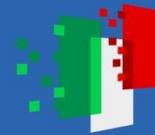




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# The legal integration of European capital markets: beyond regulatory harmonisation

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# Table of contents

1. **CMU and legal integration: is the glass half empty or half full?**
2. **Legal reasons for missing integration**
3. **Fixing legal fragmentation (going beyond harmonization)**
  - a. Conflict-of-law rules, regulatory competition and integration
  - b. Data governance as a driver for integration

# CMU: half-full or half-empty?

- **Reasons to be optimistic if we look backward**
  - Single rulebook increasingly integrated
  - Supervisory convergence has developed steadily
- **Reasons to be unsatisfied if we look forward**
  - Capital markets remain essentially national
    - Persisting home biases
  - Market infrastructures remain fragmented



# Legal reasons for missing integration (examples)

- **Minimum harmonisation persists in some areas**
- **Express or implied reference to national laws**
  - Preventing autonomous interpretation of EU law
- **Use of standards and open-texture rules**
  - Inevitable for effective regulation, but local interpretations
- **Unaddressed relationship between private law and CMU/SIU measures**
  - Private law principles can add on top of EU law



# Fixing legal fragmentation

- Enrolling market participants in shaping the legal framework
  - Bottom-up approach to complement top-down architecture
- Enhancing the role of conflict-of-law rules
  - Clearer framework needed – a special regime?
  - More space to market participants' choice
- The role of data governance
  - Harmonisation through standardization of production process?
  - Data spaces for supervisors and courts



# Risk of conflicting interpretations (retail market)

Financial service provider based in Country A

Determines NCA (with its interpret. of COBs)

Performing services to retail investor in Country B

Determines applicable law



Securities/bank account in Country C

Determines (in part) jurisdiction for tortious liability (including pre-contractual)

# New conflict-of-laws regime

- **Higher predictability of litigation settings**
  - NCA, applicable law, and jurisdiction
- **Leveraging on multiple single authorities in the CMU**
  - When connecting factors enable concentration
    - The example of bonds and UCITS markets
- **Fostering uniformity through negative integration and/or strengthening Member States' incentives to support centralisation of supervision**
  - At least, NCAs play a role in the ESAs' governance



# The (un-)expected role of data

- **Integrating the market for the raw materials can help integrate CMU**
  - Harmonisation through standardization of production process
- **Some positive effects may come from pending reforms**
  - Circulation of standardised client info (RIS; FIDA)
  - ESAP as the European EDGAR; CTP as the European NMS
  - ESAs as data hub to support NCAs
- **Data governance in uncharted territories may deliver further results**
  - Law as code approach in supporting RegTech and SupTech
  - Circulation of court decisions across the borders





# A new *lex mercatoria* for the CMU?

- Learning from the past: *lex mercatoria*
  - Supranational by definition
  - The case of negotiable instruments
- Leveraging on the 28<sup>th</sup> regime
  - Supranational by definition
  - We need to work on:
    - Autonomy of the 28<sup>th</sup> regime vis-à-vis national laws
    - The organisation of Courts





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# Thank you