Global Counsel

Reforming EU financial supervision: more Europe without more Treaties

Blog post by Practice Lead Adam Terry, 22 September 2017

Reforms to the EU's financial supervisory system proposed this week can be boiled down to two principles: more supervision at the European rather than the national level, and more powers for the EU to keep a closer eye on developments in other jurisdictions.

The European Supervisory Authorities (ESAs) in their current form are already over-stretched, under-funded and imperfectly governed. If this situation is to be addressed, then EU policymakers will need to consider three things together – the scale of the ESAs' tasks, resource allocation, and governance arrangements. All three need to be in balance for any final package to work. So, do the Commission proposals pass this test?

To an extent, but in the context of a big push for centralisation. Indeed, the overall tone is in keeping with that of Commission President Jean-Claude Juncker's state of the union speech last week. His rejection of a 'two-speed Europe' in favour of everyone moving forward together is echoed in the suggestion that the EU's financial supervision should become more centralised, and take place at the highest level. This proposal also suggests a means for the Commission reasserting itself within the EU institutional set-up without the need for treaty change – an approach which, if it works, could then be applied in other areas.

It's a bold statement, and one likely to be resisted from several directions. National regulators will not take kindly to seeing their role diminish through the creation of new Executive Boards, staffed by full-time EU-level appointees, in each of the ESAs. The power given to those new appointees will come at the expense of the existing Boards of Supervisors, made up of the heads of the national regulators – who value their current level of influence.

Nor will national governments automatically bring their regulators into line and sign up to the new proposals. There is an unspoken, and incorrect, assumption underpinning several recent EU initiatives: that as the UK leaves the EU it is removing the only source of resistance to greater consolidation of power.

It is far from clear that this is the case for financial services, where most direct supervision takes place at national level – a situation that the Commission now seeks to change in favour of more direct EU supervision. Various countries will resist this: the Dutch, a strong advocate for subsidiarity; the non-Eurozone Danes and Swedes; and even the French, who like a system that combines EU-level oversight with domestic flexibility.

The Commission tries to head this off with a financial sweetener: shifting the responsibility of paying for the ESAs from national regulators to fees levied on industry. Yet this is unlikely to be seen by national governments or regulatory bodies as sufficient compensation for the loss of power and influence. Instead, it will serve to anger private sector firms who will feel they are being asked to add direct payments on top of the indirect costs of post-crisis legislation.

Add to that the concerns of non-EU jurisdictions (and the UK, soon to become one) at the Commission's proposals to extend its extra-territorial reach beyond Europe's shores and there is something in these proposals to displease everyone.

This is not an unusual situation in Brussels. Indeed, hardened EU technocrats will argue that the best compromises are always those in which everyone is equally unhappy. The problem here, though, is that the success of the overall package depends on the interaction between its various elements. If individual compromises are hammered out in isolation, then in the end the whole will be less than the sum of its parts.