

How many Single Rulebooks?

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Impact paragraph

A lack of consistency in financial regulation is enabling financial institutions to exploit regulatory loopholes and distort competition, makes it burdensome for market participants to operate efficiently across the EU Single Market and difficult for supervisors to perform their supervisory mandates in an effective manner. The 2007/2008 financial crisis, however, has shown that in integrated financial markets, regulatory inconsistencies can have highly disruptive effects. Once market or operational risks materialise, the impact can often not be contained within regulatory boundaries but spreads across the EU Single Market. Therefore, it is of paramount importance to address identical or similar risks with the same level of effective regulatory standards across all Member States, hence creating an EU Single Rulebook for the Single Market in financial services.

However, despite the unprecedented amount of new regulation adopted in the post-crisis financial sector reforms, we still do not know to what extent we have achieved the overarching policy goals of ensuring regulatory consistency and creating a level playing field in the area of investment management. Scholars have primarily focused on cross-sectoral consistency, namely the lack of consistent regulation between banks and non-banks including investment managers. Equally, calls from EU and national parliaments, stakeholders, regulators as well as audit recommendations by the European Court of Auditors addressed to the European Commission to take stock to which extent the post-crisis reforms achieved their desired policy objectives in the area of investment management, have so far remained unanswered. Moreover, the very concept of the EU Single Rulebook remains elusive as it has never been formally defined in any official EU document. In the absence of academic contributions and comprehensive policy evaluations, EU policy makers and stakeholders continue debating this important issue without sufficient conceptual clarity and empirical evidence.

The research results of this dissertation are therefore relevant to policy makers and stakeholders in order to better take stock of the progress made since the financial crisis towards achieving the policy objectives pursued with the EU Single Rulebook and identify the conceptual and regulatory shortcomings that still exist. The research results could therefore aid policy makers to better assess the need for further legislative amendments addressing the persisting regulatory inconsistencies at the EU and national level. Moreover, the finding of this dissertation could be of help to market

participants in order to better identify and understand the main areas and root causes of regulatory inconsistencies and adapt their business operations with a long-term view.

The four studies making up this dissertation provide conceptual and empirical contributions to several strands of literature in the area of political science and law, notably on regulatory consistency, EU implementation and integration studies and the policy change literature.

The first study (Chapter 2) makes such contributions by investigating the origins of the Single Rulebook concept, how it could be embedded in the aforementioned strands of academic literature and how it has been subsequently (re-)interpreted by policy makers when implementing it in the area of investment management. The findings of this study therefore help to contextualise and better understand the role and position of the EU Single Rulebook concept in light of its origins, objectives and relevant academic literature.

The second study (Chapter 3) contributes to the policy change literature by investigating the role of policy paradigms in the pre- and post-crisis EU regulation on investment management. Scholars have been debating whether the financial crisis triggered a paradigm change in the way policy makers approached the regulation of financial markets. The policy paradigm framework put forward by Peter Hall (1993), which has become a cornerstone for researchers in social sciences, would lead to the expectation that the exogenous shocks experienced during the financial crisis triggered a paradigm shift in EU policies relating to investment management. Hall himself reiterated these expectations in his comments on the impact of his 1993 article on its 20th anniversary (Hall 2013), but despite the rich body of literature on this subject, we are still observing a lack of sufficient case studies that put to test the assumptions of Hall's policy paradigm framework. The study therefore provides a case study applying the policy paradigm framework to investigate whether there was a paradigm change in EU policies on investment management and what is the role of paradigm coherence. Building on the alternative model advocated by parts of the policy change literature according to which significant policy transformation may rather occur gradually through the use of policy bricolage, this study provides a more nuanced understanding of policy change in the post-crisis EU financial reforms by putting forward a novel conceptualisation of directional and non-directional policy bricolage. The findings of this case study contribute to the debate on policy change, as they

suggest that significant policy change in the EU is more likely to occur gradually and within mixes of paradigms rather than in the form of a wholesale shift from one coherent paradigm to another as anticipated under Hall's framework. Moreover, the research findings also contribute to the literature and policy debate on regulatory consistency as they indicate that a precondition for achieving regulatory consistency is to formulate policies on the basis of a coherent policy paradigm, which appears particularly challenging in a complex policy-making system such as the EU given the high number of veto powers with diverging national interests and potentially different policy paradigms at the national level.

The third study (Chapter 4) investigates how the constitutional principle of consistency can be understood and reconciled with the novel EU Single Rulebook concept. In a second step, the study moves to investigating the horizontal consistency of the EU Single Rulebook by performing a comparative case study of the AIFM and UCITS Directives and other relevant EU legal acts in key areas of regulation. Significant regulatory differences are identified and assessed to better understand whether these could be justified taking into account the specificities of the relevant financial products, the policy objectives of investor protection and financial stability and the overarching policy goal of creating an EU Single Rulebook that ensures regulatory consistency. The findings of the comparative case study provide empirical evidence, which could be valuable both to the aforementioned relevant strands of academic literature and practical ongoing debate among policy makers, auditors and stakeholders on the completion of the EU Single Rulebook.

The fourth study (Chapter 5) examines the question to which extent the EU Single Rulebook is achieving its regulatory consistency objective at the national level and therefore creating a level playing field between market participants in different Member States. This is done by performing a comparative case study on the implementation of the AIFMD in Germany and Luxembourg, which are two leading investment fund jurisdictions in Europe and globally. This research findings contribute to the literature on regulatory consistency and EU implementation studies. The research results demonstrate that while both Member States implemented the directive correctly from a formal and legal perspective, they made vastly different use of the wide national discretions provided therein. This in turn created significant inconsistencies in key areas of regulation and an unlevel playing field for market participants. In light of this, the research findings may also provide a more nuanced

perspective to EU implementation studies as they point to the need for a further distinction between a formally correct implementation of EU directives that meets the 'letter of the law' versus implementation that meets the 'spirit of the law'. This is because while the implementation of the AIFM Directive was formally correct in both Germany and Luxembourg, these Member States made use of their wide legal discretions for implementing the AIFM Directive in a way that ultimately still leaves a significant regulatory unlevel playing field and thereby impedes the overall policy goal of creating an EU Single Rulebook.

In addition to the above, recent market developments and policy debates are giving added impetus to the research findings of this dissertation. This is because the market turmoil observed (1) at the onset of the COVID-19 pandemic in 2020 with many investment funds including MMFs facing runs and needing to suspend redemptions, triggering massive central bank interventions and (2) during the first quarter of 2023, which peaked in the collapse of the Silicon Valley Bank in the US and Credit Suisse in Europe, thereby resembling a *déjà vu* from the 2007/2008 period, reignited debates among policy makers about the need for yet more wide-ranging financial sector reforms to address financial stability risks. In light of these events, some policy makers have been calling for further reforms to improve regulatory consistency, and some are even calling for the creation of a *global* Single Rulebook on investment funds and other shadow banks. This demonstrates that the quest towards achieving regulatory consistency and the creation of an EU Single Rulebook is not at its end but rather at its beginning and the research findings of this dissertation will hopefully be of value to future debates among policy makers and scholars on this important subject.