

Supra-national Regulators

Arguments for a Supra-national Regulator

Presence of a supra-national regulator will help ensure rules and regulations are properly enforced by a national regulator.

The guideline set by the European Central Bank on the fiscal deficit of its member countries is a possible comparison. Authorities of member countries are under pressure to comply. However lack of “teeth” and different views on the ambit/national of sovereignty are real problems.

A supra-national regulator applies rules and regulations equally to all jurisdictions.

- Different regulators of different jurisdictions may have different understandings and interpretations of supra-national rules and regulations.
- A supra-national regulator is in a better position to ensure a consistent approach to enforcement and compliance.

A supra-national regulator will bring benefits to cross-border markets by harmonising rules and regulations. Harmonisation facilitates:

- standardisation of licensing, registration and educational qualifications;
- standardisation of securities laws and legislation (as well as compliance and enforcement techniques);
- harmonisation of accounting standards reducing the costs of cross-border investment;
- increased market efficiency by reducing barriers-to-entry and inducing better allocation of resources (human, databases and technology); and

- increased competitive pressure to improve investment products and financial services.

The benefits of harmonization depend on the stage of development of the markets concerned.

- If a market has an undeveloped regulatory framework, it can incorporate higher commonly accepted regulatory standards; investors' confidence in the market can be enhanced on a fast-track.
- If a market has a more developed regulatory framework, it can benefit by
 1. being a frontrunner for the harmonized regulatory framework (colonisation);
 2. better protect investors (in their own countries) when they invest in the less developed markets; and
 3. share their experience with less developed markets who leverage on their expertise.

Arguments against a Supra-national Regulator

Difficulty of enforcement. It is difficult for a supra-national regulator to effectively protect investors, police financial institutions, and supervise markets in different jurisdictions; hard to establish the credibility to act with sufficient authority.

National Regulators are jealous. National regulators are defensive and political/regulatory competition is hard to resolve. They resist colonisation by standards identified with other countries.

Financial contributions: a key political problem.

Complete harmonization is complex and undesirable

- retail investors have more confidence in national regulators;
- harmonisation may reduce incentives to further improve national regulatory regimes;
- issues such as “maximum compliance” to achieve harmonisation can encourage a race to the bottom;
- a fully harmonised regulatory system ignores individual characteristics of national markets, and may inhibit flexible development.

Will a supra-national regulator increase issuer compliance with corporate disclosure regulation?

- Increased threat of litigation depends entirely on the attitude of national courts and incorporation of supra-national standards into local law.
- A supra-national regulator with no enforcement powers will only increase likelihood of enforcement by national regulators if the supra-national regulators’ operations and regulatory philosophy coincide with those of national regulators.

Relevance of the EU is limited

- A legal and monetary union based on Treaty of Rome with strong centralised, heavily resourced institutions.
- Little to be read across to Asian regulation.