banking, above all – are particularly sensitive. In these high-risk areas, calls for 'simplification' should not be taken lightly, as they may in practice amount to *de facto* deregulation and re-import the very vulnerabilities that post-crisis reforms sought to contain. Conversely, a strategy of simply prohibiting complex structures may offer a superficially simple answer, but at the cost of curtailing securitisation's useful role in facilitating risk-taking and risk transfer in support of real-economy investment. The overarching objective should, therefore, be a proportionate simplification of the securitisation framework that reduces unnecessary frictions and costs for sound (in particular STS-compliant) transactions, while preserving the core safeguards of transparency, due diligence and risk retention.

The June 2025 proposals, however, introduce yet another layer of complexity by grandfathering the securitisation structures for which sovereign or other institutional risk assumption mechanisms are in place. Particularly driven by industry lobby, the Securitisation Regulation is at risk to be amended, to introduce new risks to the markets, rather than to continue to regulate the markets commensurate to the high risky nature of the transactions concerned. This we find to be a clear example where the simplification agenda of the EU, is at risk to evolve in deregulation incapable in addressing the true risks of the relevant instruments.[137]

90 This structure generates persistent **normative misalignment**. Functionally similar activities or products are addressed through different concepts, and compliance architectures depend on sectoral taxonomies. Core classifications – of actors, services, or instruments – are articulated in different ways across related legal texts. As a result, economically comparable activities are subject to different definitional regimes, which has an impact on coherence, predictability and consistency of application. Operators willing to improve their portfolio of products will be deterred by compliance costs that may not be justified, while others will use the differences for arbitrage purposes.

Box 12 – Lack of cross-sectoral taxonomy for users of financial services

Terminological ambiguity is not the only challenge when it comes to definitions. Another source of difficulty lies in the widespread reliance on concepts that seem straightforward at first glance – terms

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[135] Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement the CRR with regard to liquidity coverage requirement for credit institutions, [2015] OJ L 11/1. This delegated act was adopted by virtue of Article 460(1) CRR.

[136] On this aspect, see Koenig, E., 'Banking Regulation: Reforming Without Retreating' (May 2025), *SUERF Policy Brief No 1160*, https://www.suerf.org/wp-content/uploads/2025/05/SUERF-Policy-Brief-1160_Koenig.pdf, pp. 4-5.

[137] On proportionality, see Joosen, B., 'The Principle of Proportionality as an Area of National Discretion' in Annunziata, F. and Siri M. (eds), *EU Banking and Capital Markets Regulation* (Palgrave Macmillan 2025) pp. 3-34.

such as "client",[138] "retail client",[139] "retail investors",[140] "professional client",[141] "qualified investors"[142] or variations thereof. On closer inspection, however, it becomes evident that these notions are far from uniform. Rather than a single, coherent definition, EU financial legislation relies on sector-specific interpretations.[143] What qualifies as a client in the field of banking law may not align with the definition applied under capital-markets regulation, and insurance law introduces yet another variation. Similarly, some national laws introduce specific sub-categories that do not exist at Union level, such as "semi-professional investors".[144] The result is a hodgepodge of overlapping and sometimes conflicting categories. Each regulatory silo – whether banking, securities, or insurance – establishes its own understanding of who the protected party is meant to be.

91 The case of the inducement regime, which is regulated both by MiFID and IDD, is an example that shows how a similar rule is applied differently across sectors, without this generating any apparent benefit: when one considers insurance-based investment products, which are substantially similar to conventional investment financial products, rules on inducements should work in the same way.[145] The same applies to investment advice, suitability, and other requirements. None of these differences is necessarily unjustified when viewed within each silo; collectively, however, they amount to a **structural inconsistency that complicates supervisory convergence**, increases the risk of uneven outcomes for like cases, and strains legal certainty across an increasingly intertwined financial system.

Box 13 – Loan-originating funds

An example is provided by loan-originating funds. From an economic perspective, these funds engage in activities comparable to those of traditional credit institutions, namely the lending of money to clients. As they are subject to regulation under the AIFMD rather than the CRR/CRD IV,[146] they are subject to disparate regulations concerning capital, liquidity, and governance, exposing the limits of sector-based legislation. Moreover, the case of loan-originating funds illustrates

138 See Article 4(1), point (9) MiFID II ("'client' means any natural or legal person to whom an investment firm provides investment or ancillary services").

139 See Article 4(1), point (11) MiFID II ("'retail client' means a client who is not a professional client") and point (10) ("'professional client' means a client meeting the criteria laid down in Annex II").

140 Article 4(6) of Regulation (EU) No 1286/2014 of the co-legislators of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), [2014] OJ L 352/1, as in force.

141 See Annex II MiFID II ("Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs"). The Directive then specifies a number of criteria to assess the client's experience, knowledge and expertise.

142 See Art 2, point (e) Prospectus Regulation ("'qualified investors' means persons or entities that are listed in points (1) to (4) of Section I of Annex II to [MiFID], and persons or entities who are, on request, treated as professional clients in accordance with Section II of that Annex, or recognised as eligible counterparties in accordance with Article 30 [MiFID] unless they have entered into an agreement to be treated as non-professional clients in accordance with the fourth paragraph of Section I of that Annex").

143 In this issue, see Annunziata F., 'Towards an EU Charter for the Protection of End Users in Financial Markets' (2022) *EBI Working Paper Series No. 128*, p. 3.

144 See sec. § 1(19) no. 33 German Kapitalanlagegesetzbuch (KAGB).

145 See the study by Kantar Public and CEPS, 'Disclosure, inducements and suitability rules for retail investments: Final report' (2023).

146 See ESMA, 'Opinion: Key principles for a European framework on loan origination by funds' (ESMA/2016/596, 11.4.2016), https://www.esma.europa.eu/sites/default/files/library/2016-596_opinion_on_loan_origination.pdf.

fragmentation at national level: while in some jurisdictions loan-originating funds are encouraged to channel non-bank finance, in others the same activities trigger bank-like prudential expectations or are significantly constrained by national overlays driven by national regimes for reserved banking activities.[147]

2.4. Overlapping Regimes

92 Even though sectoral legislation remains the backbone of the current legislative design, it is now criss-crossed by **transversal regimes that cut across thematic boundaries**. Sustainable finance embeds disclosure, diligence, and product-level constraints in both issuer and intermediary rulebooks; digital finance layers cyber and ICT-risk management on top of existing governance, outsourcing, and operational rules; the AI Act imposes additional obligations and standards, with its own supervisory interlocutors. These horizontal overlays were designed to correct blind spots of siloed regulation, yet in practice, they frequently generate duplicative processes, divergent definitions, and multiple points of supervisory contact for the same underlying activity.

93 Where an entity straddles sectors – for example, universal credit institutions with large asset-management arms, platforms offering payments, custody, and trading functions – the mapping of obligations and the apportionment of supervisory responsibility become intricate exercises in statutory cartography.

94 Taken together**, the regulatory treatment of two economically similar activities may vary, being a source of cost for some, and a source of arbitrage for others**. Collectively, these examples highlight the institutional challenge of ensuring coherent regulation of functionally and economically similar activities, underscoring the need for a more harmonised approach to mitigate fragmentation and regulatory arbitrage.

Box 14 – MiCAR and payments legislation

A very recent example of lack of functional equivalence and legislative misalignment can be found in MiCAR. It introduced a bespoke regime for crypto-assets, with EMTs defined in Article 3(1)(7) as crypto-assets that purport to maintain a stable value by referencing the value of one official currency. However, EMTs are not treated in isolation. Article 48(2) classifies EMTs as e-money, meaning that issuers of EMTs must comply simultaneously with MiCAR and EMD II requirements.

The issue is further compounded by PSD II, which applies to the provision of payment services involving "funds" – a term defined to include e-money. Because EMTs are deemed to be e-money, many EMT-related services also fall within PSD II's scope. This results in a complex overlay of separate regimes: MiCAR, EMD II, and PSD II, each with its own licensing triggers, prudential requirements, and consumer protection obligations. Acting on a mandate from the Commission dated 6.12.2024 and relying on Article 9c of its founding Regulation,[148] the EBA issued a No-Action Letter to mitigate, on an interim basis, the regulatory frictions created by the concurrent application of MiCAR, EMD II and PSD II.

147 On this, see Annunziata F., 'Credit Funds Regulation in the EU and the Debate on NPLs and AMCs' (2021) *Bocconi Legal Studies Research Paper No. 3857841*.

148 Regulation (EU) No 1093/2010 of the co-legislators of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) (…), [2010] OJ L 331/12, as in force.

Proceeding from the premise that the transfer and custody of EMTs conducted on behalf of clients fall squarely within the catalogue of payment services enumerated in Annex I of PSD II, the Authority nevertheless considers that the immediate imposition of a second licensing requirement upon every CASP already authorised under MiCAR would be disproportionate to the incremental risks at stake. Accordingly, it invites NCAs – until 2 March 2026 – to refrain from enforcing the PSD II authorisation obligation in respect of three categories of activity: the transfer of EMTs on behalf of clients, custody and administration of EMTs, and the execution of client orders involving EMTs. Although these activities may properly be characterised, under the PSD II, as the execution of payment transactions or as money-remittance services, the Authority considers that the exceptional circumstances created by the advent of MiCAR justify a temporary period of supervisory forbearance.

The EBA's intervention gives rise to significant structural considerations: *First*, the length (over 30 pages) and complexity of the No-Action Letter – combined with its non-binding nature – raises fundamental questions about the legal certainty of the EU regime. One of MiCAR's central promises was to deliver *ex-ante* clarity for stakeholders. Instead, barely months after the Regulation entered fully into force, stakeholders are faced with a lengthy document that acknowledges critical unresolved conflicts and defers their resolution to a future regulatory cycle.

Second, the EBA's approach effectively confirms that there is no coherent mechanism to accommodate hybrid business models involving EMTs. Unlike Article 60(3) MiCAR, which allows crypto-asset services to be treated as equivalent to MiFID investment services where appropriate, there is no similar provision for payment services. The absence of a regulatory equivalence principle forces firms to seek multiple payment authorisations without clarity on whether these regimes are meant to apply in parallel, in hierarchy, or in exclusion. The cost and compliance implications are particularly significant for CASPs whose business models include EMT issuance or transfers as ancillary, non-core functions.

Finally, the entire episode casts doubts on the utility of the principle of technological neutrality as invoked by EU legislation. Far from ensuring a neutral application of rules across technological infrastructures, the application of EMD II and PSD II to crypto-assets distorts the playing field and subjects new entrants to burdensome regimes conceived for fundamentally different market dynamics. Rather than neutral, the regime is layered, duplicative, and misaligned with the functional reality of crypto-based payment systems.[149]

95 A further source of complexity lies in the **duplication of reporting obligations**. Financial firms are frequently required to submit information on the same, or closely related, subjects to multiple authorities at both Union and national levels. While each obligation may be justified on its own terms, taken together, they create substantial overlap and repetition. This duplication not only inflates administrative costs, diverting valuable resources from both businesses and supervisory agencies. It can also create an incoherent picture between separate disclosures by the same company, undermining trust, and increase uncertainty for businesses as to when to separate or merge the information.

96 The situation is further exacerbated by the **lack of consistency in scope, detail and format** across regulatory frameworks. Institutions are often required to present comparable data in multiple templates and technical forms – from Word

149 See Minto A., de Arruda T., 'Op-Ed: Regulating E-Money Tokens at the Intersection of MiCAR and PSD2: Legal Ambiguities and the EBA's No-Action Letter' (2025), *EU Law Live*.

and Excel to PDF, XML or XBRL[150] – which heightens administrative burden without materially improving supervisory insight.

Box 15 – Securitisation reporting[151]

A single EU securitisation transaction often gives rise to several overlapping reporting streams, each requiring broadly similar information to be submitted in different templates and technical formats:

First, the ESMA transparency framework obliges reporting entities to provide detailed XML disclosures on the underlying loans, transaction structures and cashflows.[152]

Second, prudential reporting under the EBA's common reporting (COREP) framework introduces an additional layer, requiring institutions to submit templates on capital and risk exposure.[153]

Third, supervisory processes further duplicate information through "Simple, Transparent, and Standardised" (STS) notifications, "Significant Risk Transfer" (SRT) pre-notifications and the ECB's Excel-based guidance templates. Fourth, statistical frameworks such as AnaCredit, Balance Sheet Items (BSI) and securities-holdings reporting collect related data using incompatible systems.

Finally, market practice adds another dimension, as rating agencies request CSV-files that are subsequently converted for regulatory use. Collectively, these requirements encompass around 4.800 data points.[154] Identifying where they overlap or conflict is an intricate and demanding task, yet a necessary one.

97 Encouragingly, supervisory authorities have begun to tackle these problems through **public consultations** aimed at identifying duplicative reporting and options to streamline it. **ESMA**, for example, has recently opened a call for evidence on simplifying financial-transaction reporting[155] and its discussion paper on an integrated supervisory reporting system.[156] These efforts are mirrored by the **EBA**'s consultations to harmonise and rationalise reporting templates (including on resolution-planning reporting, data guidelines under Titles III and IV MiCAR, and third-country branch reporting).[157] Although

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150 On this point, see Storied Data's reply to ESMA's Consultation on the Securitisation Disclosure Templates, https://www.esma.europa.eu/press-news/consultations/consultation-securitisation-disclosure-templates.

151 This example follows the analysis of Olivia Hauet, Principal Economist at the ECB, in 'Reviving securitisation in the EU: A critical analysis of the reporting requirements' (2023) 7*(2) Journal of Financial Compliance* p. 106.

152 See Article 7(1) of the Securitisation Regulation (EU) 2017/2402; further see Commission Delegated Regulation (EU) 2020/1224 and Commission Implementing Regulation (EU) 2020/1225, which define the content and format of these submissions.

153 See C 13.01, C 14.00 or C 14.01. For an up-to-date overview of the EBA Reporting Framework, see at https://www.eba.europa.eu/risk-and-data-analysis/reporting/reporting-frameworks.

154 For details, see Hauet O. (2023), *op. cit*.

155 ESMA, 'Call for evidence on a comprehensive approach for the simplification of financial transaction reporting' (23.6.2025), ESMA12-437499640-3021 (hereinafter ESMA (2025)).

156 ESMA, Discussion Paper on the integrated collection of funds' data (23.6.2025), ESMA12-2121844265-490.

157 EBA, Consultation Paper on Draft ITS on reporting for resolution planning (30.7.2024), EBA/CP/2024/18; EBA, Consultation Paper on Draft Guidelines on temples to assist competent authorities in performing their supervisory duties regarding issuers' compliance under Titles III and IV of Regulation (EU) 2023/1114 (15.7.2024), EBA/CP/2024/15; EBA, Consultation Paper on Third Country Branches Reporting (20.7.2025) EBA/CP/2025/28.

these and other initiatives are welcome and appreciated, the European Single Access (data) Point (**ESAP**)[158] is still not single.

2.5. Formal Shortcomings: EU financial regulation is Law, after all

98 The problems described in the previous sections are partly a symptom of a broader problem: policymakers often neglect that financial 'regulations' are Law, and as such Law they must work as an interpretative construct, and as a cohesive system.[159] When this central feature is given secondary importance the result is a loss of the sense of coherence and proportion. This, in turn, results in important formal shortcomings, such as a limited use of principles, an excess of overlapping provisions, an unmethodical approach to matters of concept and drafting, or a focus on concrete provisions and texts at the expense of the legal 'system'.

99 One example is the **limited and uneven application of the principle of proportionality**.[160] While many legislative acts recognise proportionality in principle, its practical application is often limited to specific thresholds, partial reporting exemptions, or discretionary supervisory relief. A typical case are the provisions of the CRD IV and the CRR applying to "small and non-complex institutions" (**SNCIs**) as contrasted to "large institutions"[161] by application of the principle of proportionality.

100 However, the lessons from the spring 2023 banking turmoil, the most important stress for the banking sector since the GFC,[162] dictate some caution in this respect. In particular, the failure of *Silicon Valley Bank of Santa Clara, California* (**SVB**) revealed, *inter alia*, some regulatory failures, including the lack of *effective* interest rate risk regulation for all US depository institutions and the exemption (since 2018) of medium-sized ones from some prudential rules, including the requirements for meeting prudential liquidity requirements and those for annual stress-testing.[163]

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158 This was established by Regulation (EU) 2023/2859 of the co-legislators of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, OJ L, 2023/2859, as in force.

159 Lamandini M. and Ramos Muñoz D., *op. cit.* (2023), Chapters 1-2.

160 On the application of this principle, see Joosen B., Lamandini M., Lehmann M. Lieverse K. and Tirado Ig., 'Stability, Flexibility and Proportionality: Towards a Two-Tiered European Banking Law?' (2018), *EBI Working Paper Series 20,* https://ssrn.com/abstract=3128304; and Joosen B. and Lehmann M., 'Proportionality in the Single Rule Book', in Chiti, M.P. and Santoro V. (eds), *The Palgrave Handbook of European Banking Union Law* (Palgrave Macmillan 2019), pp. 65-90.

161 The definition of these two terms is set out in Article 4(1), points (145) and (146) CRR, respectively.

162 On this episode, see, *ex multis*, Acharya V.V., Richardson M.P., Schoenholz K.L. and Tuckman B. (eds): *SVB and Beyond: The Banking Stress of 2023*, NYU Stern Business School, Rapid response Economic 4, CEPR Press, 17 August 2023, https://cepr.org/system/files/publication-files/188970-svb_and_beyond_the_banking_stress_of_2023.pdf.

163 It has been argued that, if the SVB had been subject to the liquidity coverage ratio rules (part of the Basel III regulatory framework), it would have required to publish more data about its liquidity risks

101 In practice, financial entities with materially different risk profiles or business models may face **comparable layers of overlapping obligations**, particularly when sectoral and transversal regimes accumulate. This – once more – creates an administrative burden without any significant supervisory benefits.

102 A pervasive **proliferation of cross-references** adds another layer. Obligations in one instrument often depend on definitions, methodologies or thresholds located in others and, in certain cases, these cross-references span multiple acts.

Box 16 – Definition of the term "credit institution"

A telling example is the definition of a "credit institution" – one of the most fundamental terms of EU banking law. The CRD IV does not provide a self-standing definition but refers directly to the CRR (see Article 3(1)(1) CRD IV with reference to Article 4(1)(1) CRR). While the first part of that provision covers undertakings that take deposits or other repayable funds from the public and grant credits for their own account (Article 4(1)(1)(a) CRR), there is no definition of "deposit" and "granting of credits" under these legislative acts, rendering the entire definition essentially incomplete. Thus, this definition allows national legislators to target different classes of supervised 'banks'.

Moreover, the definition has been recently expanded to include a new category: certain large investment firms (so-called "Class 1 investment firms"). These are investment firms authorised under MiFID II to carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of that legislative act, provided they meet asset thresholds specified in the CRR and are not excluded under Article 8a CRD IV.[164] As a result, the meaning of "credit institution" can only be approximated by moving through CRD IV → CRR → MiFID II → back to CRD IV, a chain of references that illustrates how even a basic definition rests on multiple legislative layers – and still remains incomplete.[165]

103 In addition, **some terms are defined in various legislative acts with a different meaning** – apparently for the purposes of these acts. A notable example is that of "financial institution", which under the CRR/CRD IV is explicitly defined as excluding credit institutions,[166] while under the EBA Regulation is defined as including them.[167]

Box 17 – Contradictory definitions

Different definitions for the same concept can respond to the existence of different purposes in the legal act, but if this is not clearly acknowledged it can lead to confusion, especially if the term is widely used in practice. The term "over the counter – OTC" enjoys widespread use, but, whereas in

and thus, its failure could have been prevented; see Feldberg G., 'Lessons from Applying the Liquidity Coverage Ratio to Silicon Valley Bank' (March 2023), *Yale Program on Financial Stability*, https://som.yale.edu/story/2023/lessons-applying-liquidity-coverage-ratio-silicon-valley-bank.

164 See Article 4(1), point (1)(b) CRR as amended by Article 1(1)(a) CRR III.

165 Another element of complexity is the fact that Article 4(1), point (3) CRR also defines the term "institutions" as credit institutions and undertakings under Article 4(1), point (1)(b) CRR, which by end-2019 were carrying out activities as investment firm, authorised under MiFID II, and should have applied for authorisation in accordance with Article 8 CRD IV by 27 December 2020. It is apparent that – due to the lapse of the deadline set – this definition should anymore not apply and that both the CRR and CRD IV should have been amended to make reference to credit institutions only.

166 See Article 4(1), point (26)(a) CRR: "'financial institution' means an undertaking that meets both of the following conditions: (a) it is not an institution (…)".

167 See Article 4, point (1) EBA Regulation: "'financial institution' means any undertaking that is subject to regulation and supervision pursuant to any of the legislative acts referred to in Article 1(2)".

MiFID II, the term denotes all contracts concluded outside of a trading venue (including MTF and OTF),[168] under EMIR, it covers only contracts the execution of which does not take place on a regulated market (excluding MTF and OTF).[169] Both acts have different purposes, but having a household term with two divergent meanings, while leaving the rationale to the ingenuity of the reader is liable to create considerable confusion.

104 A contributing factor to all this is the **serial reform of core statutes**. Successive 'packages' revising existing regimes – most visibly the CRD IV/CRR, with layered amendments, recasts and 'quick fixes', but also the BRRD/SRMR and the MiFID II/MiFIR revisions – produce complexity and **legal uncertainty**. The effect is a moving target that weakens foreseeability, complicates consistent application across sectors and jurisdictions, and raises the cost of reconciling definitions and obligations that are themselves being continuously recalibrated.

Box 18 – Frequent amendments of key legislative acts

Several legislative acts which constitute key sources of EU financial law have been already amended since their adoption in the mid-2010s more than 10 times to the **detriment of legal certainty**. By means of indication, to date:

(a) MiFID II was amended 12 times, including by the Investment Firms Directive (**IFD**),[170]

(b) CRD IV was also amended 12 times, including by the **CRD V**[171] and the **CRD VI**,[172]

(c) CRR has been amended even 20 times, and

(d) BRRD and SRMR have been amended 10 and 5 times, respectively (and they are currently under further review).

105 This is not helped by the challenges in finding the current versions of the EU legislation in force. Commission Directorate Generals' websites may vary in structure and content, and up-to-date information, though habitual, is not guaranteed. In addition, the EBA's "Single Rulebook" is linked to EUR-Lex, which contains directives and regulations as published in the *OJ*. Consolidated versions provided do not necessarily incorporate the most recent amendments and include a disclaimer that they are "meant purely as a documentation tool" and have "no legal effect".

106 These problems are further exacerbated by a **technocratic drafting style**. Increasingly, provisions are written not in layman's terms but by economic and prudential specialists who rely on complex formulas and thresholds.

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168 See e.g., Article 57(14) lit. (a) MiFID II.

169 Article 2, point (7) EMIR.

170 Directive (EU) 2019/2034 of the co-legislators of 27 November 2019 on the prudential supervision of investment firms (…), [2019] OJ L 314/64, as in force.

171 Directive (EU) 2019/878 of the co-legislators of 20 May 2019, [2019] OJ L 3150/253.

172 Directive (EU) 2024/1619 of the co-legislators of 31 May 2024 amending [the CRD IV] as regards supervisory powers, sanctions, third-country branches, and [ESG] risks, OJ L 2024/1623.

Box 19 – Article 36 CRR

Article 36(1) CRR on deductions from Common Equity Tier 1 (**CET1**) is a case in point. To apply point (m) of that Article on insufficient coverage for non-performing exposures, the reader must first classify exposures under Articles 47a and 178 CRR,[173] then compute exposure values with the adjustments in Articles 34 and 105 CRR,[174] then split positions into secured and unsecured parts, and only then apply a sequence of time-dependent factors that step from 0.35 to 1 across years of non-performance as set out in Article 47c CRR.[175] The calculation continues with specific subtractions listed in Article 47c(1) CRR, is modified by guarantees and collateral rules in Title II of Part Three[176] and Article 201 CRR,[177] and is further altered by derogations found in Article 47c(6) CRR. The provisions read, therefore, as a self-referential technocratic code – crafted by specialists for specialists, with a highly convoluted language.

107 Policymakers also show a clear 'system neglect', where each new rule, or reform, while sensible in isolation, can, when the ensemble is considered, increase complexity to an extent that it may create problems, or defeat of some individual measures.[178]

Box 20 – Capital buffers: regulatory architecture and maximum distributable amount (MDA)[179]

Macroprudential capital buffers – such as the Capital Conservation Buffer (**CCB**), the Countercyclical Capital Buffer (**CCyB**), the Systemic Risk Buffer (**SyRB**), and the buffers for systemically important institutions (G-SIIs and other systemically important institutions, **O-SIIs**) – are designed to enhance credit institutions' resilience by providing loss-absorbing capacity above minimum capital requirements. Some buffers, notably the CCyB and the SyRB, are releasable during periods of systemic stress, while others are intended to remain stable throughout the financial cycle. The capital buffer discipline under CRD IV forms a central pillar of EU banking supervision.[180] Nevertheless, the cumulative design of this regime, including multiple buffer layers with differing objectives and releasability conditions, has led to increasing complexity – both legally and operationally.

The CCB, governed by Article 128 CRD IV, requires a 2.5% CET1 buffer above minimum capital requirements. It is non-releasable and automatically triggers restrictions on distributions when

173 See Article 47(1)(3)(a) CRR ("in accordance with Article 178").

174 Article 47(2) subpara 1 CRR ("in accordance with Articles 34 and 105").

175 See in particular Article 47c(2) CRR.

176 Article 107 CRR *et seq*.

177 Because Article 47c CRR computes the CET1 deduction using the credit-risk mitigation framework in Title II of Part Three (see Article 107 CRR *et seq*) – defining the secured part by funded or unfunded credit protection or full mortgage security – and it applies special factors only where the guarantee is from an eligible protection provider as set out in Article 201 CRR.

178 Apart from the box, see Claudia Buch, Chair of the Supervisory Board of the ECB, in her speech 'Simplification without Deregulation: European Supervision, Regulation and Reporting in a Changing Environment' (Goldman Sachs European Financial Conference, Berlin, 11 June 2025) p. 1 https://www.bankingsupervision.europa.eu/press/speeches/date/2025/html/ssm.sp250611~e309f5bec9.en.html (noting that the EU risk-based capital stack for banks can comprise up to nine layers of microprudential and macroprudential requirements and buffers, with split responsibilities between the ECB and national authorities, creating complexity and potential unintended effects). See further EBA, 'Stacking Orders and Capital Buffers' (2024), https://www.eba.europa.eu/sites/default/files/2024-07/3f548b65-873a-4f0d-ab5a-094cd18dee33/Report%20on%20stacking%20orders%20and%20capital%20buffers.pdf.

179 On prudential regulation for banks, see, *ex multis*, Cranston R., Avgouleas E., Van Zwieten K., Hare C. and Van Sante Th., *Principles of Banking Law* (3rd edn, Oxford University Press 2017).

180 For an overview, see Gortsos Ch. V., *op. cit.* (2025), pp. 190-208 (and the literature cited).

breached (Article 141 CRD IV). The CCyB, set in accordance with Article 130 CRD IV and ESRB Recommendation 2014/1, is time-varying and nationally releasable. The SyRB under Article 133 targets long-term structural risks but lacks a harmonised release mechanism. Meanwhile, institution-specific risks are addressed under Pillar 2 (Articles 104-105 CRD IV), with binding Pillar 2 Requirements (**P2R**) and supervisory Pillar 2 Guidance (**P2G**).

Aiming to respond to complexity problems, Articles 129 and 131 CRD IV regulate the stacking of buffer requirements, mandating that the higher of the SyRB or O-SII buffer applies unless explicitly cumulative. This structure, however, can result in overlapping obligations, particularly for cross-border banking groups subject to national divergence in buffer implementation. Furthermore, conflicting supervisory interpretations across jurisdictions compound the difficulty in capital planning. Complications also arise when firms' MREL requirements are calculated by reference to their capital requirements, including O-SII.[181]

The EBA Guidelines on buffer management (EBA/GL/2014/10) provide interpretive support but introduce additional procedural layers, particularly concerning supervisory dialogue and pre-notification requirements in cases of buffer breaches. Moreover, evidence from recent crises has shown that credit institutions may be unwilling or unable to draw down these buffers, limiting their effectiveness.[182] Unwillingness often stems from the consequences of breaching the maximum distributable amount (**MDA**) threshold, such as automatic restrictions on dividends, bonuses, and coupon payments, as well as reputational stigma.

Article 141 of the CRD IV on restrictions on distributions introduces the MDA, which represents the maximum amount available for payments of a credit institution (such as dividends, AT1 Coupon distributions etc.) and is activated when applicable requirements are not met. The current MDA rules, albeit essential, include overlapping triggers.

Essentially, credit institutions may be constrained by parallel requirements, such as the leverage ratio (Article 92 CRR) or the MREL (Article 45 BRRD), which can prevent them from using released buffers without breaching other regulatory minima.[183]

B. *External Drivers of Regulatory Complexity*

108 Regulatory complexity is not solely the product of internal dynamics of EU law-making. It is also shaped by external drivers that demand regulatory attention. The most significant of these are **international financial standards**, **technological innovation**, the integration of **environmental, social and governance** (ESG) considerations, the development of **data governance,** and a growing policy preference for onshoring financial activity and tightening conditions for **third-country market access**. These factors are often accused of placing an excessive burden on financial entities.

181 See Appeal Panel decision no. 4/2024.

182 See Pfeifer L., 'The new era of capital regulation complexity, *Journal of Central Banking Theory and Practice'* (2023), *ISSN 2336-9205, Sciendo, Warsaw, Volume 12/3*, pp. 179-197, https://doi.org/10.2478/jcbtp-2023-0030; and ESRB 'Report of the Analytical Task Force on the overlap between capital buffers and minimum requirements' (December 2021), https://www.esrb.europa.eu/pub/pdf/reports/esrb.ATFreport211217_capitalbuffers~a1d4725ab0.en.pdf.

183 Speech by de Galhau F.V., *op. cit.* See also Joosen B., Lamandini M. and Tröger T.H. (eds), *Capital and Liquidity Requirements for European Banks: CRRII and CRDV* (Oxford University Press 2022).

109 The following paragraphs do not assess the efficiency and urgency of those policy objectives. Rather, they **focus on the effects of their legislative design and practical implementation** – whose effectiveness is often subject to debate – particularly in relation to the actual benefits delivered and the extent to which these measures have exacerbated compliance complexity by amplifying its scope and intensity.

1. International Financial Standards

110 The international financial architecture is an **intricate and multifaceted system**. Shaped by decades of economic developments and the lessons learned from successive financial crises, the current international institutional framework governing the financial system consists of various intergovernmental or international fora, predominantly composed of NCAs, and a limited number of international organisations.

Box 21 – Institutions of public international financial law[184]		
Intergovernmental policy groups: G7, G10, G20	International fora: *BCBS* (banking regulation) *IOSCO* (capital markets regulation) *IAIS* (insurance regulation) *CPMI* (payment systems oversight) *CGFS* (market functioning) *IASB* (accounting standards) *Joint Forum* (supervision of financial conglomerated) *IFAC* (auditing standards) *FATF* (anti-money laundering and combatting of terrorist financing) *IADI* (deposit guarantee) *FSB* (specific areas e.g., financial resolution)	International organisations: *IMF* (financial stability and macroeconomic issues) *BIS* (international monetary cooperation) *World Bank* (economic development) *OECD* (corporate governance)

111 All these actors, as illustrated above, contribute – each within their respective field of expertise and mandate – to the formulation of **international financial standards**. These standards, although deprived of any formal legal, binding power, play a guiding and, in many cases, pivotal role in the establishment of hard law rules by the competent (national or supra-national) legislative authorities.

184 Gortsos Ch. V., *op. cit.* (Springer 2023), p. 132.

Box 22 – MREL and TLAC

MREL and Total Loss Absorbing Capacity (**TLAC**) constitute regulatory loss-absorbing capacity standards designed to ensure that institutions can be resolved in an orderly manner without recourse to public funds. TLAC, introduced by the FSB, constitutes a binding minimum requirement for Global Systemically Important Banks (**G-SIBs**) under the international standard endorsed by the G20. MREL, by contrast, is the EU-specific rule developed under the BRRD, applicable to all credit institutions regardless of systemic designation.

Despite converging objectives – ensuring resolvability and operationalisation of the bail-in tool, MREL and TLAC differ materially in calibration and scope. While TLAC prescribes fixed minimum thresholds (16% of RWA and 6% of the Basel III leverage ratio as of 2019), MREL is institution-specific, determined by resolution authorities in accordance with the preferred resolution strategy for each credit institution. Moreover, TLAC imposes a statutory subordination requirement (Article 92a CRR) that ensures structural subordination of eligible instruments, whereas MREL permits flexibility to reflect Member State insolvency hierarchies.

Even if TLAC is a common minimum, the coexistence of both standards introduces operational complexity, particularly for EU-based G-SIBs (global systemically important institutions, **G-SIIs**), which must simultaneously comply with both regimes – each with distinct denominators, eligibility criteria, subordination rules and disclosure/reporting timelines.[185]

112 The banking sector constitutes a prime example of the influence that international financial standards may have on the development of binding (hard) law. Namely, as discussed, the BCBS and the FSB have produced, respectively, "*the Basel III regulatory framework*" and the "*Key Attributes"*, which have immensely impacted the rules of prudential banking regulation and banking resolution worldwide and in the EU specifically. The influence of international standard-setters in EU banking law translates into a structural dynamic of **recurrent legislative adaptation**. Each new iteration of the Basel regulatory framework has required successive amendments to the CRD IV/CRR package, often incorporating highly technical prudential formulas directly into Level-1 legislation. The burgeoning complexity of global standards may reflect policymakers' attempts to find a gold standard that proves elusive, or the growing difficulty to achieve global consensus in an increasingly fragmented policy landscape.

113 This process, while indispensable for ensuring consistency with global prudential norms, has progressively transformed the EU's primary legislation into a living transposition instrument for international standards. The challenge, therefore, is not whether these standards should be implemented, but how to do so in a manner that safeguards coherence, stability, and legal certainty.

114 In addition, while international financial standards seek to promote coherence by providing valuable guidance for legislators worldwide, the large number of participating actors and the inherently non-binding nature of these standards make the framework considerably more complex, due to the **coexistence of multiple standard-setting** bodies with overlapping mandates. Similarly, the

185 Speech by de Galhau F. V., *op. cit.*

voluntary character of these standards means that jurisdictions **may adopt them selectively or interpret them differently**, resulting in uneven application across the global financial system. For the EU, this asymmetry translates into a structural tension between the pursuit of global consistency and the preservation of internal coherence. Thus, whereas global harmonisation is worth pursuing, policymakers should be aware of the compounded effect of complex global rules, plus complex implementation processes, and make their own efforts to simplify the processes.

Box 23 – Uneven adoption of the supplement to the Basel III regulatory regime

A striking example of the uneven implementation of international financial standards can be observed in the recent legislative developments surrounding the incorporation of the most recent supplement to the Basel III regulatory framework.[186] Although the Basel standards were designed to be introduced in a coordinated and simultaneous manner across jurisdictions, several jurisdictions (such as the United States and the United Kingdom) have opted not to (yet) apply the own funds requirements for market risks under the FRTB of the Basel framework. In response to this development, the European Commission, through its Delegated Regulation (EU) 2024/2795, enacted pursuant to Article 461a(2) CRR, deferred the application of the new market risk requirements introduced by CRR III[187] until 1 January 2026, allowing credit institutions to continue applying the pre-existing regime until then. The deferral was further extended to 1 January 2027 by virtue of Commission Delegated Regulation (EU) 2025/1496 of 12 June 2025. As expressly stated in recital (2) of the former Delegated Regulation:

> "*Given the highly competitive nature of international trading activities, the FRTB standards were adopted on the premise that their implementation across jurisdictions, both in terms of substance and timelines, would ensure an international level playing field for institutions' trading activities. The monitoring of the implementation of the FRTB standards in other BCBS member jurisdictions, and more specifically in those jurisdictions with a large number of internationally active credit institutions, has showed that, due to delays to the implementation of [these] standards in those jurisdictions, there is a significant risk of distortions to the international level playing field. It is therefore necessary to defer the application of [these] standards for the calculation of own funds requirements for market risk in the [EU] for one year.*"

This case illustrates how the voluntary and non-binding character of international financial standards enables individual jurisdictions to apply them at their own discretion, leading to a fragmented global regulatory landscape.[188]

2. Technological Innovation

115 Technological innovation is one of the key forces reshaping the way firms conduct business. In finance, it not only alters the range of products on offer but also transforms how institutions engage with their clients.

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186 On the evolution of the BCBS's regulatory framework since the adoption of the 1988 Basel Capital Accord and its impact on EU banking regulation, see Gortsos Ch. V., 'Historical Evolution of Bank Capital Requirements in the European Union', in Joosen B., Lamandini M. and Tröger T.H. (eds), *op. cit.* (2022), pp. 3-42.

187 Regulation (EU) 2024/1623 of the co-legislators of 31 May 2024, OJ L 2024/1623.

188 It is noted that, taking into account the above, on 6 November 2025 the Commission launched a targeted consultation on the application of the market risk prudential framework, which expired on 6 January 2026 (see at: https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-application-market-risk-prudential-framework_en).

116 Much of this development is positive: digital tools can broaden access, improve services, and ultimately lower the costs of doing business. Yet these changes do not come without risks. The impact of innovation can be understood in three main areas: *First*, it has transformed the range of **financial products** available, from payments to investments. *Second*, it has enabled more **integrated services** that combine functions once offered separately. *Third*, it has introduced new **risks**, particularly through the sheer speed with which financial transactions take place and reliance on third-party providers such as cloud computing and data service companies.

117 One of the clearest effects of technological innovation has been the emergence of new financial products. Digitalisation has broadened what institutions can offer, ranging from **electronic money** and **digital payments** to **crypto-assets**. Financial regulation, however, was largely written without these developments in mind.[189] Some innovations could not be accommodated within the existing regimes, which led to amendments of earlier legislation and, at times, the creation of entirely new acts. A case in point is that of 'tokenised bank deposits', i.e., traditional demand deposits represented and transferred on distributed ledger technology while remaining claims on a credit institution. Their legal qualification is unsettled: characterised as EMTs, they would fall under MiCAR; regarded as mere technological representations of conventional deposits, they would remain subject exclusively to EU banking law.[190] This uncertainty is compounded by divergent national approaches and the absence of EU-level guidance, leaving credit institutions to navigate potentially inconsistent regulatory expectations – an example of how technological innovation can expose and exacerbate the boundary problems inherent in sector-based financial regulation.

118 Beyond new products, services themselves are also changing. Digitalisation has given rise to **integrated providers** that no longer fit neatly into the classical categories of credit institutions, investment or insurance firms. Instead, they combine activities that were once separated, offering payments, lending,

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189 See Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG), 'Final Report of the European Commission, 30 Recommendations on Regulation, Innovation and Finance' (2019), p. 50 ("fundamental notions such as 'account', 'client', 'customer' need clarification as they are based on a 'bilateral view' of relationships which cannot be applied smoothly in the context of a DLT network"), https://finance.ec.europa.eu/publications/final-report-expert-group-regulatory-obstacles-financial-innovation-30-recommendations-regulation_en; further see Veil R., 'Blockchain and the Future of Financial Markets' in Binder J-H. and Saguato P. (eds), *Financial Market Infrastructures* (Oxford University Press 2021) para 5.01; Van de Velde S. *et al.*, 'Euroclear's digital financial market infrastructure' (2024) *Capital Markets Law Journal* pp. 113, 115.

190 On the legal qualification of tokenised deposits and the tension between MiCAR and EU banking law, see Zatti F., 'Navigating technological neutrality: the challenge of tokenised bank deposits and the regulatory framework of MiCAR' in Paracampo M.T. (ed), *Beyond MiCA: An overview of developments on crypto-assets* (Giappichelli 2025), pp. 83-104. See also EBA, 'Report on tokenised deposits' (December 2024), https://www.eba.europa.eu/publications-and-media/press-releases/eba-assesses-potential-benefits-and-challenges-tokenised-deposits.

investment advice and even insurance through a single platform. These models reflect a more 'modern way' of doing business, but they also blur the boundaries on which existing regulation and supervision are based. They also raise new complex issues as to data governance and digital platforms, where the traditional boundaries between finance and real economy tend to blur. For regulators, this creates problems of classification and oversight, since the applicable regime often depends on which category an activity is placed in.

119 **Operational risks** have grown in parallel. As the financial industry moves further online, core functions increasingly depend on ICT systems and external providers. Payments, trading, settlement and even basic account management now rely on digital infrastructures that are deeply interconnected across firms. This reliance has made the entire sector more exposed to cyber threats and other digital risks. For institutions, the challenge is not only to ensure the resilience of their own systems but also to manage risks that originate beyond their immediate control, especially at critical third-party providers.[191] Regulators have sought to respond by introducing common standards and oversight, most prominently through the Digital Operational Resilience Act (**DORA**).[192] Yet while such measures aim to strengthen stability, they also multiply compliance obligations and contribute to the growing complexity of the legal regime.

Box 24 – "Systemic risk" and digital finance

Article 3, point (65) of the AI Act defines "systemic risk" as "a risk that is specific to the high-impact capabilities of general-purpose AI models, having a significant impact on the Union market due to their reach, or due to actual or reasonably foreseeable negative effects on public health, safety, public security, fundamental rights, or the society as a whole, that can be propagated at scale across the value chain". The AI Act's approach to systemic risk posed by general-purpose AI (**GPAI**) models/systems is broad and societal, grounded in the potential of AI to amplify risks through automation, decision-making opacity, and the rapid scalability of AI models. However, it remains partially disconnected from financial-sector systemic risk regimes, despite AI's increasing role in the financial sector.

In contrast to the AI Act, prudential regulation adopts a narrower, and finance-oriented definition of systemic risk. Accordingly, Article 3(1)(10) CRD IV, as replicated by Article 3(30) IFD, define "systemic risk" as "*a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy*". This definition is firmly anchored in prudential risk management, reflecting concerns about financial contagion, liquidity crises, and systemic failures of firms.

A similar conceptualisation appears in Regulation (EU) No 1092/2010, establishing the ESRB, where systemic risk is defined as a "*a risk of disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree*", pursuant to its Article 2(c). Unlike the AI Act, financial-sector definitions do not extend systemic risk considerations to digital technologies, fundamental rights, or societal well-being. Instead, they focus primarily on financial contagion risks and economic stability. While it

191 See, e.g., the ESMA Guidelines on outsourcing to cloud service providers (ESMA 50-164-4285).

192 Regulation (EU) 2022/2554 of the co-legislators of 14 December 2022 on digital operational resilience for the financial sector, [2022] OJ L 333/1.

could be argued that AI-driven systemic risk is already covered by existing macroprudential disciplines, the ESRB has acknowledged that technology-driven financial systemic risk (or "systemic cyber risk") creates threats that "require further work by macroprudential authorities".[193]

Another legal qualification of the term "systemic risk" emerges in Article 34 of the so-called Digital Services Act (**DSA**),[194] whose content refers to the dissemination of illegal content, actual or foreseeable negative effects for the exercise of fundamental human rights, civic discourse, electoral processes, public security, gender-based violence, public health, among others. Unlike the financial sector's macroprudential definition or the AI Act's technological focus, the DSA's systemic risk rules targets online platforms and social media ecosystems, reflecting concerns about the role of digital services in spreading disinformation, undermining democracy, and harming societal structures. This widespread misalignment in the taxonomy raises critical regulatory challenges. The AI Act and DSA both address technology-driven systemic risks, yet they do so from different vantage points – one focused on AI's transformative impact on markets and governance, the other on the destabilisation of information flows and digital platforms. Neither, however, is fully aligned with financial stability considerations, despite increasing interactions between financial markets and AI systems. Yet another example can be found in Directive 2022/2555 (**NIS2**),[195] which, in the context of establishing a unified legal regime to uphold cybersecurity on a cross-sectoral basis, makes reference to "significant systemic risk" without qualifying or defining the term.[196]

In view of these inconsistencies, DORA does not even refer to "AI" or "AI systems", although it is perhaps the main existing regulatory tool to directly address "systemic risks"[197] arising from ICT-related events. This overarching objective is made clear in recital (79) of the Regulation, which states that:

> "*Cyber incidents have a distinctive ability to multiply and propagate throughout the financial system at a considerably faster pace than other types of risk monitored in the financial sector and can extend across sectors and beyond geographical borders. They have the potential to evolve into a systemic crisis, where trust in the financial system has been eroded due to the disruption of functions supporting the real economy, or to substantial financial losses, reaching a level which the financial system is unable to withstand, or which requires the deployment of heavy shock absorption measures. To prevent these scenarios from taking place and thereby endangering the financial stability and integrity of the Union, it is essential to provide the convergence of supervisory practices relating to ICT third-party risk in finance, in particular through new rules enabling the Union oversight of critical ICT third-party service providers.*"

Inconsistencies in classification – notably, the absence of any mention to AI in the DORA – and, more broadly, the lack of a harmonised definition between, *inter alia,* the AI Act, prudential financial sector legislation and DORA, creates gaps in the cross-sectoral taxonomy, undermining horizontal coordination and exposing EU financial stability to significant risks arising from AI-driven systems not adequately covered under existing laws.

120 The regulatory response to technological innovation thus faces a persistent dilemma. On the one hand, digitalisation creates opportunities for **more efficient products and services**, but on the other, it generates **new risks and regulatory blind spots**. Supervisors often struggle to keep pace with rapid

193 ESRB, *'Systemic Cyber Risk'* (ESRB Report, February 2020).

194 Regulation (EU) 2022/2065 of the co-legislators of 19 October 2022 on a Single Market For Digital Services, [2022] OJ L 277/1.

195 Directive (EU) 2022/2555 of the co-legislators of 14 December 2022 on measures for a high common level of cybersecurity across the Union, [2022] OJ L 333/80.

196 Article 2(2)(d) NIS2.

197 See, *inter alia*, recital (31) DORA.

technological change, to classify novel activities with precision, and to decide whether to adapt old regimes or design entirely new ones. Innovation, in this sense, is not only a driver of progress but also of regulatory complexity.

3. Integrating Non-Financial Objectives

121 Financial regulation has traditionally focused on three core objectives: financial stability, protection of depositors, investors and policyholders, and market integrity. In recent years, however, legislators have expanded its scope to include **non-financial objectives**, most prominently environmental, social and governance (**ESG**) considerations. By loading financial regulation with these broader societal aims, legislators have added yet another layer of obligations that heighten compliance costs and complicate oversight.

122 ESG considerations in financial regulation aim to align sustainability goals with finance, reflecting both the financial materiality of investing in environmentally friendly activities and the urgency of supporting more sustainable strategies. The significance of **environmental risk** is evident in the integration of ESG factors into a wide range of initiatives, including the Sustainable Finance Disclosure Regulation (**SFDR**),[198] the Taxonomy Regulation,[199] the Corporate Sustainability Reporting Directive (**CSRD**),[200] and the Corporate Sustainability Due Diligence Directive (**CS3D**).[201]

123 Their relevance has also been recognised in **prudential regulation**, particularly for credit institutions, through new provisions on risk exposure and corporate governance introduced by the CRR III and the CRD VI. While these measures seek to promote a smoother green transition,[202] and adequately measure climate and other sustainability-related risks, they have been adopted without clear planning, or adequate consideration about the interplay between these rules and with other rules.

124 A first source of complexity lies in several layers of **data and disclosure obligations**. Regulated firms must collect and report ESG-specific information under multiple regimes (e.g., the Taxonomy Regulation, SFDR and CSRD). This proliferation of requirements strains financial entities' compliance departments and creates problems of interoperability, particularly where

[198] Regulation (EU) 2019/2088 of the co-legislators of 27 November 2019 on sustainability-related disclosures in the financial services sector", [2019] OJ L 317/1.

[199] Regulation (EU) 2020/852 of the co-legislators on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088, [2020] OJ L 198/13.

[200] Directive (EU) 2022/2464 of the co-legislators of 14 December 2022 amending [*inter alia*] Directive 2013/34/EU, as regards corporate sustainability reporting, [2022] OJ L 322/15. Under this legislative act, sustainability reporting was harmonised and standardised.

[201] Directive (EU) 2024/1760 of the co-legislators of 13 June 2024, OJ L, 2024/1760, as in force.

[202] Legally required under the EU Climate Law (Regulation (EU) 2021/1119 of the co-legislators of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999) OJ L 243/1).

thresholds, models and metrics diverge. A clearer set of data points and reporting requirements is important to insist on the quality of the data produced. Inconsistencies and duplications should not create the misunderstanding that such data are not needed in the first place.

Box 25 – Sustainable finance disclosure overlaps and fragmentation

The parallel application of several EU regimes, most notably the SFDR, the CSRD, and the Taxonomy Regulation has resulted in disclosure requirements that are interconnected but not fully aligned.[203] By way of example, a company reporting climate-related greenhouse gases emissions under the CSRD will use the data to demonstrate taxonomy alignment for SFDR disclosures. Another example lies in CSRD's European Sustainability Reporting Standards No. 1-4 which require companies to disclose extensive information on their workforce, value chain workers, affected communities, and consumers. This corresponds to Taxonomy Regulation's Article 18 safeguards concerning labour and human rights protections.[204]

Further, the Taxonomy Regulation (Article 8) requires companies subject to the Accounting Directive,[205] as in force after its most recent amendment by the (just above-mentioned) CSRD (Articles 19a/29a) to include the proportion of turnover, capital expenditure (**CapEx**) and operating expenditure (**OpEx**) aligned with environmentally sustainable activities. These disclosures must be included in the company's sustainability statement under the Accounting Directive as amended by the CSRD. The precise methodology and templates for these Key Performance Indicators (**KPIs)** are set out in the Taxonomy Disclosures Delegated Act.[206]

While each instrument pursues a related policy objective, the divergences in scope, terminology, and methodology force companies to prepare multiple reports that are overlapping but not completely compatible. In particular, the SFDR targets financial market participants and financial advisers, CSRD targets large private and listed companies, listed SMEs, and certain non-EU companies with substantial EU operations, while Taxonomy disclosures cover large EU companies subject to sustainability reporting and financial market participants offering products in the EU.

A recent study on reporting obligations underscores that the CSRD, the CS3D and the Taxonomy Regulation serve different functions, which would justify considering reporting obligations as not legally duplicative but complementary.[207]

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203 For an overview of these topics, see, *ex multis*, various contributions in Busch D., Ferrarini G., and Grünewald S. (eds), *Sustainable Finance in Europe – Corporate Governance, Financial Stability and Financial Markets* (second edition, Palgrave MacMillan 2024); Alexander K., Gargantini M. and Siri M., *The Cambridge Handbook of EU Sustainable Finance: Regulation, Supervision and Governance* (Cambridge University Press 2025).

204 Marcus J. S. and Thomadakis A., *Reporting Obligations* (European Parliament, 13 June 2025) IUST_STU(2025)773027, p. 31.

205 Directive 2013/34/EU of the co-legislators of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (…), [2013] OJ L 182/19, as in force.

206 Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the co-legislators by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation, [2021] OJ L 443/3.

207 Marcus J. S. and Thomadakis A., *op. cit.* (2025).

Nonetheless, a more integrated and interoperable approach should be pursued in order to avoid 'information overload',[208] as recently proposed by the Commission in the SFDR review.[209]

125 A second challenge is **classification**. What qualifies as a "sustainable activity" or "sustainable investment" can mean different things across norms and sectors. Technical screening criteria and the extensive use of delegated acts further complicate implementation, increasing uncertainty and compliance costs.

Box 26 – Fragmented definitions and concepts in sustainable finance

A substantial source of complexity in EU sustainability reporting arises from divergent definitions of key concepts across the SFDR, the Taxonomy Regulation and the CSRD, leading to classification challenges for companies and financial market participants. In fact, each regime defines sustainability in different terms – "Principal Adverse Impact (**PAI**) indicators" under SFDR, "Impacts, Risks, and Opportunities" (**IROs**) under the CSRD, and "Do No Significant Harm (**DNSH**) minimum safeguards" under the Taxonomy Regulation. For instance, Article 2(17) SFDR defines a sustainable investment as an

> "*investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance*".[210]

The Taxonomy Regulation establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable as well. These criteria focus on substantial contributions to environmental objectives, avoidance of significant harm to other objectives, and compliance with minimum safeguards. In contrast, the CSRD does not offer a formal definition of sustainable investment. Instead, it mandates that companies disclose information regarding sustainability impacts and risks.

The DNSH principle, featured in the SFDR, the Taxonomy Regulation, and the Benchmark Regulation, exemplifies a key cornerstone of sustainable finance. Yet, despite its central role, the principle remains vague and subject to different interpretations. The result is a hodgepodge of technical terms and concepts that are not aligned, leading to a duplication of obligations and lack of clarity for a regime that should be as accessible as possible also to retail investors.

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208 *Ibid*.

209 European Commission, 'Commission simplifies transparency rules for sustainable financial products', https://finance.ec.europa.eu/publications/commission-simplifies-transparency-rules-sustainable-financial-products_en.

210 Please note that the Commission has proposed the deletion of Article 2(17) SFDR in the context of the amendments to the SFDR regime, as discussed.

4. Data Governance

126 In addition to the factors already discussed, data governance has emerged as a major external driver of regulatory complexity for the financial sector. Due to financial firms' inherent **heavy reliance on data** for the performance of core functions and provision of client services, they are subject to an additional set of rules: both sector-specific (such as banking secrecy and confidentiality obligations) and horizontally applicable across industries (most notably the General Data Protection Regulation – GDPR).[211] The GDPR's entry into force in 2016 marked a turning point, adding personal data protection obligations to an already dense body of financial regulation.

127 Since then, the EU – within the broader regime of its Digital Decade initiative – has broadened its digital agenda with more instruments, introducing the Data Act, the Data Governance Act, the DORA, the Artificial Intelligence Act (**AI Act**), and the Proposal for the Financial Data Access Regulation (**FIDAR**). While these legislative acts pursue distinct objectives, they collectively aim to establish a robust, secure and rights-compliant data rules. For financial firms, however, they create additional layers of obligations, particularly in the areas of transparency, accountability and security.

Box 27 – Financial rules and the GDPR

This expansion of data-related statutes has two main consequences:

First, obligations under different data-related acts often overlap. In particular, under the GDPR, financial firms must maintain a Record of Processing Activities (**RoPA**), while the AI Act requires registries of AI systems, datasets and outputs. Resilience and cybersecurity regulations add further record-keeping and reporting duties. Such duplication – and at times triplication – of compliance tasks compounds the already heavy regulatory burden on the sector.

Second, financial firms face especially stringent sectoral requirements, such as conducting Fundamental Rights Impact Assessments (**FRIAs**) under the AI Act when using AI for creditworthiness, or applying enhanced GDPR safeguards when handling special categories of data (e.g., insurance undertakings processing health data for premium calculation).

128 Against this background, the European Commission has acknowledged concerns about the cumulative and overlapping nature of EU digital regulation and announced a 'Digital Omnibus' initiative aimed at streamlining and rationalising existing data-related obligations. In November 2025, the European Commission published its Digital Omnibus package, formally proposing amendments to the GDPR, the AI Act, the Data Act, and related digital

[211] In this context, an additional element that needs to be considered in the course of simplification are the dispersed and varied professional secrecy rules across financial sector supervisors, with a likely impact on double reporting, and lack of consistency on post-supervision/resolution transparency and accountability. See Smits, R. and Badenhoop, N., 'Towards a Single Standard of Professional Secrecy for Financial Sector Supervisory Authorities: A Reform Proposal' (2019) *44(3) European Law Review 295-318*, https://ssrn.com/abstract=3346946.

legislation, with the aim to simplify and harmonise streamlines rules on artificial intelligence (AI), cybersecurity and data.[212]

129 In conclusion, the data governance regulatory regime is complex in its own right, adding to the already **heavy burden of financial regulation**. Its obligations display a significant degree of duplication, unnecessarily hindering the operational efficiency of financial firms and disproportionately diverting them from their core functions.

5. Third-country market access and regulatory isolation

130 Beyond sustainability and other non-financial aims, an additional policy-driven objective has quietly gained prominence in recent years: the **onshoring of financial activity** into the Union. Rather than merely ensuring that third-country firms meet equivalent prudential and conduct standards, EU legislation increasingly pursues a broader strategic goal – encouraging foreign institutions to establish a substantive presence within the EU, and thereby relocate business, staff and balance sheets onto its territory.

131 This orientation is particularly visible in the Union's relations with neighbouring financial centres such as Switzerland and the United Kingdom. The traditional mechanism for managing cross-border access – regulatory '**equivalence**'[213] – has been used sparingly, is absent from some recent frameworks (for instance, MiCAR[214] or EMIR 3.0[215]), and has not yet been fully operationalised in others (such as the regime under Articles 46-49 MiFIR).[216] In practice, third-country firms often face a choice between accepting **double regulation** and significant organisational costs or withdrawing from the EU altogether. From their perspective, EU rules are frequently perceived as excessively bureaucratic, encouraging them to stay outside the Union market rather than engage with it. This is yet another driver of regulatory burden.

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212 European Commission, 'Digital package – simplifying EU digital rules', https://digital-strategy.ec.europa.eu/en/policies/digital-package; European Commission, 'Digital Omnibus Regulation Proposal', https://digital-strategy.ec.europa.eu/en/library/digital-omnibus-regulation-proposal.

213 On equivalence, see generally Schürger J., *Equivalence and Substituted Compliance in Financial Markets Law* (OUP 2023).

214 The U.S. counterpart – the GENIUS Act – instead, contains a provision on equivalence (see Sec. 18(b) GENIUS Act). More generally, refer to Bartylla B., 'Ausländische Emittenten unter dem GENIUS Act' (2025) *Recht Digital* 605; Lehmann M., 'MiCAR – Gold Standard or Regulator Poison for the Crypto Industry? (2024) 61(3) *CMLR* 699, pp. 720–723.

215 After Brexit, the United Kingdom retained a regulatory framework for financial services that was, in most core areas, substantively aligned with those of the EU. Nevertheless, no equivalence decision was adopted by the EU for key regimes such as MiFID II/MiFIR, notwithstanding this close alignment.

216 See Art 7a Regulation (EU) 2024/2987 of the co-legislators of 27 November 2024 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets, [2024] OJ L 2987; further, see Lehmann M., 'CCP supervision after Brexit: from extraterritoriality to a model of shared control' (2022) 18(1) *CMLJ* 5.

132 In light of this, onshoring can be seen as a non-financial, policy-driven objective that tends towards an isolationist stance. It seeks to attract business 'here' rather than facilitate **two-way integration** with other well-regulated jurisdictions. While such a strategy may strengthen the domestic market in some respects, it also risks narrowing the range of providers and investment opportunities available to EU investors and limiting the Union's ability to tap global pools of capital.

III. Clarifying the Concept of Simplification

A. The Need for Simplification and Codification

133 In light of the above analysis, considering the multifaceted dimensions of regulatory complexity, **simplification** emerges **as a necessary step** towards building a more effective and efficient regulatory legal system – one that preserves the high level of resilience achieved by the current rules while reducing unnecessary burdens. Such an exercise requires that the existing substantive safeguards shall not be dismantled; rather, it requires preserving the core objectives and protective functions of existing obligations, while ensuring the utmost respect to consistency and the formal divisions of legal sources.

134 To achieve this, the **balance between principle-based and rule-based** regulation must be revisited. The current high degree of complexity reflects an implicit tendency among policymakers to overregulate, addressing almost every conceivable scenario in banking and finance through highly prescriptive and granular provisions. This tendency is particularly visible in the heavy layering of Level 2 rules which, although intended to provide clarity, often result in regulatory inflation.

135 A more proportionate approach could be achieved if Level 1 legislation refrained from adopting excessively detailed and elaborate provisions and instead became **more principles-oriented**. Principles, when duly and precisely enshrined in legislation, may operate with a broader scope of application, thereby enabling greater flexibility, adaptability to technological and market innovations, and enhanced regulatory efficiency. Such a **recalibration** of the nature and formulation of regulatory obligations would not only reduce the cumulative compliance burden but would also promote the development of a regulation more capable of responding effectively to emerging risks and evolving market conditions, without necessitating frequent and extensive legislative overhauls.

136 Notwithstanding the above, principle-based legislation and limited granularity could, on the other hand, give rise to the **undesired effect of stimulating fragmentation** among Member States. Indeed, long and detailed texts have been used as a legislative technique also to reduce the discretion of national legislators and to reduce divergence in approaches across the Union. A balance, therefore, must be found, in order to avoid that simplification leads to the undermining of uniformity and legal certainty.

137 In this regard, simplification should be accompanied by a proper **codification** of EU financial law. While the former aims at reducing administrative burdens, removing duplications, updating obsolete rules, and rewriting provisions in plainer language through substantive policy choices, the latter consists of a

structural reform, with the objective of consolidating scattered legislation into single, coherent text without changing substantive law. Both of such exercises go hand-in-hand and are essential to move forward. When rules are well-crafted, coherent and consistent, the margin for ambiguities diminishes considerably, and the effectiveness of the system increases.

138 Codification would also provide an opportunity to change the drafting style (which has been influenced by Common law law-making practices and is quite different from the traditional drafting style in (some at least) Member States), and confront some of the problems, such as inconsistent concepts and definitions, duplications and overlaps, and endless cross-references, forcing legislators to acknowledge whether they are a matter of necessity or (as here suspected) the byproduct of an unsystematic and excessively hurried process.

B. Past Approaches: Deregulation, Principles-based Regulation and Smart Regulation

139 The present case for simplification diverges from **earlier regulatory strategies**, even though it should learn from their insights and shortcomings. What follows does not propose a restoration of the policy stances that animated the last four decades – deregulation, principles-based regulation, self- or co-regulation, meta- or 'smart' regulation.[217] The context has shifted decisively: the depth of market integration, the multiplication of public objectives, and the sheer volume and stratification of EU financial law create issues that are unprecedented.

140 The late-twentieth-century **deregulatory and liberalisation** turn accompanied the construction of the internal market. Lawmakers eased entry and activity constraints, privileged mutual recognition and home/host allocation, and relied more heavily on competition and information flows to discipline conduct. In legal technique, this meant legislation facilitating cross-border provision and a lighter reliance on *ex-ante* prohibitions, with greater room for standard-setting outside primary law. More specifically, the deregulation efforts in the 1980s and 90s had the clear objective of allowing the four freedoms enshrined in the Treaties to become effective in the financial sector. In practice, this primarily involved removing the obstacles for the single passport to operate within the Union. In this sense, that paradigm served the integration and competitiveness objectives of its time and not the contemporary pathologies of layering, taxonomic divergence, or institutional proliferation at the core of the current debate.

141 In the late 1990s and early 2000s, **principles-based regulation** sought to steer behaviour via open-textured standards backed by supervisory judgment rather

[217] On this aspect in the current context, see Koenig, E., *op. cit.*, p. 5.

than exhaustive prescriptions. In EU terms, it sat comfortably with a Lamfalussy logic of principle-heavy Level 1 and technical specification at Levels 2-3. However, the GFC precipitated a regulatory reset, which rendered a purely principle-based regulatory design practically unfeasible.

142 Between roughly 2008 and 2014, the Union adopted **dense prudential and market regimes** and strengthened the supervisory architecture. The legal order moved from permissive liberalisation to risk containment, macro-prudential oversight and enhanced conduct rules. For present purposes, two effects are salient: the stock of norms expanded markedly across Level-1 legislative acts and their Level-2 delegated and implementing acts under Articles 290-291 TFEU, and those layers were superimposed on earlier rules rather than replacing them. The result was not only more law, but more cross-referencing, greater definitional tension across regimes, and increased volatility of the applicable corpus.

143 The subsequent **Better Regulation and 'smart regulation' agenda** professionalised the legislative process. Impact assessments, proportionality analysis, stakeholder consultation, *ex-post* evaluation and a more systematic use of delegated and implementing acts improved transparency and the evidentiary basis of intervention. Yet procedurally exemplary acts may still accumulate in overlapping layers that rest on divergent taxonomies across different sectors.

144 Read chronologically, these phases are not errors to be repudiated but historically conditioned responses to **distinct regulatory problems**. First integration and competitiveness, then technical detail and adaptability, later systemic resilience, and finally procedural quality. Together they yield the contemporary condition of structural incoherence – fragmentation, layering, and taxonomic dissonance across regimes and levels. Against that backdrop, 'simplification' is used here in an exacting, architectural sense. It is not a return to deregulatory minimalism, a delegation of norm production to private ordering (i.e., self-regulation), or reliance on procedural filters alone. It denotes a project of rationalisation: restoring a legible hierarchy of sources; stabilising definitions and taxonomies across sectors; cabining the normative effects of soft law to their proper place; and imposing legislative discipline and *ex-post* coherence checks so that future norms can be absorbed without reproducing the very complexity the Union now seeks to reduce.

C. *Conceptualising Simplification*

145 Considering the foregoing analysis, the present section seeks to outline a basic **concept of simplification** that can be applied in the current debate. It begins with the negative, ruling out common misunderstandings and explaining what simplification is not (under III.C.1.), before turning to what it should be (III.C.2.).

1. What simplification is not

146 *First*, simplification is **not about removing key policy objectives (safeguards)**, nor removing outright existing regulatory provisions.[218] Financial regulation exists for specific reasons (which, in principle, should be linked to market failures): it protects the stability of the system, safeguards consumers, investors and insurance holders, and maintains trust in financial markets.[219] These objectives cannot be compromised in the name of making rules shorter or easier to read. This applies in particular to financial stability since the lessons from the GFC should not be (easily) forgotten and the probability of a new system-wide crisis cannot be ruled out. A simplified rulebook must thus still uphold regulatory standards and protections where deemed necessary.[220]

147 *Second*, simplification must **serve the public interest** and protect the integrity of the financial system as a whole. Input from the financial sector is important – since rules must be workable, but the process should not be driven by narrow commercial interests,[221] nor *simply* serve easing compliance burdens for market participants.

148 *Third*, simplification is **no privatisation of rule-making**. While self-regulation and industry codes can play a useful supporting role,[222] they should not entail

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218 This Report concurs with Claudia Buch 'Simplification without Deregulation' *op. cit.* p. 1 ("Simplification means maintaining resilience with a more effective and efficient supervisory and regulatory framework; deregulation means weakening regulation and supervision at the expense of resilience"). See also Lastra R. M. and D'Alvia D., 'Simplification, not deregulation: reframing financial regulation in the UK and the EU' (2026) *40(1) Butterworths Journal of International Banking and Financial Law*, pp. 47-53. On the distinction between 'simplification', 'deregulation', and 'codification', see Annunziata, F., EU Capital Markets Law And The Claim For "Simplification". Suggestions For A Possible Legal Methodology (October 23, 2025), *Bocconi Legal Studies Research Paper No. 5646870*, https://ssrn.com/abstract=5646870 (to be published in ECFR (2026)).

219 In some jurisdictions, but not under EU law, the competitiveness of the financial system is an additional rational for regulation.

220 See, e.g., Joint letter from Banco de España, Deutsche Bundesbank, Banca d'Italia and Banque de France to European Commissioner Maria L. Albuquerque (5 February 2025) (emphasising that simplification should not be an educated way to deregulation), https://www.banque-france.fr/en/news/joint-letter-banque-de-france-bundesbank-banca-ditalia-and-banco-de-espana-european-commissioner; see further European Banking Federation, *op. cit.*, p. 4 ("The EBF does not advocate for deregulation. We call for a more effective and coherent framework that upholds key policy objectives such as financial stability and consumer protection, while fostering growth and competitiveness"); and Cannata F. and Serafini L., 'A pragmatic approach to simplification: the case of banking regulation in the EU' (2025), *Banca D'Italia Questioni di Economia e Finanza No. 955*, p. 5 ("how to simplify without deregulating; in other words, how to preserve the effectiveness of the current framework").

221 For a similar point, see again the Joint letter from Banco de España, Deutsche Bundesbank, Banca d'Italia and Banque de France to European Commissioner Maria L. Albuquerque (5 February 2025), *op. cit*.

222 An example is Article 7(3) of the Federal Act on the Swiss Financial Market Supervisory Authority (**FINMA**) of 22 June 2007 (status as of 1 April 2025); for a comprehensive account of self-regulation in the financial industry, see Gadinis S. and Jackson H. E., 'Markets as Regulators: A Survey' (2007) *80 Southern California Law Review*, p. 1239.

outsourcing core regulatory decision-making. Essential rules that protect users, market integrity and the stability of the financial system must remain the responsibility of public authorities. Delegating these decisions to private actors risks undermining accountability and regulatory consistency.

149 *Fourth*, simplification is **no substance change by stealth**. Simplification should not be used as a hidden vehicle to introduce new policy aims or alter the objectives of regulatory regimes. Any substantive change to the purpose or scope of financial regulation should be made openly, through proper consultative and legislative processes. Recasting rules for clarity or coherence must not hide a shift in regulatory priorities.

150 *Fifth*, simplification is also **not a one-time clean-up**. Regulation evolves alongside markets and products, meaning that complexity will inevitably re-emerge. A single review or redrafting exercise, however thorough, cannot guarantee lasting clarity. Nonetheless, simplifying should aim towards higher resilience of legal sources to changes, thereby avoiding successive reforms.

151 *Sixth*, simplification is **not a purely 'cosmetic' change**. Adjusting fonts or layouts may make regulation look more approachable, but such measures do little to resolve the underlying complexity. Genuine simplification requires a **rethinking of structure, language and coherence** so that rules are easier to understand and apply. A presentational overhaul without substantive improvement risks creating the illusion of progress while leaving core problems untouched.

152 *Finally*, simplification is **not about uniformity at all costs**. Consistency of structure and terminology can improve clarity, but a rigid, one-size-fits-all approach risks erasing important nuances and ignoring the distinct needs of different sectors and of firms of varying sizes. Banking, capital markets and insurance each face particular risks and require tailored approaches. The objective is to remove unnecessary divergence, not to impose artificial sameness where differentiation is justified.

2. What simplification should be

153 **Clarity, comprehensibility and accessibility** are central to genuine simplification. Financial regulation is drafted and read mostly by specialists, yet even experts can find themselves lost in dense and overly technical language. Legal clarity demands precision, but precision need not come at the cost of readability. Plain-language drafting, when done carefully, can make obligations transparent without diluting their legal force. A rule that is hard to understand is also hard to apply; further, it can also end up undermining the very objectives it was meant to achieve. Introducing a mandatory review of draft legislation for linguistic clarity and comprehensibility by dedicated linguistic specialists could

help ensure that complex rules remain accessible without sacrificing accuracy.[223]

154 **Clarity is also a matter of structure**. Too often, legislation begins with exceptions and qualifications before stating the basic rule.[224] This forces the reader to work backwards. Presenting the core rule first, followed by its conditions and exceptions, creates a more intuitive reading. The same logic applies to the organisation of entire regulatory acts: the path through the regulation should be intuitive and predictable, allowing readers to follow it without constant cross-referencing.

155 **Visualisation can further enhance accessibility**. Many provisions in financial law require a process of classification – determining whether a product, activity or entity falls within a given category – and such determinations can involve long chains of conditional reasoning. Decision trees, flowcharts and other visual aids can turn a complex set of tests into a clear, step-by-step process. The ESAs have begun to use such tools in their guidance,[225] and this is a welcome development. Done well, such visuals can complement the legal text and make it more accessible without compromising legal precision. Ideally, this process could be taken one step further, by providing a digital codification of EU financial law that is easily accessible and completely up to date. This would allow a classification of norms by theme or topic.

156 **Codification and removal** are equally important aspects of effective simplification.[226] Repealing obsolete rules, guided by **a careful cost-benefit analysis**, can lighten the load without losing essential safeguards. Similarly, consolidation offers a further means of improving efficiency.[227] Where acts

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223 The EU could take inspiration from Switzerland, where the Federal Chancellery reviews all draft federal legislation through an Internal Drafting Committee of legal and linguistic experts to ensure texts are clear, consistent, and accurate. See Federal Chancellery Homepage, https://www.bk.admin.ch/bk/de/home/regierungsunterstuetzung/rechtsetzungsbegleitung/gesetzesredaktion.html.

224 See, e.g., Article 24(4) and (7)-(9) MiFID II, where the main prohibition on inducements appears only after a series of exceptions and conditions, forcing the reader to piece together the basic rule from its qualifications.

225 Very useful examples can be found, e.g., in the EBA, EIOPA and ESMA 'Joint Guidelines on templates for explanations and opinions, and the standardised test for the classification of crypto-assets, under Article 97(1) of Regulation (EU) 2023/1114' (2024) JC 2024 28, p. 30; ESMA, 'Supervisory briefing on understanding the definition of advice under MiFID II' (2023) ESMA35-43-3861, p. 9; and EIOPA, 'Final Report on Public Consultation No. 14/036' (2014) EIOPA-BoS-14/173, pp. 44-45.

226 This report acknowledges the recent efforts of the EU Commission to streamline legislation through the Omnibus proposals. The measures are estimated to reduce administrative burdens by at least 25% overall and by 35% for SMEs. Comparable initiatives should be explored across all areas of financial regulation. See EU Commission Work Programme 2025, 'Moving forward together: A Bolder, Simpler, Faster Union', COM(2025) 45 final, p. 2.

227 Take the following two examples for illustration: *First*, the Prospectus Regulation and the PRIIPs Regulation both aim to enhance investor disclosure yet operate through distinct mechanisms, requiring issuers subject to both to produce a prospectus summary and a KID, leading to duplication. *Second*, overlaps between the MiCAR and the PSD II mean that certain CASPs engaged in payment activities may face parallel authorisation and conduct requirements under both regimes.

share substantially similar purposes and content, merging them into a single instrument can eliminate duplication and provide a clearer and more coherent point of reference.

157 **Regulatory fitness checks** serve the same goal.[228] Rules that were once essential may lose their relevance as markets develop and supervisory practices evolve. 'Sunset clauses' – i.e., provisions that require periodic review before renewal – provide a structured opportunity to test whether a rule remains fit for purpose. By embedding such reviews into the legislative process, policymakers can keep the regime up to date without waiting for problems to accumulate.[229] Crucially, these exercises should be based on verifiable quantitative and qualitative evidence, including – in particular – a reassessment of costs and benefits in light of actual implementation experience, so that decisions to renew, amend or repeal rules rest on demonstrable regulatory performance rather than on assumptions.

158 In this light, simplification aligns well with what is often described as **"targeted deregulation"**.[230] It does not imply a wholesale dismantling of the regulatory framework, but may justify a calibrated relaxation of specific elements of **substantive rules** where this is supported by robust evidence and a sound risk-sensitive analysis – particularly when it comes to prudential rules – and where key policy objectives, above all financial stability, are not compromised.[231] The task of legislators and regulators is not to remove risk altogether – which would also remove return and, in practice, require prohibiting large parts of financial activity – but to channel risk in a responsible way, while also preventing the occurrence of negative externalities in the financial system (and mitigate market

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228 A similar proposal was made by the EU Commission in its recent Work Programme 2025, 2 ("It also includes an annual plan of evaluations and fitness checks to ensure continuity of the simplification and burden reduction exercise"). These fitness checks should be explored for all financial regulation. See EU Commission Work Programme 2025, 'Moving forward together: A Bolder, Simpler, Faster Union', COM(2025) 45 final, p. 2.

229 Similar Draghi Report, *op. cit*., p. 13 (noting the possibility for improvement; "However, given their complexity, those quantitative exercises have remained rare and largely self-standing").

230 See Zetzsche D. A., *Deregulating Financial Regulation* (2024), *FutureFinTech Working Paper Series No. 5*, https://www.ssrn.com/abstract=5241266, p. 30 ("When the benefits created by a given rule do not exceed their costs, a case for targeted deregulation arises"); a concrete illustration is provided by ownership-control procedures for acquisitions and increases of qualifying holdings in regulated entities. While they pursue the legitimate aim of ensuring suitable and sound shareholders, in practice they often take the form of highly formalistic, 'tick-the-box' processes that generate substantial costs and delays. In some cases, they function as a *de facto* 'poison pill' for otherwise sound transactions, illustrating the need for carefully calibrated, moderate deregulation.

231 See in respect the call for papers of the BCBS/Centre for Economic Policy Research (CEPR) of 4 November 2025 on "Simplifying banking regulation and supervision without scarifying safety". The papers are to be presented at the Joint conference by the Research Group of the BCBS and the CEPR on 21-22 May 2026; on the topics to be covered, see at: https://www.bis.org/events/260521_bcbs.pdf.

See also the above-mentioned ECB Report of December 2025, which (*inter alia*) proposes to reduce the number of elements in the risk-weighted and leverage ratio regulatory framework.

failures in general). This calls for a principle-based approach that enables market activity and innovation, while setting clear boundaries.

159 A **single reporting tool** would also mark a significant step forward.[232] The private financial sector has long claimed that reporting requirements are excessively burdensome,[233] and supervisors acknowledge that not all the data collected is used effectively.[234] In some cases, similar or identical data is submitted to different authorities in different formats, at different intervals and with different calculation methods.[235] This is one of the most evident and pressing issues to address. A practical way forward would be to establish a harmonised reporting system shared among supervisory authorities. The European Single Access Point (ESAP) tries to be a one-stop-shop, and should help eliminating duplicative reporting; specific financial reporting rules should be aligned with this rationale and aim. Such a system would rely on common data standards and formats, ensuring that information collected once could be efficiently reused across all relevant bodies, and could be reinforced by a 'once-only' policy, to promote that data is provided only once, in an easy format and then shared between authorities. This approach would not only enhance the consistency and usability of the data but would also substantially reduce duplication, administrative burden, and complexity in the current reporting framework.

160 A **coherent taxonomy** is another pillar of meaningful simplification. At present, identical or near-identical terms are often used in different legislative acts but defined in inconsistent ways.[236] This creates confusion, increases the

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232 This proposal aligns with the Draghi Report, *op. cit.*, p. 111 ("Provide appropriate IT solutions for reporting"); further see ESMA's recent suggestion to reuse Article 26 MiFIR transaction data in order to eliminate duplicative reporting obligations. We propose the creation of a single, combined data hub for all financial firms, with authorised agencies granted access to the information. See ESMA Press Release, 'ESMA contributes to simplification and burden reduction' (2025) ESMA71-545613100-2696.

233 For data, see EU Commission, CEPS, Directorate-General for Financial Stability, Financial Services and Capital Markets Union and ICF, 'Study on the costs of compliance for the financial sector' (2020), p. 42 *et seq*, https://data.europa.eu/doi/10.2874/068657; further see European Banking Federation, *op. cit.*, p. 11 ("The current EU regulatory and supervisory reporting framework imposes a significant burden on banks, with annual costs exceeding € 4 billion").

234 See ESMA, *op. cit.* (2025), p. 11, footnote 29 ("Data that is costly to produce and not used should not be collected").

235 See Buch C., *op. cit.*, p. 12 ("National reporting requirements that duplicate or contradict European ones should be phased out"). Further see EU Commission Staff Working Document, 'Fitness Check of EU Supervisory Reporting Requirements' (2019) *SWD(2019) 402 final*, p. 164 ("In addition, NCAs explained that certain data were not used because the data (or similar data) was already reported or available in another report but possibly at a higher level of aggregation that was deemed sufficient by the relevant NCAs").

236 An example from reporting obligations is the inconsistent definition of the entity submitting the report: EMIR uses "Report Submitting Entity ID", SFTR refers to "Report Submitting Entity", and MiFIR employs "Submitting Entity Identification Code". See ESMA, *op. cit.* (2025), p. 9. See also the varying terminology for "professional investors" across EU capital markets legislation; and the *Less is More Report (2025)*, p. 82 ("However, this framework as a whole is immensely complex, being made up of texts that sometimes propose different definitions, vary in their implementation timetable and establish

risk of error and complicates compliance for cross-sectoral institutions. One solution is the creation of a single 'taxonomy act' or 'unified code' at the EU level, where common terms are defined once and applied consistently.[237] Such an instrument could consolidate the multitude of overlapping and sector-specific definitions into a single rulebook. It would serve as a common reference point for all financial legislation – an EU Definitional Charter – that eliminates the need for constant cross-referencing. At the same time, it would offer an opportunity to **reconsider the very foundations** of these categories and to rethink certain definitions in a more conceptual and principled manner.[238] Rather than persisting with a piecemeal approach that relies on open-ended and often circular exemplary lists, lawmakers should ask what truly qualifies core concepts and why they require a distinct regulatory regime. Clarifying these boundaries would help to resolve long-standing conceptual ambiguities, provide greater legal certainty for market participants, simplify compliance, and ultimately strengthen the coherence of EU financial regulation.

161 **Cross-sectoral consistency** is equally important. Banking, capital markets and insurance have long been regulated in separate silos, reflecting historical distinctions in their activities. Yet today financial firms frequently operate across these sectors, offering more integrated products and services. Where the same risks are addressed differently in each sector, inconsistencies can lead to duplication and unnecessary costs or opportunities for regulatory arbitrage.[239] Greater alignment – while preserving necessary sectoral distinctions – would make the discipline more coherent and easier to work with in practice.[240]

162 **Allowing for experimentation** is also necessary. Recent scholarship[241] has argued for a shift toward an anticipatory governance culture, organised around foresight, experimentation, and learning. Regulatory foresight would entail structured scanning and scenario planning to identify risks and opportunities before they crystallise; regulatory experimentation would involve controlled

redundant obligations"). Another example of a lack of terminological consistency across legislative instruments. Is replacement of established concepts, such as 'companies', with broader terms, such as 'undertakings', without explanation or consistent definition. This can create legal uncertainty and unintended scope effects. Professional entities organised as partnerships or other personal business structures, such as law or accounting firms, may find themselves ambiguously included in, or excluded from, regulatory regimes designed around corporate models.

237 Similar ESMA, *op. cit.* (2025), p. 9, ("Different regimes often use different names for substantively the same concepts, creating difficulties for the implementation, interpretation and reconciliation. The absence of a centralised and standardised data dictionary prevents the resolution of such inconsistencies").

238 A suggestion for this can be found in Lehmann M. and Schinerl F., *op. cit.*, pp. 340-345.

239 Further see European Banking Federation, *op. cit.*, p. 8 (noting "multiple overlapping regulations" in the area of payment services).

240 To a certain extent this has been taken into account in the revised Solvency II, which includes macroprudential tools and also notes that some alignment with banking regulations should exist.

241 See Ahern D., 'The New Anticipatory Governance Culture for Innovation: Regulatory Foresight, Regulatory Experimentation and Regulatory Learning' (2025), *25 European Business Organization Law Review*, p. 241.

'test-and-learn' environments such as regulatory sandboxes, pilots, and policy labs that generate evidence in real time;[242] and regulatory learning would embed continuous review and feedback loops into the legislative cycle itself. Such mechanisms could counteract regulatory lag in fast-moving domains – digital finance, AI-enabled trading, or sustainability disclosures – by ensuring that adjustments are guided not only by *ex-post* crisis dynamics (**rules as 'children of crises'**) but mainly by structured processes of anticipation and adaptation. Beyond expressly allowing for experimentation mechanisms, policymakers should be aware that innovation can be stifled by very specific and detailed rules, calibrated for existing market structures, whilst more open, principles-based texts can allow different activities and instruments to evolve. This can also make the law more stable and adaptable to future developments.

163 Finally, simplification requires **self-restraint in regulatory layering**.[243] Over time, regulation often grows not through deliberate reform, but through incremental additions designed to address emerging issues. Each layer may be justified in isolation, yet together they produce a dense and fragmented structure.[244] Before introducing new requirements, policymakers should consider whether existing provisions could achieve the desired outcome through refinement or better enforcement. In this sense, simplification is not about compromising objectives; it is about **using existing tools more effectively**. Only where new rules are unavoidable, they should be integrated in a way that preserves overall coherence, with no unnecessary overlap or conflict.

164 Policymakers should also guard against 'gold plating', where additional national measures are added on top of EU rules, creating divergence without clear benefit.[245] Overall, sustaining simplification depends as much on avoiding future complexity as it does on reducing existing burdens.

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242 On this, see Ringe W.-G. and Christopher R., 'Regulating Fintech in the EU: the Case for a Guided Sandbox' (2020), *11(3) European Journal of Risk Regulation*, p. 604.

243 For a similar idea, see the (above-mentioned) *Less is More Report (2025)*, p. 41 ("Ultimately, the advantages of adopting Level 2 and 3 instruments are now largely outweighed by the fact that they make the rules laid down in Level 1 texts more difficult to read, understand and apply, and are a source of legal risk and of costs, sometimes without any legal basis").

244 See Buch C., *op. cit.*, p. 7 (nine layers of microprudential and macroprudential requirements and buffers) or EBA, 'Stacking Orders and Capital Buffers' (2024) *cit.*

245 For a similar idea, see *ibid*, pp. 11-12; see further Draghi Report, *'The future of European competitiveness, Part B'* (2024), p. 324 ("The results of this assessment should be made public to improve transparency and discourage 'gold-plating").

IV. Policy Proposals and Conclusions

165 The analysis undertaken in this Report demonstrates that the current state of EU financial regulation is marked by **structural complexity, sectoral inconsistency, and institutional overlap**. While these layers have accumulated in response to various crises and emerging policy goals, the resulting legislation now risks undermining legal certainty, supervisory convergence, and the effective functioning of the internal market. Taken together, these findings lead to a clear and now broadly recognised conclusion: the EU's financial regulatory framework requires simplification.

166 Simplification, however, should not proceed in an *ad hoc* or fragmented way. To advance this agenda, it seems more effective to follow a **methodological approach** that provides coherence and direction. While there may be several possible paths toward meaningful simplification, assessing all of them lies beyond the scope of this report. The following section, therefore, outlines what we consider the most practical and effective way to simplify the current regulatory framework. The proposal is structured in four parts: it begins with institutional aspects (under A.), continues with substantive issues (B.), then turns to procedural considerations (C.), and concludes with final remarks (D.).

A. Institutional Dimensions

167 From an institutional point of view, the development of EU financial law over the past decade has witnessed increased centralisation in the hands of EU authorities. Such process, however, has been greatly unbalanced between the different domains of financial regulation. The experience with the SSM has shown that the EU is capable of organising an effective supervisory mechanism that integrates EU and national spheres in a rational and efficient manner.[246] While challenges remain, the Banking Union is a successful example of vertical interplay, with demonstrably greater progress in terms of harmonisation and convergence than other areas of financial law. The appropriate degree of centralisation in capital markets, insurance and payments, however, will ultimately depend on wider debates regarding the regulatory objectives to be attained, the structure and characteristics of the markets, the institutional capacities, and the political priorities of EU legislators.

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[246] See Brescia Morra C. and Annunziata F., 'The Banking Union and the decisions of the CJEU: Towards a complete legal order?' (September 2024), *In-Depth Analysis, European Parliament, Briefing paper for the Committee on Economic and Monetary Affairs (ECON)*, EGOV; Joosen B., Pulgar Ezquerra J. and Tröger T.H., '10 years of Banking Union case law: How did CJEU judgments shape supervision and resolution practice in the Banking Union?' (September 2024), *In-Depth Analysis, European Parliament, Briefing paper for the Committee on Economic and Monetary Affairs (ECON)*, EGOV. See also Smits R. and de Arruda T., *The Banking Union and Union Courts: overview of cases as of 29 August 2025* (2025), https://ebi-europa.eu/publications/eu-cases-or-jurisprudence.

168 Notwithstanding such considerations, **the legal status of EU agencies and the limits to their discretionary powers should be clarified**. Agencies play a crucial part in EU financial regulation and supervision, yet they remain largely undefined by law. It is therefore essential to adopt an organised statute governing EU agencies and establishing the exact conditions for the exercise of their powers. The *Meroni* doctrine, developed in the 1950s and still invoked by EU Courts, should be further clarified and structured by dedicated legislation, thereby making (*inter alia*) the ESAs more efficient and accountable, especially in a context where direct supervision is sought for.

B. *Substantive Dimensions*

169 From a substantive point of view, **restoring the original hierarchy of sources pursuant to the Lamfalussy process is urgent.** Level 1 legislation should – to the extent possible due to the need to avoid gold plating by Member States – become minimal and rely more heavily on principles and taxonomies ('principle-based' instead of 'rules-based' legislation). On the other hand, Level 2 legislation should be used with technique and precision, taking into account (*inter alia* and in particular) that, by virtue of the TFEU,[247] delegated acts may only supplement or amend certain 'non-essential' elements of a given legislative act.[248] A clearer delineation of these levels would help ensure both legislative consistency and regulatory effectiveness across the Union's financial framework.[249]

170 Further, Level 3 measures must be recalibrated to establish a balance between hard and soft law. This entails **clarifying the legal nature of soft law**, distinguishing interpretative guidance from norm-creation, and clarifying the judicial review of such measures.[250]

171 Finally, Level 4 (enforcement and implementation of EU Law) is essential too. There should be greater transparency about the actions for breach of EU law by the ESAs, and infringement procedures by the Commission. The complexity and ambiguities in Level 1 or Level 2 legislation, and Level 3 soft law instruments often reflects political compromises to patch up diverging views. Some of these complexities and ambiguities can find their way to EU Courts,

[247] Article 290(1)(1) TFEU.

[248] Whether this condition is met in each particular case can be challenged before EU Courts. See, e.g., the recent (10 September 2025) judgment of the General Court in Case T-625/22, *Republic of Austria v European Commission* (ECLI:EU:T:2025:869), on a related issue in respect of Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities ([2022] OJ L 188/1).

[249] On this, see also Lamandini, M., Perassi, M.. Ceci, S., D'Ambrosio, R., Chirico, F., Consigliere, E., Crapanzano, G., Droghini, L., Montemaggi, S., *op. cit*., pp. 45-48.

[250] On EU soft law before national Courts, see Bobek M., 'Le contrôle juridictionnel des actes de *soft law* européens', *Revue de Droit Bancaire et Financier No. 2025/5*, pp. 109-111.

but this may happen only when national or European authorities enforce specific provisions. Political compromise is important, but should not entirely replace a closer monitoring, and regular enforcement action.

172 Furthermore, the simplification of similar (in their substance) requirements provided for in different legislative acts (adopted under different policy agendas and serving different purposes) is also necessary. A typical case are the capital and resolution stacks – in the EU context, under the CRD IV/CRR and the BRRD/SRMR.[251]

173 In parallel, a comprehensive **taxonomic revision** is needed to address definitional inconsistencies across sectors – for instance, in the classification of financial instruments, investment services, and client categories. Establishing a unified taxonomy would strengthen the internal logic of EU financial law and contribute to greater clarity and predictability for market participants.

174 Next, **maximum and full harmonisation should be prioritised**, where deemed necessary and provided that the principles of subsidiarity and proportionality, as enshrined in Article 5(3)-(4) TEU, are fully respected. Under these conditions, in terms of legal instruments, Regulations should be preferred over Directives, and O&Ds should be kept to a minimum – for instance, only when matters could be sensitive to criminal or constitutional laws at the national level. This is of even higher importance as the EU gradually moves towards supervisory centralisation in the financial system (SSM, ESMA, AMLA).

175 Finally, **overlaps and inconsistencies must be eliminated**. Too often, similar regulatory objectives are pursued through multiple and divergent requirements. A notable example in this respect is the significant overlapping of the specific supervisory powers of the NCAs and the ECB under Articles 104 CRD IV/16 SRMR and their early intervention powers under Article 27 BRRD.[252] Such duplication adds complexity without improving outcomes and ultimately undermines both efficiency and legal certainty. This represents regulatory burden in its purest form. The task ahead is not to relax existing safeguards or diminish the objectives of financial regulation, but to ensure that existing tools are used more effectively. Ideally, this consolidation and consistency-enhancement should be conducted together with a **cost-benefit analysis**, comparing the costs of compliance with the benefits accrued from the rule.

[251] Braun-Munzinger K., '*Capital and resolution stacks – room for simplification?*', Blog post, 27 November 2025, https://www.srb.europa.eu/en/content/capital-and-resolution-stacks-room-simplification. See also Borio C., Coelho R., Restoy F. and Tarashev N., 'Revisiting the regulatory capital stack', FSI Briefs No 28, https://www.bis.org/fsi/fsibriefs28.pdf.

[252] See Gortsos Ch. V., *op. cit.* (2025), pp. 483-493, also on the proposed amendments, and Ramos Muñoz D., 'Early Intervention, Resolution Preparation and Triggers: The Case for Reforming Crisis Management's "Twilight Zone"' (October 2024), *EBI Working Paper Series, No. 181*, https://ssrn.com/abstract=4972846 (and the literature cited in both).

176 Overall: similarly to management permanently restructuring and optimising the firm, optimisation of the legal/regulatory framework should as well be a permanent and ongoing task of regulators.

C. *Procedural Considerations*

177 To implement these changes effectively, it seems useful to follow a structured, **three-step approach**:[253]

178 The *first step* is to **compile a comprehensive inventory of the applicable rules** – covering Level-1 and Level-2 legislation, ESAs' guidelines, recommendations and Q&As, and relevant national measures. Each provision should be clearly linked to the specific objective it serves, not only at a high level (e.g., "financial stability") but also at a more operational level (e.g., "amount of available Total Loss Absorbing Capacity – TLAC"). This exercise should be combined with a comparative mapping of Member States' national legislative and regulatory corpus, in order to identify common traditions and divergences at the national level.

179 The *second step* is to use this inventory to **identify areas of overlap and other forms of regulatory inefficiencies**. Where two or more provisions pursue the same or closely related objectives, they create a presumptive risk of unnecessary regulatory burden. Such overlaps must be examined in detail, considering definitional mismatches, inconsistent thresholds, and divergent applications across Member States. The review should look closely at how rules align in practice – e.g., whether their definitions match or thresholds are consistent. Ultimately, the aim is to decide which rules should be retained, which can be consolidated, and which should be clarified.

180 The *third* and *final step* is to **implement these changes** on a consistent and coordinated basis.[254] To maintain credibility, the process should be transparent and duly involve industry stakeholders. The mapping and assessment methodology should be publicly available, and the outcomes – such as identified overlaps and proposed remedies – should be recorded in a regularly updated register. Independent oversight, for instance, through an inter-institutional panel, would further reinforce accountability. Finally, the entire exercise should be repeated at regular intervals, for example, every ten years.

[253] This three-step process is inspired by a recent suggestion in the literature; see Fernández-i-Marín X. *et al.*, 'Assessing and comparing the effects of public policies – a new approach' (2025) *32 Journal of European Public Policy*.

[254] The current tendency in the EU for each agency and organisation to conduct its own assessment in isolation is highly problematic. While activity and the build-up of expertise in this area are undoubtedly valuable, there is a clear need for a common, harmonised and coordinated approach across the different silos; otherwise, any review risks once again producing a fragmented hodgepodge of outcomes.

D. Final remarks

181 Simplification is neither deregulation, nor piecemeal amendments. It requires a **methodical, architectural rebalancing**: clarifying the hierarchy of sources, reducing the proliferation of cross-references, consolidating definitions and taxonomies, and calibrating the role of soft law. Likewise, simplification demands closer alignment between EU law and national legal systems, in particular with respect to private law remedies and the implementation of core financial rules.

182 The stakes are high. Without a deliberate and evidence-based approach, attempts to simplify may make the problem worse, by increasing (*inter alia*) fragmentation. With careful design, however, simplification (and, when needed, targeted deregulation, as discussed) can restore clarity, predictability, and coherence to the regulatory environment, thereby strengthening the broader project of **European financial integration**.

183 Although the Report covers largely technical, considerations, and its implications for financial integration, both are instrumental to further basic principles, such as equal treatment, the rule of law, judicial review and democratic accountability. Complex rules, with numerous exceptions and special regimes, inconsistencies and overlaps, and a constant revision without a sense of whole ultimately mean that like situations are not treated alike, that courts cannot ensure the system's coherence, since there is not a 'system' to speak of, and that democratically elected representatives cannot exercise proper control over fundamental issues, being too busy with the last, cursory reading to yet another piece of intractable (sometimes incomprehensible) text.

184 This Report has outlined both the challenges and a methodology to address them. The task now is to move **from diagnosis to reform**: to translate recognition of systemic complexity into practical steps toward a legal order that is not only more intelligible but also more resilient, consistent, and efficient in safeguarding the objectives of financial law.