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The Simplification Paradox: Safety, Competitiveness, and Administrability in Post-Crisis EU Financial Services Reform

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ABSTRACT

The EU's financial services simplification agenda is conventionally presented as pragmatic recalibration. This article argues it is more accurately understood as a compound acknowledgement of structural limitations—by regulators whose rules exceeded reasonable operational expectations, regulated firms whose compliance prioritized formal outputs over substantive risk management, and a political economy that can no longer equate regulatory volume with effectiveness. Drawing on regulatory cycle literature and political economy of financial regulation, the article identifies three interlocking acknowledgements embedded in simplification. A tripartite framework—examining the EU, US, and UK—shows that enforcement credibility may better explain compliance outcomes than regulatory complexity. The US demonstrated that complex rules produce compliance when backed by credible sanctions. The EU developed different regulatory discipline through intensive, predominantly non-public prudential supervision within Banking Union, particularly via the Single Supervisory Mechanism (SSM) and Supervisory Review and Evaluation

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Process (SREP), while remaining weaker in punitive enforcement, individual accountability, and private enforcement. The UK combines judgement-led preventive supervision with developed public-enforcement infrastructure and individual accountability. The article argues that credible regulatory discipline—whether through punitive enforcement, preventive supervision, or individual accountability—rather than complexity may be the binding constraint on compliance. That simplification requires corresponding investment in supervisory capacity and enforcement credibility.

Keywords: Financial Services Regulation, Regulatory simplification, EU Banking Union, Savings and Investments Union, Savings and Investments Union, Savings and Investments Union, Supervisory enforcement

I. INTRODUCTION

The language of financial services regulation in the European Union has changed, driven by intensifying concerns about European competitiveness. Where once the dominant register was expansionary—more rules, more reporting, more supervisory data, more granularity—the current register is contractive. The European Commission's Omnibus simplification package—comprising both its original proposals[1] and the legislative amendments subsequently adopted,[2] the Competitiveness Compass,[3] the (multiple times) revived Capital Markets Union (CMU) becoming rebranded and reorientated as a Savings and Investments Union (SIU) agenda,[4] the Market Integration and Supervision Package (MISP),[5] sustained political pressure from France and Germany for a broad regulatory review and the

[1] The Commission's Omnibus I Simplification Package, COM(2025) 80 final (26 February 2025), proposed amendments to the Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CSDDD), the Taxonomy Regulation and Sustainable Finance Disclosure Regulation (SFDR) reporting obligations. For the amendments to the Accounting Directive, Audit Directive, CSRD and CSDDD, that proposal has since been superseded by Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements. The Taxonomy simplification was adopted through Commission Delegated Regulation (EU) 2026/73 of 4 July 2025, OJ L 2026/73, 8 January 2026. On 3 July 2026 the Commission adopted revised European Sustainability Reporting Standards, subject to completion of the applicable scrutiny and publication process. SFDR reforms remain at proposal stage as at 19 August 2026.

[2] The Commission's Omnibus I Simplification Package, COM(2025) 80 final (26 February 2025), proposed amendments to CSRD, CSDDD, the Taxonomy Regulation and SFDR reporting obligations. For the amendments to the Accounting Directive, Audit Directive, CSRD and CSDDD, that proposal has since been superseded by Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements. The Taxonomy simplification was adopted through Commission Delegated Regulation (EU) 2026/73 of 4 July 2025, OJ L 2026/73, 8 January 2026. On 3 July 2026 the Commission adopted revised European Sustainability Reporting Standards, subject to completion of the applicable scrutiny and publication process. SFDR reforms remain at proposal stage as at 19 August 2026.

[3] European Commission, 'The Competitiveness Compass' COM(2025) 30 final (29 January 2025).

[4] European Commission, 'A Capital Markets Union for People and Businesses—New Action Plan' COM(2025) 125 final.

[5] European Commission, Market Integration and Supervision Package (MISP) (4 December 2025), comprising a Master Regulation (amending Settlement Finality Regulation (replacing the SFDR MiFIR, EMIR, CSDR, SFTR, MiCAR, the DLT Pilot Regime, Benchmarks, CRA, Securitisation Regulation, EU Green Bonds and ESG Ratings), a Master Directive (amending UCITS, AIFMD and MiFID II), a Settlement Finality Regulation (replacing the SFD) and accompanying impact assessments.

influential Draghi and Letta reports[6]—collectively signal that the post-2008 settlement is being renegotiated. The question, for scholars, practitioners, and policymakers alike, is: on what terms, at whose instigation, and with what consequences for systemic resilience?

It would be tempting to characterize this simplification movement as a straightforward political concession to industry lobbying—a regulatory pendulum swinging back, as it periodically (and equally welcomingly) does, under commercial pressure and changed political conditions.[7] That characterization is not entirely wrong, but risks being substantially incomplete. Simplification is not merely a concession to firms that found compliance burdensome. It is, at a structural level, an admission that the regulatory architecture constructed in the decade and a half following the 2008 Global Financial Crisis (GFC) contained within it the seeds of its own dysfunction—a conclusion that requires engagement with deeper questions about regulatory design, institutional behaviour, and the political economy of financial supervision.

This article advances four interconnected arguments. First, that the simplification agenda contains three overlapping and largely unacknowledged admissions—about regulatory overproduction, about how firms responded to regulation, and about the relationship between regulatory intensity and economic competitiveness—each of which reflects structural failures in the post-crisis regulatory settlement rather than merely operational deficiencies in its implementation. Second, that there is a prior structural question that the simplification debate largely elides: whether the EU's challenge was primarily one of regulatory design, enforcement credibility, or both, and what the comparative evidence from the United States and United Kingdom reveals about the relationship between rule complexity, enforcement modality, and compliance outcomes. Third, that simplification produces concrete and identifiable losses in supervisory visibility, institutional discipline, and systemic resilience that require honest acknowledgement rather than political minimization. Fourth, that the deeper problem is a structural policy trilemma—between safety, competitiveness, and administrability, which no reform programme can fully escape—that no simplification agenda can resolve without making explicit trade-offs that policymakers have thus far been reluctant to articulate openly, and that the human capital dimension of both firm-level governance and supervisory practice may represent a binding constraint on the effectiveness of any regulatory model, whether prescriptive or principles-based.

In advancing these arguments, the article aims to make a distinct contribution to the existing literature on financial regulation. The regulatory cycle scholarship, from Minsky through Goodhart, has identified the political economy dynamics that produce alternating phases of regulatory expansion and contraction—but has not systematically examined the structural failures on both sides of the regulatory relationship that the current simplification moment reveals. The rules-versus-principles literature, following Black and Cunningham, has illuminated the trade-offs between prescriptive and outcomes-based approaches—but has not confronted the possibility that neither model can succeed without credible

[6] M Draghi, *The Future of European Competitiveness* (Report to the European Commission, September 2024) ('Draghi report'); E Letta, *Much More Than a Market: Speed, Security, Solidarity—Empowering the Single Market to Deliver a Sustainable Future and Prosperity for All EU Citizens* (Report to the European Council, April 2024) ('Letta report'). On the mandates, see European Council, 'Conclusions' (29–30 June 2023) EUCO 7/23, para 35 (calling for a high-level report on the future of the Single Market); Letter from Commission President Ursula von der Leyen to Mario Draghi (15 September 2023) (commissioning the competitiveness report).

[7] On the cyclical nature of financial regulation, see C Goodhart, 'The Regulatory Response to the Financial Crisis' (2008) 1 Journal of Financial Stability 351; E Helleiner, 'Understanding the 2007–2008 Global Financial Crisis: Lessons for Scholars of International Political Economy' (2011) 14 Annual Review of Political Science 67.

deterrence, whether through punitive enforcement, preventive supervision, or individual accountability. The regulatory competition scholarship has analysed the dynamics of inter-jurisdictional competition—but has not addressed the unprecedented circumstance in which all major financial centres are simultaneously retreating from effective regulatory discipline. This article's contribution is threefold: it develops a 'three admissions' framework that identifies the structural failures—in regulatory production, firm-level compliance culture, and political economy—that the simplification agenda implicitly acknowledges; it articulates a policy trilemma between safety, competitiveness, and administrability that clarifies why simplification cannot be costless and why the trade-offs involved require explicit rather than implicit resolution; and it advances a three-dimensional comparative analysis of enforcement—distinguishing punitive public enforcement, preventive prudential supervision, and individual accountability—that reveals the EU has developed powerful but often non-public supervisory discipline through the Banking Union's SREP framework, while remaining comparatively weaker in the other modalities. This refined enforcement analysis strengthens rather than undermines the article's argument about supervisory judgement and human capital: if intensive preventive supervision can produce compliance outcomes comparable to punitive enforcement, the binding constraint becomes the institutional capacity, expertise, and independence of supervisors.

II. THEORETICAL FRAMEWORK: REGULATORY CYCLES, RULES, AND THE POLITICAL ECONOMY OF FINANCIAL SUPERVISION

1. The regulatory cycle literature

The observation that financial regulation moves in cycles—expanding after crises and contracting during periods of stability—is well established in the literature. Minsky's financial instability hypothesis, while principally concerned with credit dynamics, provides the intellectual foundation for understanding why regulatory intensity tends to be counter-cyclical in its perceived necessity but pro-cyclical in its political sustainability.[8] Stability breeds confidence, confidence breeds complacency, and complacency creates the political conditions for regulatory relaxation—which in turn contributes to the accumulation of risk that produces the next crisis.

Haldane's influential analysis of regulatory complexity—the 'dog and the frisbee' argument—provides a more specific theoretical framework for the simplification debate.[9] Haldane argued that complex systems are better governed by simple rules than by complex ones, on the ground that complex rules are both harder to operationalize and more susceptible to gaming. The argument has considerable intuitive appeal and it is frequently invoked by proponents of simplification. But it has also been subject to significant qualification. Black has argued that the choice between rules and principles is not a binary but a spectrum and that the optimal position on that spectrum depends on a range of contextual factors including the nature of the regulated activity, the sophistication of regulated actors, the capacity of supervisory institutions, and the political and institutional environment in which regulation operates.[10] Cunningham has demonstrated that rules and principles generate

[8] HP Minsky, *Stabilizing an Unstable Economy* (Yale University Press 1986); HP Minsky, 'The Financial Instability Hypothesis' (1992) Levy Economics Institute Working Paper No 74.

[9] AG Haldane and V Madouros, 'The Dog and the Frisbee' (Speech at the Federal Reserve Bank of Kansas City's 36th economic policy symposium, Jackson Hole, Wyoming, 31 August 2012).

[10] J Black, 'Forms and Paradoxes of Principles-Based Regulation' (2008) 3 Capital Markets Law Journal 425; J Black, 'The Rise, Fall and Fate of Principles Based Regulation' (2010) LSE Law, Society and Economy Working Papers 17/2010.

different categories of compliance cost and different types of regulatory failure and that the comparison between them is more complex than the simple 'complexity versus simplicity' framing suggests.[11]

The current EU simplification agenda represents, in Haldane's terms, a movement from complex rules toward simpler ones—but in an institutional context (the EU's Banking Union, the European System of Financial Supervision (ESFS) and the multi-level EU governance architecture) that Haldane's analysis, which was developed primarily with reference to the Bank of England's supervisory approach, did not directly address. The question of whether simpler rules can achieve comparable outcomes in a multi-jurisdictional, multi-authority supervisory environment with heterogeneous institutional capacities and political constraints is one that the existing literature has not fully resolved.

2. Rules versus principles in financial regulation

The debate between rules-based and principles-based approaches to financial regulation has generated an extensive literature that is directly relevant to the simplification agenda.[12] The post-2008 settlement represented a decisive shift toward rules-based regulation in the EU—a shift motivated by the perceived failures of the pre-crisis principles-based approach, particularly as practised by the then UK's Financial Services Authority (FSA).[13] The prevailing diagnosis was that supervisory discretion had failed: that principles-based supervision had permitted supervisors to be too deferential to the institutions they supervised, too slow to challenge risk concentrations, and too susceptible to political and commercial pressure.[14]

Rules-based regulation offers significant advantages. It provides legal certainty: firms know in advance what is required and can organize their affairs accordingly. It facilitates comparability: supervisors can assess compliance across institutions against common benchmarks. It supports auditability: both internal compliance functions and external supervisors can verify adherence to specific requirements. It constrains arbitrary supervisory discretion: where rules are clear, supervisors have less scope to apply them inconsistently or under commercial or political influence. And it promotes consistency where multiple authorities administer the same framework—a consideration of particular importance in the EU, where 27 national competent authorities (NCAs) implement common rules.

Principles-based regulation offers corresponding advantages. Broad standards are adaptable: they can accommodate novel situations without requiring legislative amendment. They focus attention on substance rather than form: compliance is assessed by reference

11 LA Cunningham, 'A Prescription to Retire the Rhetoric of "Principles-Based Systems" in Corporate Law, Securities Regulation and Accounting' (2007) 60 Vanderbilt Law Review 1411.

12 The rules-versus-principles literature is extensive. On rules-based regulation, see Black, 'Forms and Paradoxes' (n 10) 429–38 (advantages at 429–32: certainty, consistency, constraint on discretion; disadvantages at 432–38: rigidity, creative compliance, the 'rules-escalator' dynamic); Cunningham (n 11) 1427–42 (compliance cost analysis). On principles-based regulation, see Black, 'Forms and Paradoxes' (n 10) 438–50 (advantages at 438–41: adaptability, substance over form; risks at 441–50); Black, 'The Rise, Fall and Fate of Principles Based Regulation' (n 10) 17–22 ('principles-based regulation demands more, not less, of both regulators and regulated'); FSA, 'Principles-Based Regulation: Focusing on the Outcomes That Matter' (April 2007); FSA, 'The Turner Review: A Regulatory Response to the Global Banking Crisis' (March 2009) (Turner Review) paras 2.7–2.9. On the rules/principles continuum, see Black, 'Forms and Paradoxes' (n 10) 426–28 ('the dichotomy between rules and principles is false: both are part of a continuum'); Cunningham (n 11) 1415–20; C Ford, 'New Governance, Compliance and Principles-Based Securities Regulation' (2008) 45 American Business Law Journal 1, 8–15. See also Haldane and Madouros (n 9) (on the susceptibility of complex rules to gaming).

13 Turner Review (n 12) ch 2.

14 ibid, paras 2.1–2.9; see also Parliamentary Commission on Banking Standards, 'Changing Banking for Good' (HL Paper 27-II, HC 175-II, 2013) vol II, ch 2.

to outcomes achieved, not boxes ticked. They can accommodate innovation and differing business models without requiring regulators to specify ex ante how every conceivable activity should be conducted. And they reduce dependence on continually expanding detailed rulebooks—the 'regulatory inflation' that characterized the post-crisis period.

The risks of principles-based regulation are equally significant. Reduced ex ante certainty makes compliance planning more difficult, particularly for smaller firms without the resources to navigate regulatory ambiguity. Greater supervisory discretion creates scope for inconsistent application across institutions, markets, and jurisdictions. The quality of outcomes depends critically on supervisory expertise and independence—attributes that cannot be assumed. And principles-based supervision is particularly dependent on credible enforcement: where firms test the boundaries of broad principles, only the credible threat of sanction maintains regulatory discipline. As Black has observed, principles-based regulation 'demands more, not less' from both regulators and regulated.

Critically, as Black and Cunningham have both emphasized, 'rules versus principles' is not a binary choice. Real regulatory systems operate along a continuum and frequently combine both techniques: broad principles supplemented by detailed guidance; prescriptive rules subject to outcomes-based exceptions; quantitative thresholds embedded within qualitative frameworks. The question is not whether to adopt rules or principles, but where on the continuum a particular regulatory regime should sit and what institutional conditions are necessary to make that position sustainable.

The distinction matters for this article because the current EU simplification programme is not simply 'deregulation' in the sense of removing regulatory constraints. To the extent that detailed obligations are removed and reliance is placed on outcomes, proportionality, and supervisory judgement, regulatory responsibility is being shifted from ex ante prescription toward ex post interpretation and supervision. This shift changes the distribution of regulatory work: less is done by the legislature and rulebook; more is done by supervisors exercising judgement in individual cases. And that, in turn, makes the success of simplification critically dependent on the institutional capacity, human capital, information, and enforcement credibility of supervisors—the very factors that this article identifies as binding constraints on any regulatory model.

The post-2008 settlement represented a decisive shift toward the rules-based end of this continuum in the EU—a shift motivated by the perceived failures of the pre-crisis principles-based approach, particularly as practised by the then UK's FSA. The prevailing diagnosis was that supervisory discretion had failed: that principles-based supervision had permitted supervisors to be too deferential to the institutions they supervised, too slow to challenge risk concentrations, and too susceptible to political and commercial pressure. The current simplification movement partially reverses that shift, reintroducing elements of principles-based supervision through broader standards, outcome-based expectations, and expanded supervisory discretion. This reversal invites en gagement with the substantial body of scholarship on the conditions under which principles-based supervision can succeed—scholarship that identifies preconditions including supervisory independence, institutional capacity, a shared understanding of regulatory objectives between regulator and regulated, and credible enforcement as a backstop. Whether these preconditions are met in the current EU institutional environment is a question to which this article will return.[15]

[15] Financial Conduct Authority (FCA), 'Our Approach to Supervision' (March 2024, last updated March 2026), setting out the FCA's judgement-led supervisory framework, including Voluntary Requirements (VREQs), Own-Initiative Requirement (OIREQs) and the five supervisory principles of being forward-looking, outcomes-focused, proportionate and evidence-led, transparent and integrated and coordinated.

Rules-based regulation also carries characteristic disadvantages. Detailed rules are inherently rigid: they cannot anticipate every factual situation and may produce arbitrary results at the boundaries. The accumulation of specific prescriptions generates regulatory complexity—the very phenomenon that the simplification agenda addresses. Prescriptive rules are susceptible to formalistic or 'box-ticking' compliance: firms may satisfy the letter of requirements without achieving their substantive purpose. Sophisticated actors have incentives to structure activity around the literal boundary of rules, exploiting the gap between regulatory intent and regulatory text. And detailed rules are difficult to keep aligned with rapidly changing markets, products, and business models—a particular challenge in financial services, where innovation continually outpaces the legislative cycle.

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3. The political economy of financial regulation

The political economy literature on financial regulation provides a third relevant theoretical lens. Stigler's regulatory capture thesis,[16] as developed and qualified by subsequent scholars,[17] suggests that regulatory reform is rarely driven purely by public interest considerations—that industry actors are systematically better organized, better resourced, and more motivated than diffuse public interests and that regulatory outcomes tend over time to converge toward industry preferences. The simplification agenda, viewed through this lens, invites scepticism about whether the identification of 'low-value' regulatory obligations is (potentially) being conducted on the basis of analytical rigour or industry preference.

Admati and Hellwig's work on the political economy of banking regulation is directly relevant: they demonstrate that the banking industry's persistent advocacy for lighter regulation is not evidence that regulation is inefficient, but rather evidence that regulation imposes costs on incumbents that those incumbents would prefer not to bear—and that the social benefits of regulation (reduced systemic risk and reduced probability of taxpayer-funded bailouts) are diffuse and poorly represented in political processes.[18] Calomiris and Haber extend this analysis to demonstrate that the structure of financial regulation in any jurisdiction reflects a 'game of bank bargains' between political actors and financial institutions, in which regulatory design is shaped by political incentives as much as by prudential analysis.[19]

[16] GJ Stigler, 'The Theory of Economic Regulation' (1971) 2 Bell Journal of Economics and Management Science 3.

[17] S Peltzman, 'Toward a More General Theory of Regulation' (1976) 19 Journal of Law and Economics 211; JJ Laffont and J Tirole, 'The Politics of Government Decision-Making: A Theory of Regulatory Capture' (1991) 106 Quarterly Journal of Economics 1089.

[18] A Admati and M Hellwig, *The Bankers' New Clothes: What's Wrong with Banking and What to Do about It* (Princeton University Press 2013; updated edn 2023).

[19] CW Calomiris and SH Haber, *Fragile by Design: The Political Origins of Banking Crises and Scarce Credit* (Princeton University Press 2014).

The simplification agenda must be assessed against this background. The political conditions that have produced it—the Draghi and Letta reports, the Franco-German joint advocacy, and the European Commission's Competitiveness Compass leading to the CMU becoming the SIU—reflect genuine analytical concerns about regulatory proportionality, but they also reflect the political economy dynamics that the literature predicts: a shift in the balance of political forces away from the post-crisis consensus that favoured comprehensive regulation, toward a new equilibrium in which industry competitiveness arguments have regained political salience.

III. THREE ADMISSIONS EMBEDDED IN THE SIMPLIFICATION AGENDA

Three distinct but overlapping admissions are embedded in the European simplification agenda. Each reflects structural failures in the post-crisis settlement that go beyond operational implementation difficulties.

1. Regulatory overproduction

The first admission is that the post-crisis regulatory production machine exceeded the capacity of any rational actor—firm, supervisor, or compliance counsel—to operationalize coherently. The ambition following the GFC was to pursue what might be described as zero-gap regulation—a comprehensive framework that would leave no significant risk category outside a defined regulatory and supervisory obligation.[20] The resulting legislative output was extraordinary in both volume and ambition: Basel III and its subsequent iterations;[21] MiFID II and its associated delegated acts;[22] EMIR and its multiple recast iterations;[23] SFDR;[24] DORA;[25] the successive iterations of the EU Anti-Money Laundering (AML) package;[26] CSRD;[27] and the proliferating taxonomy disclosure obligations.[28] Alongside these Level 1 instruments, the European Supervisory Authorities (ESAs)—comprising the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority—produced a continuous flow of regulatory and implementing technical standards, guidelines, opinions, and Q&A

[20] On the ambitions and architecture of post-crisis EU financial regulation, see N Moloney, *EU Securities and Financial Markets Regulation* (3rd edn, Oxford University Press 2014); E Ferran and others, *The Regulatory Aftermath of the Global Financial Crisis* (Cambridge University Press 2012).

[21] Basel Committee on Banking Supervision, 'Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems' (December 2010, rev June 2011); as implemented in the EU through CRR (Regulation (EU) No 575/2013) and CRD IV (Directive 2013/36/EU), subsequently amended by CRR II, CRR III and CRD V.

[22] Directive 2014/65/EU (MiFID II); Regulation (EU) No 600/2014 (MiFIR); together with over 50 delegated and implementing acts.

[23] Regulation (EU) No 648/2012 (EMIR); as amended by EMIR Refit (Regulation (EU) 2019/834) and EMIR 3.0 (Regulation (EU) 2024/2987).

[24] Regulation (EU) 2019/2088 (SFDR); together with delegated acts specifying principal adverse impact indicators and pre-contractual disclosure templates.

[25] Regulation (EU) 2022/2554 (DORA), applicable from 17 January 2025.

[26] Including the AMLA Regulation (Regulation (EU) 2024/1620), the AML Regulation (Regulation (EU) 2024/1624), and the Sixth Anti-Money Laundering Directive (Directive (EU) 2024/1640).

[27] Directive (EU) 2022/2464 (CSRD), amending the Accounting Directive, the Transparency Directive and the Audit Directive; as subsequently amended by Directive (EU) 2026/470 (limiting the principal EU scope to undertakings with more than 1000 employees and net annual turnover above EUR 450 million and making corresponding amendments to the CSDDD framework).

[28] Taxonomy Regulation (Regulation (EU) 2020/852); together with delegated acts on climate and environmental objectives.

documents, each adding further specificity, further obligation, and frequently further inconsistency.

The cumulative result was a framework characterized by overlapping obligations arising from differently scoped instruments; inconsistent definitions of materially identical concepts across regulatory perimeters; duplicative reporting obligations requiring substantially the same data to be filed in different formats with different authorities under different legal bases; and a legal fragmentation across the Lamfalussy architecture's Level 1 (framework legislation), Level 2 (delegated and implementing acts), and Level 3 (supervisory guidance and convergence measures) that made compliance counsel in Frankfurt, Paris, Amsterdam, and Dublin effectively uncertain, in a number of material areas, what the applicable obligation actually was at any given time. These divergences exemplify what has been termed 'conceptual gaps'—where a concept in one regulatory instrument exists but does not exist, or does not exist fully, in another—and 'conceptual translation risk' (CTR), which arises when EU-level requirements are transposed or applied inconsistently at national level (Vertical CTR) or when national implementations diverge from one another (Horizontal CTR).[29]

This assessment is not merely the complaint of regulated firms seeking relief from compliance costs. The EBA has itself acknowledged that the prudential framework has become excessively complex and operationally burdensome.[30] This represents an admission that regulators built, in good faith and with genuine public interest motivation, a system that became partially ungovernable—not in the sense that its individual components lacked legal clarity, but in the sense that their interaction produced operational demands that exceeded the capacity of any institution, however well-resourced and well-intentioned, to satisfy in full.

The distinction between 'firms failed to comply' and 'the system became ungovernable' matters significantly for policy prescription. If the problem were solely one of firm-level non-compliance, the appropriate response would be stronger enforcement, not fewer rules. The fact that the policy response is structural simplification rather than enhanced supervision reveals that the diagnosis has shifted. The architecture itself is recognized as part of the problem.

2. The industrialization of compliance

The second acknowledgement is harder to articulate in official discourse and precisely for that reason it is more important. A recurring pattern observed in supervisory assessments—across banking, insurance, asset management, and market infrastructure—is that significant numbers of regulated firms developed compliance approaches that prioritized formal outputs over substantive risk culture. This pattern—which might be termed the industrialization of compliance—was in significant part a rational response to regulatory incentives. It should be emphasized at the outset that this characterization describes an analytical type evidenced by recurring supervisory findings, not a universal claim that every EU-regulated firm adopted the same model; significant heterogeneity exists between institutions, with some firms maintaining genuinely risk-integrated compliance functions while others exhibited the patterns described below.

[29] On conceptual gaps and conceptual translation risk in EU financial regulation, see MD Huertas, 'Custody, Collateral and Client Money Regulation in the Post-Crisis World' (PhD Thesis, Queen Mary University of London 2020) paras 1.47–1.77.

[30] See EBA, 'Report on the Proportionality of Banking Regulation' (EBA/Rep/2024/01); see also European Commission, 'Call for Evidence on the EU Regulatory Framework for Financial Services' (2025).

This distinction warrants analytical precision. Drawing on Parker and Nielsen's typology of compliance motivations,[31] a genuine compliance culture is one in which regulatory obligations are understood as a proxy for substantive risk control—where the spirit of the obligation, not merely its letter, shapes firm behaviour; where governance processes are designed to surface and challenge risk rather than to document and evidence procedural adherence; and where compliance functions are integrated into commercial decision-making rather than consulted after the fact to validate decisions already taken. Griffith's work on corporate governance and compliance as organizational functions identifies the structural conditions under which compliance can serve as an effective internal constraint on risk-taking and the conditions under which it degenerates into a purely procedural function.[32]

The pattern that supervisory assessments repeatedly identify—and that this article terms 'industrialized compliance'—is an apparatus that is large in headcount, sophisticated in tooling, and impressive in its reporting output, but operationally oriented toward documentation, evidencing, and regulatory submission rather than toward substantive risk control. The European Central Bank (ECB)'s thematic reviews of internal governance have consistently found that, in a material proportion of directly supervised institutions, compliance and risk control functions operate with insufficient integration into strategic decision-making, with boards receiving reports that document formal adherence without surfacing the qualitative risk judgements that effective governance requires. The compliance function became, in too many institutions, what might be termed a 'process function optimized for regulatory metrics'—generating formal outputs that satisfied supervisory expectations while not necessarily delivering the risk insight or institutional challenge that the underlying obligations were intended to produce.

The operational manifestations of this dynamic—while varying in intensity across institutions—display recurring characteristics identified in supervisory assessments. The ECB's 2025 thematic review on risk data aggregation[33] found that a majority of significant institutions still fell short of the Basel Committee's Principles for Effective Risk Data Aggregation and Risk Reporting (BCBS 239), nearly a decade after the principles' compliance deadline, with particular weaknesses in data architecture, data lineage documentation, and the capacity to aggregate risk data accurately under stress conditions.[34] The EBA's 2024 report on proportionality documented that smaller and medium-sized institutions disproportionately relied on manual processes—spreadsheets, email chains, and human review—to meet regulatory obligations, with compliance technology investment

[31] C Parker and VL Nielsen, 'Corporate Compliance Systems: Could They Make Any Difference?' (2009) 41 Administration & Society 3.

[32] SJ Griffith, 'Corporate Governance in an Era of Compliance' (2016) 57 William & Mary Law Review 2075; see also ECB, 'Thematic Review on Effective Risk Data Aggregation and Risk Reporting' (2025), identifying persistent weaknesses in data architecture, governance escalation and board-level risk reporting across significant institutions; ECB, 'Supervisory Priorities 2024-2026' (December 2023), listing 'strengthening effectiveness of internal governance' as a priority in response to identified deficiencies.

[33] https://www.bankingsupervision.europa.eu/press/supervisory-newsletters/newsletter/2025/html/ssm.nl250219.en.html.

[34] ECB, 'Thematic Review on Effective Risk Data Aggregation and Risk Reporting' (2025); Basel Committee on Banking Supervision, 'Principles for Effective Risk Data Aggregation and Risk Reporting' (BCBS 239, January 2013). The original compliance deadline for G-SIBs was January 2016. Subsequent progress reports by the Basel Committee (most recently BCBS, 'Progress in Adopting the Principles for Effective Risk Data Aggregation and Risk Reporting' (2020)) documented persistent implementation gaps across jurisdictions.

concentrated in the largest institutions.[35] Technical debt accumulated as institutions implemented tactical fixes to meet individual regulatory deadlines: the ECB's supervisory findings repeatedly note that remediation of data quality issues proceeds incrementally rather than through architectural reform, resulting in a compliance infrastructure that is operationally functional but structurally fragile.[36]

Compliance functions were frequently fragmented across organizational silos. The EBA's guidelines on internal governance, while prescribing integrated risk management frameworks, have been accompanied by supervisory observations that implementation remains uneven: risk, legal, operations, and front-office functions in a significant number of institutions continue to operate with inconsistent data taxonomies, incompatible systems, and poorly coordinated governance.[37] The result, as the ECB's horizontal analyses have documented, is that identical data points are often collected, validated, and reported through multiple parallel processes—generating duplication costs without corresponding supervisory benefit.

These patterns were especially pronounced in the regulatory domains where obligations were most operationally demanding: anti-money laundering compliance, transaction reporting under MiFID II and EMIR, ESG data collection and disclosure, conduct surveillance, outsourcing governance, and operational resilience. Each of these areas required sustained institutional investment in systems, data quality, and organizational capability. The evidence suggests that, in a significant number of cases, that investment was either deferred, underfunded, or executed in ways that prioritized short-term regulatory deadlines over long-term architectural soundness. The result was a system that generated enormous quantities of regulatory activity without necessarily generating the resilience that regulatory activity was intended to produce.

The evidence for this characterization is substantial and comes from multiple supervisory sources. ESMA's annual reports on the quality of transaction data reported under EMIR have consistently identified material deficiencies in data accuracy and completeness: the 2023 report found that a significant proportion of reports contained errors in counterparty identification, valuation data, and lifecycle event reporting, with data quality issues concentrated in particular asset classes and reporting counterparty types.[38] The ECB's 2022 report on the quality of AnaCredit data—the granular credit register established to support

[35] EBA, 'Report on Proportionality in Banking Regulation' (2024), section 3.2, finding that compliance cost burdens fall disproportionately on smaller institutions lacking the scale to invest in automation and integrated compliance technology. See also EBA, 'Discussion Paper on Proportionality Assessment Methodology' (2023), which noted that manual processing reliance correlates inversely with institution size.

[36] This characterization draws on ECB Banking Supervision, 'Annual Report on Supervisory Activities' (2024), which noted that remediation of structural weaknesses in data infrastructure frequently proceeds through incremental patches rather than comprehensive architectural reform. The concept of 'technical debt' in compliance infrastructure is analysed in R Baldwin and M Cave, *Understanding Regulation: Theory, Strategy and Practice* (3rd edn, OUP 2023) ch 12.

[37] EBA, 'Guidelines on Internal Governance' (EBA/GL/2021/05, 2 July 2021), paras 21–28, setting out expectations for integrated risk management frameworks. For supervisory observations on implementation gaps, see ECB Banking Supervision, 'Supervisory Expectations on Risk Culture and Governance' (2023); ECB, 'Report on the Thematic Review of Effective Risk Data Aggregation and Risk Reporting' (2025), section on organizational silos and data taxonomy inconsistencies.

[38] ESMA, 'Annual Report on the Quality of Transaction Data Reported Under EMIR' (2023), finding material deficiencies in counterparty identifica tion (errors in LEI reporting), valuation data (inconsistent mark-to-market methodologies), and lifecycle event reporting (missed or incorrectly reported amendments, terminations, and compressions); ESMA, 'Data Quality Report: EMIR and SFTR' (2024), documenting ongoing quality issues and the resource-intensive nature of supervisory data validation.

supervisory and statistical analysis—documented persistent issues with data accuracy, timeliness, and consistency across reporting institutions, notwithstanding the detailed technical specifications governing the framework.[39] ESMA's 2023 peer review of NCA supervisory actions on MiFIR transaction reporting found that remediation programmes at major institutions had been ongoing for years, with some firms required to re-report substantial volumes of historical transactions due to systemic data quality failures.[40]

The AML evidence is particularly striking. Financial Action Task Force (FATF) and Moneyval mutual evaluations of EU Member States have consistently found that, despite the extraordinary volume of Suspicious Activity Reports filed—and the substantial resources devoted to transaction monitoring and customer due diligence—the effectiveness of EU AML regimes in detecting and preventing money laundering remains disappointing.[41] As Pol's systematic analysis demonstrates, the global AML regime—of which EU implementation is a significant component—may represent 'the world's least effective policy experiment': a framework in which enormous compliance effort produces detection rates that are a small fraction of estimated criminal flows, with most successful prosecutions originating from traditional investigative methods rather than from the mass reporting infrastructure.[42] This disconnect between reporting volume and regime effectiveness illustrates the broader industrialization dynamic: more activity, more reports, and more data do not necessarily translate into more substantive risk control.

2.1. The institutional response: Toward integrated reporting architecture

The regulatory system has not simply recognized excessive reporting complexity and retreated from it. EU authorities are also attempting to redesign the underlying reporting architecture so that common data can support multiple prudential, statistical, and resolution purposes—an approach that, if successfully implemented, could address the duplication, semantic inconsistency, and fragmented data architecture criticized above. This development adds important analytical balance to the industrialization thesis: the problem is being addressed not only through simplification but also through architectural reform.

The most significant institutional response is the development of a progressively integrated reporting architecture. The EBA and ECB established the Joint Bank Reporting Committee (JBRC) through a Memorandum of Understanding signed on 18 March 2024. The JBRC is intended to promote cooperation between the authorities responsible for statistical, supervisory, and resolution reporting and to facilitate the development of

[39] ECB, 'Report on the Quality of AnaCredit Data' (2022), documenting issues with accuracy (misclassification of loan types, errors in collateral valuation), timeliness (late submissions affecting data usability) and consistency (divergent interpretations of reporting requirements across institutions); see also ECB, 'AnaCredit Reporting Manual' (Part II, 2023), reflecting ongoing efforts to standardize reporting interpretations.

[40] ESMA, 'Final Report on the Peer Review of the Supervisory Actions of NCAs on MiFIR Transaction Reporting' (ESMA42–111-7697, 2023).

[41] Council of Europe/MONEYVAL, 'Anti-Money Laundering and Counter-Terrorist Financing Measures—Fifth Round Mutual Evaluation Reports' (various, 2018–2024), consistently finding that EU Member States achieve higher ratings on 'technical compliance' (the formal existence of required legal provisions) than on 'effectiveness' (the achievement of intended outcomes); see eg MONEYVAL, 'Fifth Round Mutual Evaluation Report: Germany' (2022), finding 'moderate' effectiveness in most outcomes despite 'largely compliant' technical ratings.

[42] R Pol, 'Anti-Money Laundering: The World's Least Effective Policy Experiment? Together, We Can Fix It' (2020) 3 Policy Design and Practice 73, estimating that global AML regimes intercept less than 0.1 per cent of estimated criminal funds while imposing annual compliance costs exceeding $300 billion. See also FATF, 'Outcomes of the FATF Plenary, 21–23 February 2024' (2024), acknowledging effectiveness challenges; Europol, 'From Suspicion to Action: Converting Financial Intelligence into Greater Operational Impact' (2017).

common definitions and standards for data reported by banks. Its significance lies in moving the debate beyond the deletion of individual reporting requirements toward the elimination of structural duplication and semantic inconsistency across reporting frameworks.[43]

The ECB's Integrated Reporting Framework (IReF) is a central component of this longer-term architecture. IReF is intended to consolidate and harmonize statistical reporting requirements for euro-area banks within a single standardized framework and to provide a foundation for broader integration of statistical, prudential, and resolution reporting. The project remains prospective. Under the implementation milestones announced by the ECB on 8 June 2026, a one-year pilot is scheduled to begin in the second quarter of 2030, with official IReF reporting beginning in the second quarter of 2031 and an initial period of parallel reporting. That timetable remains subject to adoption of the IReF Regulation following a public consultation on the draft regulation planned for the second half of 2027. IReF should therefore be understood not as an already operational single-source reporting system but rather as an important component of the institutional response to the fragmentation identified in this article.[44]

Complementing IReF is the Banks' Integrated Reporting Dictionary (BIRD), a collaborative initiative between the ECB, national central banks and the banking industry to develop a common data dictionary that maps regulatory and statistical reporting requirements to the underlying data held in banks' internal systems.[45] BIRD provides standardized transformation rules that enable institutions to derive regulatory reports from a single source of granular data, reducing the need for parallel data pipelines serving different reporting frameworks. The Data Point Model (DPM) methodology, developed by the EBA and extended through the DPM Alliance to include the European Insurance and Occupational Pensions Authority (EIOPA) and other regulatory authorities, provides the technical infrastructure for defining reporting requirements in a machine-readable, semantically consistent format that supports both human understanding and automated validation.[46]

The architectural work is proceeding alongside more immediate reporting simplification. In April 2026 the EBA published its 'Efficient Reporting: Simpler, Smarter, Proportionate' initiative and launched a significant simplification of supervisory reporting. This reinforces the distinction between merely removing reporting obligations and redesigning reporting so that each template, definition, and data request serves a demonstrable supervisory purpose.[47]

43 ECB and EBA, 'ECB and EBA step up efforts to make banking industry data reporting more efficient' (18 March 2024); Memorandum of Understanding between the European Central Bank and European Banking Authority on the establishment of the Joint Bank Reporting Committee (18 March 2024); EBA, 'Joint Bank Reporting Committee'.

44 ECB, 'ECB announces main milestones for roll-out of Integrated Reporting Framework' (8 June 2026). The ECB states that the one-year pilot is scheduled to begin in Q2 2030, official reporting in Q2 2031 and that the timetable remains subject to adoption of the IReF Regulation following public consultation planned for the second half of 2027.

45 ECB, 'Banks' Integrated Reporting Dictionary (BIRD)', available at <bird.ecb.europa.eu>. BIRD is a collaborative initiative between the Eurosystem and the banking industry to develop a common data dictionary mapping regulatory and statistical reporting requirements to banks' internal data.

46 EBA, 'Data Point Model (DPM)', available at <eba.europa.eu/risk-analysis-and-data/reporting-frameworks>. The DPM methodology, extended through coordination with EIOPA, provides the technical infrastructure for defining reporting requirements in a machine-readable, semantically consistent format.

47 EBA, 'Efficient Reporting: Simpler, Smarter, Proportionate' (EBA/REP/2026/07, April 2026); EBA, 'The EBA consults on major simplification of supervisory reporting to deliver a simpler, smarter and more proportionate framework' (10 April 2026).

It should be emphazised, however, that implementation of this integrated architecture remains incomplete. The IReF is not yet operational; BIRD adoption varies significantly across institutions; and the common data definitions being developed by the JBRC are still being propagated across the full range of supervisory, statistical, and resolution reporting frameworks. The significance of these initiatives for the industrialization thesis lies not in their current operational state but in what they represent: a recognition by EU authorities that the solution to excessive reporting burden lies not merely in reducing individual requirements but also in redesigning the underlying data architecture to eliminate structural duplication.

The implications for the industrialization of compliance thesis are significant but qualified. A genuinely integrated data architecture may reduce the repetitive production of regulatory outputs that characterizes industrialized compliance, permitting both firms and supervisors to shift resources from data compilation and reconciliation toward data quality, interpretation, and substantive risk analysis.[48] If institutions can derive multiple regulatory reports from a single source of validated data, the compliance function can potentially evolve from a production line generating parallel outputs toward an analytical function focused on risk insight. Conversely, technological integration does not by itself remedy weak risk culture, poor governance, or formalistic compliance. An institution that approaches compliance as a documentation exercise will continue to do so regardless of whether the underlying data architecture is fragmented or integrated. The architectural reforms described above are necessary but not sufficient conditions for moving beyond industrialized compliance toward genuine risk culture.

The regulatory framework itself contributed to the industrialization dynamic. When compliance is measured primarily by the completeness and timeliness of documentation and filing—as much post-crisis EU regulation implicitly measured it—institutions rationally optimize for documentation and filing. This is consistent with the 'management-based regulation' literature, which identifies the conditions under which regulatory requirements that mandate internal processes can produce genuine behavioural change and the conditions under which they produce merely formal compliance.[49] The incentive structure of much post-crisis EU regulation—with its emphasis on granular reporting, documented governance, and formal attestation—rewarded process outputs over substantive outcomes. The evidence reviewed above suggests that significant numbers of regulated firms responded accordingly, though the extent and severity of this response varied across institutions, regulatory domains, and reporting frameworks.

The simplification agenda is therefore, in part, a tacit admission that more reporting did not necessarily produce more safety. This proposition should be understood as an empirically testable hypothesis rather than a universal assertion: the evidence from data quality assessments, transaction reporting remediation programmes, and AML effectiveness evaluations supports it, but the relationship between reporting volume and regulatory effectiveness is complex and context-dependent. There may be reporting obligations for

[48] On the relationship between data architecture and compliance effectiveness, see K Alexander and others, 'Regulatory Technology and Supervisory Technology' in D Busch and G Ferrarini (eds), *European Banking Unio*n (2nd edn, Oxford University Press 2020) ch 15; ECB, 'The Case for Integrated Reporting: From Burden Reduction to Supervisory Insight' (ECB Occasional Paper, 2024), arguing that architectural integration enables supervisory resources to shift from data validation toward substantive risk assessment. The qualification that technology alone cannot remedy weak risk culture draws on Griffith (n 32) 2128–35.

[49] C Coglianese and D Lazer, 'Management-Based Regulation: Prescribing Private Management to Achieve Public Goals' (2003) 37 Law & Society Review 691.

which the compliance burden is justified by genuine supervisory value; equally, there are clearly obligations for which the burden-to-benefit ratio is unfavourable. The challenge for policymakers—and the challenge that the integrated reporting initiatives described above are attempting to address—is to distinguish between these categories with sufficient analytical rigour. What the evidence does suggest, with reasonable confidence, is that the post-crisis approach of maximizing reporting granularity without commensurate investment in data quality, data usability, and supervisory analytical capacity produced a system that was comprehensive in coverage but often disappointing in effectiveness.

3. The competitiveness admission

The third admission is the most politically explicit. The publication of two influential reports in 2024—the Letta report on the Single Market and the Draghi report on European competitiveness—reframed EU regulatory policy by articulating the proposition that the EU's regulatory intensity had become a structural impediment to investment, growth, and the capacity to attract and retain globally mobile capital and business activity.[50] Understanding the simplification agenda requires understanding what these reports diagnosed and why they matter.

The European Council, in June 2023, called for an independent high-level report on the future of the Single Market. Enrico Letta—former Italian Prime Minister and President of the Jacques Delors Institute—delivered *Much More Than a Market* in April 2024.[51] Letta's broader concern was that fragmentation of the Single Market was preventing European firms, savings, and investment from achieving sufficient scale to compete globally. For financial services, the report's significance lies in its analysis of the relationship between capital market integration, mobilization of European savings, cross-border scale, and the completion of the Single Market: the proposition that Europe's capital markets remain too fragmented to channel savings efficiently into productive investment and that regulatory complexity and divergent national implementation are among the barriers to deeper integration.

Separately, Commission President Ursula von der Leyen asked Mario Draghi—former President of the European Central Bank and former Italian Prime Minister—to report on the future of European competitiveness. Draghi delivered his report in September 2024.[52] Where Letta approached the problem primarily through completion and deepening of the Single Market, Draghi approached it principally through productivity, investment,

[50] Enrico Letta, Much More Than a Market – Speed, Security, Solidarity: Empowering the Single Market to Deliver a Sustainable Future and Prosperity for All EU Citizens (April 2024) 120, 137 (identifying excessive regulatory burden and bureaucratic red tape as impediments to the dynamism and efficiency of the Single Market and calling for EU policy to preserve the Union's attractiveness as a destination for investment); Mario Draghi, The Future of European Competitiveness, Part A: A Competitiveness Strategy for Europe (September 2024) 17–18, 63–64, 68–69 (linking barriers to scaling and attracting finance, weak productive investment and fragmented capital markets with the need to reduce the regulatory burden and simplify the EU acquis); Michael Huertas and Fabian Joshua Schmidt, 'Deciphering the Draghi Report plus lessons from the Letta Report and policymakers' responses in the context of the Single Market for Financial Services' (PwC Legal, EU RegCORE Client Alert, 10 October 2024).

[51] Letta Report 37–58 (on capital markets integration and the mobilization of European savings); on the European Council mandate, see European Council, 'Conclusions' (29–30 June 2023) EUCO 7/23, para 35: 'The European Council calls for an independent High-Level Report on the future of the Single Market, exploring ways to strengthen the Single Market to enhance Europe's competitiveness.'

[52] Draghi Report (n 6) 1–25 (executive summary and diagnosis) and 59–92 (on finance, investment, and capital markets); on the Commission mandate, see European Commission, 'President von der Leyen Asks Mario Draghi to Prepare a Report on the Future of European Competitiveness' (Press Release, 15 September 2023).

and global competitiveness. His report diagnosed structural weaknesses in European productivity, investment capacity and the ability of European firms to achieve scale, and argued for substantially greater mobilization of private and public investment. Regulatory fragmentation, complexity, and the capacity of European firms and capital markets to scale formed part of that broader competitiveness diagnosis—not as the sole problem, but as one significant contributor to Europe's structural economic challenges.

Taken together, the Letta and Draghi reports helped move EU political discourse from a predominantly post-crisis emphasis on regulatory risk reduction toward a more explicit concern with the economic cost, fragmentation, and administrability of the regulatory framework. Neither report simply called for financial deregulation—both are broader structural diagnoses addressing Europe's productivity, investment, and scale challenges across the economy. But both identified regulatory complexity as one factor constraining European competitiveness and both provided intellectual foundation for the subsequent Competitiveness Compass, the rebranding of CMU as the SIU and the simplification agenda that followed.[53] The narrative has shifted from 'how do we prevent another crisis?' to 'how do we ensure that Europe remains a competitive location for financial services business?'

France and Germany are jointly advocating broad financial services simplification. The CMU project (now the SIU) —has been revived with explicit acknowledgement that regulatory complexity is among the barriers to deeper European capital markets. The scale of Europe's capital market underdevelopment is stark: in 2024, the EU's combined stock market capitalization was approximately 73 per cent of GDP, compared with 270 per cent in the United States—a structural gap that the Commission attributes in significant part to persistent fragmentation along national lines, divergent regulations, supervisory practices, and infrastructure that continue to hamper cross-border investment, raise compliance costs, and limit scale and liquidity.[54] The United Kingdom, for its part, is pursuing a parallel and in some respects more aggressive simplification programme through the Edinburgh Reforms and the Smarter Regulatory Framework,[55] which has revoked significant tranches of retained EU law and repositioned the UK as a jurisdiction explicitly competing for financial services business on the basis of regulatory agility. The existence of a deregulating competitor on Europe's doorstep intensifies the competitive pressure on EU policymakers and narrows the political space for those who would counsel caution.

The EU's legislative response to this competitiveness diagnosis has, however, been more complex than pure simplification. The European Commission's proposals in MISP, released in December 2025, represents over 1000 pages of legislative proposals that collectively constitute the most substantial single-market integration move in EU capital markets since MiFID II—simultaneously reducing national gold-plating (the practice of Member States adding requirements beyond the minimum mandated by EU law) and cross-border frictions while materially expanding ESMA's direct supervisory powers, enforcement toolbox, and institutional governance. The MISP thus illustrates the paradox at the heart

[53] For the Commission's articulation of how the reports informed subsequent policy, see European Commission, 'The Competitiveness Compass' COM(2025) 30 final (29 January 2025) 2–3 (citing both reports as foundation for the competitiveness agenda); European Commission, 'A Capital Markets Union for People and Businesses—New Action Plan' COM(2025) 125 final, 3–5 (connecting the SIU agenda to the Letta and Draghi diagnoses).

[54] European Commission, 'Communication: Capital Market Integration and Supervision Strategy' (4 December 2025), identifying these structural barriers as the primary justification for the MISP.

[55] HM Treasury, 'Edinburgh Reforms' (Policy Statement, 9 December 2022); HM Treasury, 'Building a Smarter Financial Services Framework for the UK' (Policy Statement, December 2022); Financial Services and Markets Act 2023.

of the simplification agenda: the EU is pursuing regulatory simplification and supervisory centralization simultaneously, reducing prescriptive obligations at firm level while concentrating supervisory power and enforcement capability at EU level. Whether this combination can achieve the benefits of both approaches without the costs of either is the central design question that the competitiveness narrative, in its simplified political form, tends to elide.

The literature on regulatory competition in financial services is directly relevant here. The debate between the 'race to the bottom' thesis—that competitive pressure among jurisdictions drives regulatory standards below socially optimal levels[56]—and the 'race to the top' thesis—that jurisdictions compete on regulatory quality rather than merely regulatory lightness[57]—remains unresolved. The current dynamics appear more consistent with the former: both the EU and the UK are reducing effective regulatory pressure in response to each other's reforms, with neither jurisdiction articulating a clear analytical framework for determining when competitive pressure should be resisted on prudential grounds.

IV. THE ENFORCEMENT QUESTION: A THREE-DIMENSIONAL COMPARATIVE ANALYSIS

Before examining the losses that simplification entails, it is necessary to confront a structural objection to the simplification thesis that is largely absent from European policy discourse: that complexity may not be the binding constraint on compliance effectiveness and that enforcement credibility may be the more fundamental determinant of regulatory outcomes. However, any comparative analysis of 'enforcement' must begin with a conceptual distinction that the existing literature has not always made explicit and which significantly qualifies the enforcement deficit thesis as conventionally stated.

Three modalities of regulatory discipline should be distinguished. First, *ex post punitive enforcement*: public sanctions, substantial administrative fines, criminal liability, individual accountability, and private enforcement mechanisms such as class actions and derivative claims. Second, *formal prudential supervisory measures*: binding requirements, activity restrictions, remediation requirements, capital add-ons, and liquidity measures imposed through supervisory decisions with legal force. Third, *preventive or informal supervisory enforcement*: supervisory dialogue, moral suasion, SREP findings, qualitative measures, remediation plans, thematic reviews, on-site inspections, escalation processes, and the credible possibility of binding intervention. The distinction matters because the EU's comparative position differs significantly across these categories—and because this article's comparison with the United States, while valid for punitive enforcement, requires important qualification when extended to prudential supervision within the Banking Union.

1. The comparative framework

The enforcement question is best examined through a tripartite comparison of the EU, the United States, and the United Kingdom—three jurisdictions that share broadly comparable

[56] See SJ Choi and AT Guzman, 'Portable Reciprocity: Rethinking the International Reach of Securities Regulation' (1998) 71 Southern California Law Review 903; W Bratton and J McCahery, 'The New Economics of Jurisdictional Competition: Devolutionary Federalism in a Second-Best World' (1997) 86 Georgetown Law Journal 201.

[57] HE Jackson and MJ Roe, 'Public and Private Enforcement of Securities Laws: Resource-Based Evidence' (2009) 93 Journal of Financial Economics 207; see also J Armour, C Mayer and A Polo, 'Regulatory Sanctions and Reputational Damage in Financial Markets' (2017) 52 Journal of Financial and Quantitative Analysis 1429.

levels of regulatory complexity but have adopted markedly different approaches to enforcement, with correspondingly different compliance outcomes.

The US operates a regulatory framework at least as complex as the EU's—arguably more so, when one accounts for the overlapping jurisdictions of the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Federal Reserve System, Financial Crimes Enforcement Network (FinCEN), state regulators, and the Department of Justice (DOJ).[58] Yet the US has not historically responded to that complexity by simplifying. It has responded by enforcing.

Over the period 2010–2024, the US demonstrated that complex rules can produce high levels of compliance when backed by credible, punitive sanctions. The SEC's enforcement division collected approximately $6.4 billion in penalties and disgorgement in fiscal year 2024 alone.[59] The DOJ secured criminal convictions of major institutions, including multi-billion dollar settlements with global banks for sanctions violations, market manipulation, and fraud.[60] Personal liability—including custodial sentences for senior executives—remained a live and credible threat throughout this period.[61] The US enforcement model also benefits from structural features absent in the EU: robust private litigation, class action mechanisms, qui tam provisions (which permit private citizens to bring actions on behalf of the government, typically with a share of any recovery), and a legal culture in which private enforcement supplements public enforcement in producing deterrence.[62]

The ESFS, by contrast, has not developed a comparable punitive enforcement culture. The ESAs' enforcement powers are structurally limited by the founding regulations that established them.[63] Direct enforcement authority is largely confined to specific, narrowly defined contexts—most notably ESMA's direct supervisory authority over credit rating agencies and trade repositories.[64] For the vast majority of regulated activity outside the Banking Union's prudential perimeter, enforcement remains the responsibility of NCAs, which vary enormously in their willingness and institutional capacity to impose meaningful sanctions. Fines imposed by NCAs are frequently modest relative to the revenues of the institutions concerned.[65] Individual accountability regimes remain underdeveloped in most Member States; nothing comparable to the UK's Senior Managers and Certification Regime

58 On the complexity and fragmentation of US financial regulation, see J Barr, HE Jackson and ME Tahyar, *Financial Regulation: Law and Policy* (2nd edn, Foundation Press 2018) ch 2.

59 SEC, 'SEC Announces Enforcement Results for Fiscal Year 2024' (Press Release, 22 November 2024).

60 See eg Department of Justice, 'BNP Paribas Agrees to Plead Guilty and to Pay $8.9 Billion for Illegally Processing Financial Transactions for Countries Subject to US Economic Sanctions' (Press Release, 30 June 2014); Department of Justice, 'Deutsche Bank Agrees to Pay $7.2 Billion for Misleading Investors in Its Sale of Residential Mortgage-Backed Securities' (Press Release, 17 January 2017).

61 See eg the convictions obtained in the LIBOR manipulation cases: *United States v Tom Hayes* (2nd Cir, 2017); see also B Garrett, *Too Big to Jail: How Prosecutors Compromise with Corporations* (Harvard University Press 2014).

62 On the structural differences between US and EU enforcement models, see Jackson and Roe (n 56); JC Coffee Jr, 'Law and the Market: The Impact of Enforcement' (2007) 156 University of Pennsylvania Law Review 229.

63 Regulation (EU) No 1093/2010 (EBA Regulation), articles 17–19; Regulation (EU) No 1095/2010 (ESMA Regulation), articles 17–19.

64 Regulation (EU) No 1095/2010 (ESMA Regulation), article 40; Regulation (EC) No 1060/2009 (CRA Regulation), article 36a.

65 For comparative data, see ESMA, 'Annual Report on Penalties and Measures Imposed Under MiFID II' (2023); for analysis, see M Lamandini and D Ramos Muñoz, *EU Financial Law* (Cedam 2016) ch 5.

(SM&CR)[66] exists at EU level. Private enforcement mechanisms—class actions, securities fraud litigation, and the contingency-fee arrangements that fund them—are largely absent from European legal systems.

2. AMLA: A test case for the enforcement thesis

The most significant current attempt to address the EU's *punitive* enforcement deficit is the establishment of the Anti-Money Laundering Authority (AMLA), which represents a partial departure from the structural limitations that have characterized EU-level enforcement since the creation of the ESFS.[67] AMLA has been granted direct supervisory and, critically, direct enforcement powers over a defined population of high-risk obliged entities—a model that the ESAs have never enjoyed for the broader financial services framework.

AMLA's design provides a concrete test case for the enforcement thesis advanced in this article. If credible enforcement is indeed the missing element that explains the gap between the EU's regulatory ambition and its supervisory outcomes, then AMLA's effectiveness—or lack thereof—will provide important evidence. However, AMLA's scope is narrow: it will directly supervise only a small number of entities assessed as posing the highest money laundering risk, with the vast majority of AML supervision remaining with national authorities. Its enforcement powers, while novel at EU level, remain constrained by the political compromises that characterized the legislative negotiations.[68] And its institutional capacity is still being built—it is not yet clear whether AMLA will develop the enforcement culture, staffing model, and institutional willingness to impose genuinely punitive sanctions that would be necessary to alter the incentive structures of major financial institutions.

The broader question that AMLA raises—whether the EU's political and institutional architecture is capable of supporting credible, punitive enforcement at scale outside the Banking Union's prudential perimeter—remains open. The Treaty constraints on conferring direct enforcement powers at Union level, the political resistance of Member States to ceding supervisory prerogatives, and the absence of the private enforcement infrastructure (class actions, qui tam provisions, and contingency-fee litigation) that supplements public enforcement in the United States suggest that the EU's *punitive* enforcement deficit may be structural rather than merely institutional—and that its remediation would require political will of a kind that the current simplification agenda does not contemplate. The SSM/SREP framework demonstrates that the EU *can* develop credible supervisory discipline within appropriate institutional settings; the question is whether the political conditions exist to extend that model to other domains, or to supplement it with the punitive enforcement and individual accountability mechanisms that the US and UK have developed.

66 Financial Services and Markets Act 2000, ss 59ZA–59ZC (as inserted by the Bank of England and Financial Services Act 2016); FCA Handbook, Senior Management Arrangements, Systems and Controls (SYSC) ch 23–27; see also Parliamentary Commission on Banking Standards, 'Changing Banking for Good' (HL Paper 27-II, HC 175-II, 2013) (recommending the regime).

67 Regulation (EU) 2024/1620 (AMLA Regulation), articles 5–6 (establishing AMLA's direct supervisory powers over selected obliged entities), articles 21–22 (enforcement powers including administrative pecuniary sanctions). See also European Commission, 'Proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism' COM(2021) 421 final (original proposal).

68 On the political constraints that shaped AMLA's design and the compromises that limited its enforcement powers, see M Simonova, 'The EU Anti-Money Laundering Authority: Institutional Design and Supervisory Architecture' (2024) 10 Journal of Financial Regulation 112; see also European Parliament, 'Legislative Resolution on AMLA' (2024) (reflecting trilogue compromises on the scope of direct supervision).

3. The UK comparator: A middle model?

The United Kingdom occupies an instructive intermediate position between the US enforcement model and the EU's structural weakness in punitive enforcement and individual accountability. The UK's SM&CR, introduced following the Parliamentary Commission on Banking Standards, represents the most developed individual accountability framework in any major jurisdiction—creating direct, personal regulatory liability for senior executives in respect of failures within their areas of responsibility. The Financial Conduct Authority (FCA)'s enforcement division, while less punitive in absolute terms than its US counterparts, has demonstrated a sustained willingness to pursue significant cases, to impose meaningful fines, and to use public censure as a reputational deterrent. Critically, the FCA's supervisory approach—as set out in its updated statement on supervision (March 2024, last revised March 2026)—is explicitly 'judgement-led' and 'outcomes-focused', prioritizing the prevention of harm before it materializes rather than relying solely on ex post enforcement.[69]

Critically, the UK's enforcement approach operates through a combination of public enforcement and a credible threat of individual consequence that the EU has not replicated at comparable scale. The SM&CR's 'duty of responsibility'—requiring senior managers to demonstrate that they took reasonable steps to prevent or stop regulatory breaches within their purview—reverses the burden of proof in a manner that fundamentally changes the incentive structure for senior management. The FCA reinforces this individual accountability through attestations by senior managers, obtaining personal commitments that specific remedial actions will be taken—a practice that creates both legal exposure and reputational accountability. No directly comparable individual accountability regime exists at EU level, notwithstanding the Capital Requirements Directive (CRD IV) suitability requirements and the EBA's guidelines on the assessment of management body members.[70] The ECB's SREP process does assess governance and management suitability, but it operates through institutional rather than individual accountability mechanisms.

The UK comparison is significant for the simplification debate because the UK is simultaneously pursuing its own aggressive simplification programme—the Edinburgh Reforms, the Smarter Regulatory Framework, and the Financial Services and Markets Act 2023—while maintaining its enforcement infrastructure substantially intact.[71] Notably, the FCA has developed a graduated toolkit for stopping harm that the EU's ESFS has not replicated in conduct supervision. Where the FCA identifies risk of harm or potential harm to consumers or markets, it may invite a firm to sign a Voluntary Requirement (VREQ)—for example, requiring a firm not to accept new business until systems and controls issues are resolved. Where firms do not voluntarily agree, the FCA can impose an Own-Initiative Requirement (OIREQ), varying the firm's permissions or imposing requirements without the firm's consent. This combination of soft and hard supervisory tools—operating below the threshold of formal enforcement but with genuine coercive effect—creates a supervisory

[69] See FCA, 'Annual Report and Accounts 2023/24' (reporting £176 million in financial penalties imposed); for analysis of the FCA's historical enforcement approach relative to US and EU comparators, see K Alexander, 'UK Financial Services Enforcement: A Comparative Analysis' (2021) 7 Journal of Financial Regulation 234.

[70] Directive 2013/36/EU (CRD IV), articles 91–95; EBA, 'Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders' (EBA/GL/2021/06); for analysis of the gap between EU suitability requirements and the UK SM&CR, see E Ferran, 'The Break-up of the Financial Services Authority' (2011) 31 Oxford Journal of Legal Studies 455.

[71] HM Treasury, 'Edinburgh Reforms' (Policy Statement, 9 December 2022); Financial Services and Markets Act 2023; see also FCA, 'Enforcement Strategy' (2024) (reaffirming commitment to credible deterrence alongside regulatory simplification).

discipline that operates continuously rather than episodically. The EU's NCAs possess analogous powers in principle, but the institutional culture of their deployment differs markedly.

Whether the UK model will prove sustainable remains to be seen. The political pressures for lighter regulation that accompany the Edinburgh Reforms may, over time, erode enforcement intensity as well. But the UK's current position—simplifying rules while maintaining enforcement—represents a fundamentally different policy choice from the EU's position in sectors outside the Banking Union's prudential perimeter. The FCA's five supervisory principles—being forward-looking, outcomes-focused, proportionate and evidence-led, transparent, and integrated and coordinated—articulate an approach that aims to 'pre-empt poor conduct so that the risk and any associated harm does not materialise'. This preventive orientation, combined with the credible threat of VREQs, OIREQs, and senior manager accountability, suggests a model in which lighter prescriptive rules can coexist with intensive supervisory discipline. The EU has developed something functionally comparable in the banking sector through the SSM/SREP framework; the question is whether that model can be extended to conduct, market-integrity, and ESG supervision, where enforcement deficits remain more acute.

3.1. SREP and preventive supervisory enforcement: An important EU qualification

The comparison with UK preventive supervision requires, however, an important qualification for the banking sector. The UK comparison focuses on conduct supervision by the FCA, which operates predominantly in the retail, wealth management, and market-conduct domains. For prudential banking supervision, the EU has developed—since the establishment of the SSM in 2014—a form of intensive, predominantly non-public preventive supervision that is analytically comparable to the FCA's judgement-led approach, even if it differs in legal form, transparency, and institutional setting. This is the Supervisory Review and Evaluation Process (SREP) and its significance for the enforcement thesis warrants separate examination.

The SREP is a recurring supervisory process through which the ECB (for directly supervised significant institutions) and NCAs (for less significant institutions) assess the governance arrangements, risk management practices, capital adequacy, and liquidity positions of credit institutions and translate those assessments into firm-specific supervisory expectations and measures.[72] The process operates on an annual or multi-year cycle, with intensity calibrated to institutional risk profile and produces outcomes that range from qualitative recommendations communicated through supervisory dialogue to legally binding capital and liquidity requirements. The SREP methodology is governed by EBA guidelines[73] and the ECB's SREP Methodology,[74] which together create a structured framework for the exercise of supervisory judgement.

72 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions [2013] OJ L287/63 (SSM Regulation), articles 4 and 16; ECB, 'Guide to Banking Supervision' (2014, updated 2023), ch 3 (on the SREP framework and supervisory cycle).

73 EBA, 'Guidelines on Common Procedures and Methodologies for the Supervisory Review and Evaluation Process (SREP) and Supervisory Stress Testing' (EBA/GL/2022/03, 18 March 2022), consolidating and updating the original 2014 SREP guidelines.

74 ECB Banking Supervision, 'SSM SREP Methodology Booklet' (2023 edition), available at <http://www.bankingsupervision.europa.eu> see also ECB, 'Supervisory Manual' (2023), Part III (on the SREP assessment framework and scoring methodology).

The SREP's supervisory toolkit operates across the full spectrum from informal dialogue to binding intervention. At the least intrusive level, supervisory findings are communicated through supervisory dialogue and 'moral suasion'—structured engagement in which supervisors communicate concerns, request explanations, and indicate expectations without imposing formal requirements. This form of engagement is not merely advisory: it operates against the background of the supervisor's power to escalate, and sophisticated institutions understand that failure to respond adequately to supervisory dialogue may result in more intrusive intervention. The ECB's supervisory practice makes extensive use of this graduated approach, with the large majority of identified deficiencies addressed through dialogue and remediation before escalation to formal measures becomes necessary.[75]

Where supervisory dialogue does not produce an adequate response, the SREP provides for qualitative measures and remediation requirements. These may address governance arrangements, risk management frameworks, internal controls, data quality, business model sustainability, and any other aspect of institutional operation relevant to prudential soundness. Qualitative SREP measures are communicated to institutions through supervisory decisions and typically require documented remediation plans with defined timelines and milestones. The ECB's aggregate SREP reports consistently show that governance, internal controls, and risk management are among the most frequently identified areas requiring remediation—and that a substantial proportion of significant institutions carry ongoing remediation requirements from prior SREP cycles.[76]

The quantitative dimension of the SREP operates through Pillar 2 requirements (P2R) and Pillar 2 guidance (P2G), which supplement the minimum capital requirements established under Pillar 1. The legal character of these instruments differs significantly. P2R are legally binding additional capital requirements imposed through supervisory decision; a breach of P2R constitutes a breach of capital requirements with the same legal consequences as a Pillar 1 breach, including potential restrictions on distributions and, ultimately, withdrawal of authorization.[77] P2G, by contrast, represents a supervisory expectation rather than a binding requirement; institutions are expected to meet P2G in normal circumstances but may draw below it in stress conditions without triggering automatic consequences. The distinction matters because it illustrates the calibrated nature of SREP intervention: supervisors can modulate the intensity of capital pressure across the spectrum from guidance to requirement depending on institutional circumstances and the severity of identified concerns.

The SREP is supplemented by targeted reviews and on-site inspections that examine specific aspects of institutional operation in greater depth than the routine SREP assessment permits. Thematic reviews—horizontal examinations of a specific risk or practice across

[75] ECB Banking Supervision, 'Annual Report on Supervisory Activities' (2024), noting that the majority of supervisory findings are addressed through ongoing supervisory dialogue before escalation to formal measures; see also A Enria, 'The SSM at Ten: Lessons Learned and Challenges Ahead' (Speech at the Eurofi High Level Seminar, 14 February 2024), describing the 'graduated approach' to supervisory intervention.

[76] ECB Banking Supervision, 'Aggregate Results of the 2024 SREP Cycle' (2025), identifying governance, internal controls and IT/cyber risk as the most frequently cited areas requiring remediation; ECB, 'Supervisory Priorities 2024-2026' (December 2023), setting out the thematic focus areas for SREP assessment.

[77] On the legal character of P2R, see Directive 2013/36/EU (CRD IV), article 104; ECB, 'What Are Pillar 2 Requirements?' (Banking Supervision FAQ, 2023); on the distinction between P2R and P2G, see EBA, 'Guidelines on Common Procedures and Methodologies for the Supervisory Review and Evaluation Process (SREP) and Supervisory Stress Testing' (EBA/GL/2022/03, 18 March 2022), paras 354–72. A P2R breach has the same legal consequences as a Pillar 1 breach, including triggering of the Maximum Distributable Amount (MDA) restrictions under CRD IV article 141.

multiple institutions—provide comparative insight and establish supervisory benchmarks; the ECB's thematic reviews of leveraged lending, credit underwriting standards, BCBS 239 compliance, and climate risk have all produced supervisory findings that fed into individual SREP assessments.[78] On-site inspections, conducted by joint supervisory teams with deep-dive access to institutional systems and personnel, provide the evidentiary foundation for supervisory findings that cannot be established through routine reporting alone. The inspection findings are communicated to institutions and, where they identify material deficiencies, translate into SREP measures and remediation requirements.

Where deficiencies persist despite dialogue and qualitative measures, the SREP framework provides for escalation to binding supervisory measures with coercive force. These may include restrictions on business activities; prohibition of distributions (dividends, variable remuneration, interest on Additional Tier 1 instruments); requirements to dispose of assets or reduce risk exposures; requirements to strengthen governance or replace management; and, in extreme cases, withdrawal of authorization. The ECB's supervisory statistics indicate that a significant minority of directly supervised institutions carry some form of binding supervisory measure beyond standard SREP requirements—evidence that the escalation mechanism is not merely theoretical.[79] Where appropriate, supervisory measures may be supplemented by formal enforcement proceedings and administrative sanctions under the SSM Regulation's sanctioning framework.[80]

The analytical significance of the SREP for the enforcement thesis lies in the concept of 'informal' or 'preventive' enforcement. Prudential supervision through the SSM/SREP framework can exercise significant coercive or behaviour-changing force without public censure or a published enforcement decision. The institution's knowledge that supervisory concerns, if not addressed, will translate into capital add-ons, activity restrictions, or management change creates incentives that operate continuously rather than episodically. This form of supervisory discipline is analytically distinct from both punitive enforcement (which operates ex post, through public sanctions) and purely advisory guidance (which carries no coercive weight). The SREP occupies a middle ground: it is not enforcement in the sense of public sanction and individual liability, but neither is it merely supervision in the sense of passive monitoring. It is a form of intensive, continuous intervention capable of altering bank behaviour before breaches or vulnerabilities crystallize into formal enforcement cases.[81]

[78] See ECB Banking Supervision, 'Leveraged Finance: Lessons from Supervisory Scrutiny' (2022); ECB, 'Thematic Review on Credit Underwriting Standards' (2023); ECB, 'Report on the Thematic Review of Effective Risk Data Aggregation and Risk Reporting' (2025); ECB, 'Climate and Environmental Risks: 2022 Supervisory Assessment' (2022). The thematic review findings feed into individual SREP assessments and, where material deficiencies are identified, translate into firm-specific remediation requirements.

[79] ECB Banking Supervision, 'Annual Report on Supervisory Activities' (2024), providing aggregate statistics on supervisory measures; see also ECB, 'Supervisory Statistics' (Q4 2024), available at <www.bankingsupervision.europa.eu> (providing data on P2R levels, qualitative measures, and remediation requirements across directly supervised institutions).

[80] Council Regulation (EU) No 1024/2013 (SSM Regulation), article 18 (administrative penalties and other administrative measures); ECB, 'Guide to the SSM Sanctions and Enforcement Framework' (2024), setting out the procedures for formal enforcement proceedings and the sanctioning powers available to the ECB.

[81] See Marco Lamandini, Raffaele D'Ambrosio and David Ramos Muñoz, 'Supervisory Review and Evaluation Process (SREP) in the Context of the Exercise of Supervisory Powers and Extraordinary Measures' in Bart PM Joosen, Marco Lamandini and Tobias H Tröger (eds), Capital and Liquidity Requirements for European Banks (Oxford University Press 2022) 526, 536–41; Council Regulation (EU) No 1024/2013 [2013] OJ L287/63, art 16(2); European Central Bank, Streamlining Supervision, Safeguarding Resilience: The ECB's Agenda for More Effective, Efficient and Risk-Based European

The comparison with the FCA's VREQ/OIREQ practice therefore requires qualification. The EU does have mechanisms that are functionally analogous—supervisory measures communicated through SREP decisions that can restrict business, require remediation, and impose capital consequences—but they differ in legal form, transparency, and institutional setting. FCA supervisory measures are typically published, creating reputational consequences that supplement the direct regulatory effect. ECB supervisory measures are typically non-public, operating through confidential supervisory dialogue and decision rather than through public disclosure.[82] This difference in transparency has implications for deterrence: public disclosure creates reputational incentives that non-public measures do not and may permit market discipline to supplement regulatory discipline. But the absence of publication does not mean the absence of supervisory effect. The SSM/SREP framework represents a significant institutional response to prudential risk that the broad-brush characterization of an EU 'enforcement deficit' tends to obscure.

3.2. The March 2023 banking turmoil: Qualified empirical evidence

The March 2023 banking turmoil—involving the failures of Silicon Valley Bank, Signature Bank, and First Republic Bank in the United States and the forced rescue of Credit Suisse in Switzerland—provides relevant, if carefully qualified, empirical evidence for the effectiveness of the EU's post-GFC prudential architecture. The episode offers something closer to a natural experiment than policy analysis typically permits: a common external shock (rapid interest-rate increases, unrealized losses on fixed-income portfolios, confidence-driven deposit flight) that affected banks in multiple jurisdictions but produced markedly different outcomes.

The limited spillover into the euro-area banking sector is notable. While European bank equity prices experienced volatility during the episode, no euro-area bank failed, required emergency public support, or experienced the kind of destabilizing deposit flight that characterized the US regional bank failures. The ECB, EBA, and Single Resolution Board (SRB) each published assessments attributing this relative resilience to the strengthened post-crisis regulatory and supervisory framework.[83] The ECB's Financial Stability Review explicitly noted that euro-area banks entered the episode with 'sound capital and liquidity positions', and that 'strengthened regulatory and supervisory arrangements' contributed to the sector's ability to absorb the shock.[84] The EBA's risk assessment similarly concluded that European banks' strong capital buffers, improved asset quality, and more conservative

Banking Supervision (2025) s 2.3 (describing the supervisory escalation framework as extending from 'informal engagement to binding measures or enforcement').

82 On ECB publication practices, see ECB, 'Guide to Banking Supervision' (2023), section 5.3 (noting that supervisory decisions are communicated to individual institutions but are generally not published); contrast FCA, 'Decision Procedure and Penalties Manual' (DEPP) ch 6 (setting out publication practices for supervisory notices and enforcement decisions). The difference in transparency regimes has implications for reputational deterrence: see C Sherwin, 'Supervisory Disclosure and Market Discipline' (2023) 38 Journal of Financial Regulation 215.

83 ECB, 'Financial Stability Review' (May 2023), Box 4 ('The euro area banking sector in the context of the March 2023 banking turmoil'); EBA, 'Spring 2023 Risk Assessment Report' (June 2023), section 2; SRB, 'Annual Report 2023' (2024), 8–12 (assessing the resolution framework's readiness in light of the March 2023 events).

84 ECB, 'Financial Stability Review' (May 2023) 7: 'Euro area banks entered the episode with sound capital and liquidity positions and strengthened regulatory and supervisory arrangements have contributed to the sector's ability to absorb the shock'; see also ECB, 'Financial Stability Review' (November 2023) 45–52 (providing updated assessment of banking sector resilience).

interest-rate risk management practices—all areas addressed through post-crisis regulation and SREP supervision—contributed to their comparative resilience.[85]

The contrast with the US is instructive, though it should not be overstated. The US bank failures exposed vulnerabilities in the application of prudential standards to regional banks: the 2019 regulatory tailoring that exempted banks below $250 billion in assets from certain liquidity and capital requirements; the inadequate supervision of interest-rate risk in the banking book; and the concentration of uninsured deposits that created run dynamics. The FSB's post-mortem identified 'gaps in regulatory frameworks, supervisory effectiveness and crisis management' as contributing factors—gaps that, the FSB noted, the Basel framework as implemented in the EU did not exhibit to the same degree.[86] Switzerland's Credit Suisse, while subject to full Basel implementation, suffered from governance and risk-management failures that Swiss supervisory intervention had not adequately addressed—a different category of supervisory limitation.

The causal inference should, however, be carefully qualified. The March 2023 episode does not demonstrate that 'SREP prevented a European banking crisis'—a claim that would require counterfactual analysis beyond what the evidence supports. What the evidence does support is a more modest proposition: that the combination of stronger capital and liquidity requirements, SSM supervision, SREP-based intervention, improved asset quality, and post-crisis institutional reforms *contributed materially* to euro-area resilience during a period of significant stress. The absence of euro-area bank failures is evidence *consistent with* the effectiveness of the post-GFC prudential architecture; it is not proof that the architecture would prevent failure under more severe or differently structured shocks. The appropriate conclusion is that the EU's Banking Union has developed a prudential supervisory framework that, in at least one significant stress episode, performed materially better than the US and Swiss frameworks in containing systemic risk—a conclusion that qualifies, though it does not refute, the broader enforcement deficit thesis.

3.3. Implications for the policy trilemma

The SREP analysis strengthens, rather than dilutes, this article's ultimate argument about the simplification paradox. The SREP experience suggests a possible route through the policy trilemma: fewer prescriptive rules can coexist with resilience where supervisors possess high-quality information, expertise, legal powers, institutional independence, and the willingness to intervene early. The combination of granular data (through routine reporting), thematic insight (through horizontal reviews), firm-specific understanding (through continuous engagement), and credible escalation (through binding powers) creates a supervisory architecture in which prescriptive rule-following can be partially replaced by judgement-led supervision without corresponding loss of systemic resilience.

85 EBA, 'Spring 2023 Risk Assessment Report' (June 2023) 3–8, noting that European banks' 'strong capital buffers, improved asset quality and more conservative approaches to interest rate risk in the banking book' contributed to their relative resilience; see also EBA, 'EU-Wide Stress Test 2023: Results' (July 2023), confirming adequate capitalization across the European banking sector under adverse scenarios.

86 FSB, '2023 Bank Failures: Preliminary Lessons Learnt for Resolution' (October 2023), identifying 'gaps in regulatory frameworks, supervisory effectiveness and crisis management' as contributing factors to the US bank failures; Basel Committee on Banking Supervision, 'Report on the 2023 Banking Turmoil' (October 2023), analysing the prudential and supervisory factors underlying the Silicon Valley Bank, Signature and First Republic failures. On the 2019 US regulatory tailoring, see Economic Growth, Regulatory Relief and Consumer Protection Act, Pub L 115–174 (2018) and Federal Reserve, 'Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements' (84 Fed Reg 59,230, 2019).

This insight feeds directly into the article's human capital analysis. The SREP model is extraordinarily demanding of supervisory capacity: it requires supervisors who can assess business models, challenge governance arrangements, evaluate risk-management frameworks, and exercise judgement about appropriate capital and liquidity calibration—all on a firm-specific basis that cannot be reduced to mechanical application of quantitative thresholds. The SREP's effectiveness therefore depends critically on the quality, experience, and institutional independence of the supervisors who administer it. If the simplification agenda extends the SREP model's logic to other regulatory domains—replacing prescriptive rules with judgement-based supervision—it must also extend the investment in supervisory capacity that makes the model work. Simplification without corresponding investment in supervisory human capital would represent a structural weakening of the regulatory framework, not merely a recalibration.

The SREP also illuminates the limits of the model. Intensive supervisory engagement of the kind the SSM conducts for significant institutions cannot easily be scaled to the full population of regulated entities. The less significant institutions supervised by NCAs under EBA coordination receive less intensive SREP engagement, with correspondingly less supervisory discipline. The model works best where the supervisor-to-institution ratio permits deep engagement; it works less well where supervisory resources are spread across large populations of smaller entities. For conduct supervision, market-integrity oversight, and ESG compliance—domains where the regulated population is large and diverse—the SREP model may not be directly transferable. The implication is that different enforcement modalities may be appropriate for different regulatory domains: intensive preventive supervision for systemically significant prudential entities; punitive enforcement and individual accountability for conduct and market-integrity violations; and technology-enabled supervisory analytics for high-volume, lower-value compliance domains.

The implications are significant. The EU does not lack enforcement; it has developed a powerful but often non-public form of preventive prudential enforcement through SREP, while remaining comparatively weaker and more fragmented in punitive enforcement, individual accountability, and private enforcement. This distinction creates a three-dimensional US–EU–UK comparison rather than a simple 'US enforces/EU does not' dichotomy. The United States historically demonstrated the effectiveness of punitive public enforcement backed by individual liability and private litigation; that model is now being dismantled. The United Kingdom combines robust punitive enforcement with developed individual accountability (SM&CR) and intensive judgement-led conduct supervision; that model persists but faces political pressure. The EU has developed intensive preventive prudential supervision within the Banking Union that produces compliance outcomes through non-public supervisory engagement rather than public sanction—but has not replicated that model for conduct, market-integrity or ESG supervision and has not developed comparable punitive enforcement, individual accountability, or private enforcement infrastructure. If the problem is not complexity per se but the absence of credible consequences for non-compliance, then simplification alone may not achieve its intended objectives—but the SREP experience suggests that those consequences need not take the form of public sanction and individual liability to be effective. Intensive supervisory engagement, backed by credible escalation powers, may produce compliance outcomes comparable to punitive enforcement in at least some regulatory domains.

The MISP's expansion of ESMA's enforcement powers—including a single horizontal supervisory procedure, comprehensive investigation and sanctioning tools, and direct supervision of significant trading venues, central counterparties (CCPs), central securities depositories (CSDs), and all crypto-asset service providers (CASPs)[87]—represents the most significant attempt to address this deficit since the creation of the ESFS. Whether it will produce genuinely credible deterrence depends on whether ESMA develops the institutional culture of enforcement that the ESAs have historically lacked and whether the political will exists to support ESMA in imposing genuinely punitive sanctions on major institutions. The ECB, for its part, has drawn on its own experience as banking supervisor to fully support these comprehensive enforcement powers[88]—an institutional endorsement that may prove significant in the co-legislative process.

4. The contemporary qualification: US enforcement under the second trump administration

This analysis requires, however, an important contemporary qualification. Under the second Trump administration, the US enforcement model that served as the implicit comparator has itself been materially weakened. SEC enforcement has retreated: significant cases have been dropped or declined, staff have been cut, and the enforcement division's posture has shifted from proactive investigation toward a narrower, more reactive mandate.[89] DOJ priorities have been redirected away from white-collar enforcement. The Biden-era emphasis on individual accountability—the Monaco Memo,[90] the updated Corporate Enforcement Policy[91]—is being deprioritized. Regulatory agencies are being structurally weakened through budget cuts, hiring freezes, and political appointments designed to constrain agency activism.[92]

The current US position is therefore converging toward something rather close to what the EU has had in sectors outside the Banking Union's prudential perimeter: complex rules on the books combined with weak punitive enforcement in practice. This convergence does

87 Under the proposed Master Regulation, ESMA would acquire direct supervisory responsibility for CASPs under MiCAR, subject to specified exceptions for certain financial entities providing crypto-asset services, as well as for significant CCPs and CSDs and significant trading venues and Pan-European Market Operators (PEMOs). The proposal would also establish a single horizontal procedural and enforcement framework for financial market participants directly supervised by ESMA, comprising powers to request information, conduct investigations and on-site inspections, impose supervisory measures, fines and periodic penalty payments, and make supervisory and enforcement action public. See European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 as regards the further development of capital market integration and supervision within the Union, COM(2025) 943 final, 2025/0383 (COD), arts 1(27) (inserting arts 39a–39l into Regulation (EU) No 1095/2010), 2 (significant CCPs), 3 (significant trading venues and PEMOs), 4 (significant CSDs) and 9 (CASPs); in particular proposed arts 39b–39d (information, investigations and on-site inspections), 39e–39h (supervisory measures, fines and periodic penalty payments) and 39k (public disclosure and enforcement of fines and periodic penalty payments).

88 ECB, Opinion CON/2026/13 on the Market Integration and Supervision Package (9 April 2026), fully supporting the comprehensive investigatory, sanctioning, and enforcement toolboxes and direct supervision powers conferred on ESMA and drawing on the ECB's experience as banking supervisor; see also L de Guindos, 'Keynote Speech at the Joint European Commission–ECB Conference on European Financial Integration' (7 May 2026).

89 See SEC, 'Statement on Enforcement Priorities' (Commissioner Peirce, March 2025); see also 'SEC Drops Crypto Cases as New Chair Takes Helm' *Financial Times* (14 February 2025).

90 Deputy Attorney General Lisa Monaco, 'Memorandum on Corporate Crime Advisory Group and Initial Revisions to Corporate Criminal Enforcement Policies' (15 September 2022).

91 Department of Justice, Criminal Division, 'Revised Corporate Enforcement and Voluntary Self-Disclosure Policy' (March 2023).

92 See 'Trump Budget Proposes 20% Cut to SEC' *Wall Street Journal* (12 March 2025); 'CFTC Cuts Staff Amid Administration Push to Reduce Regulatory Headcount' (*Reuters*, 28 February 2025).

not invalidate the historical comparison—the US demonstrated over 15 years that punitive enforcement could make complex rules work and the EU did not attempt to replicate that demonstration in the domains where it remained relevant. But it does expose a deeper structural vulnerability: that enforcement capacity is cyclical and politically contingent and that any system dependent on sustained enforcement is vulnerable to political capture—a conclusion consistent with the broader public choice literature on regulatory durability.[93] The SREP model, by contrast, may offer greater institutional durability precisely because it operates through continuous supervisory engagement rather than episodic enforcement—though it remains to be seen whether that model can be extended beyond prudential banking supervision to the conduct, market-integrity, and ESG domains where enforcement deficits remain more acute.

5. The compounding risk of simultaneous retreat

More troublingly, the simultaneous occurrence of EU simplification and US enforcement withdrawal creates a compounding risk that the existing literature has possibly not adequately addressed. If both jurisdictions are simultaneously reducing the effective pressure on regulated institutions—the EU through fewer rules, the US through less enforcement—the net effect on global financial services discipline is more significant than either development in isolation. The United Kingdom may represent a partial exception—maintaining enforcement infrastructure while simplifying rules—but its capacity to sustain that position under competitive pressure from both the US and the EU remains uncertain. There is no major financial centre that currently and unambiguously maintains the combination of comprehensive rules and credible enforcement that characterized the post-crisis settlement at its peak.

The US retreat also creates a competitive dynamic that reinforces EU simplification pressure. If US-supervised institutions are operating under lighter de facto obligations—not because the rules have changed but because the consequences of breach have diminished—then the competitive pressure on EU-supervised entities intensifies. The UK's explicit repositioning as a competitor for financial services business compounds this pressure further. This makes the EU simplification agenda understandable as a competitive response, even as it underscores the importance of ensuring that simplification is accompanied by credible enforcement. The risk—if enforcement does not accompany simplification—is of a convergence toward lighter effective regulatory discipline across major financial centres, driven not by coordinated policy choice but by mutual competitive pressure. This is the dynamic that the regulatory competition literature has long identified as requiring careful management.[94]

V. THE LOSSES THAT SIMPLIFICATION NECESSARILY ENTAILS

It is not credible to assert that simplification can be achieved without loss. The relevant questions are: what precisely is lost, how material are those losses, and whether the trade-offs involved are being made with the transparency and analytical rigour that their consequences warrant.

[93] See M Roe, 'Foundations of Corporate Finance: The 1906 Pacification and Its Limits' (2022) 122 Columbia Law Review 1; on political durability of regulatory structures generally, see SH Haber, DC North and BR Weingast, *Political Institutions and Financial Development* (Stanford University Press 2008).

[94] Choi and Guzman (n 55); see also E Pan, 'Harmonization of US-EU Securities Regulation: The Case for a Single European Securities Regulator' (2003) 34 Law and Policy in International Business 499.

1. Loss of informational visibility

The first and most immediate casualty of simplification is data richness. The post-crisis supervisory model was constructed on the premise that supervisory effectiveness depends on supervisory visibility—a premise supported by the substantial literature on information asymmetries in financial regulation.[95] Reducing reporting fields, narrowing the scope of transaction reporting obligations, simplifying governance attestation processes, or streamlining AML frameworks, ESG disclosure requirements, and conduct surveillance regimes, means that supervisors see less.

The consequences are direct and significant. Emerging risks become harder to detect at an early stage. Contagion channels between institutions, markets, and sectors become less visible to macroprudential authorities. Supervisory analytics weaken as the data inputs on which they depend become sparser or less granular. Misconduct may surface later, when the costs of remediation are substantially greater.

The implications are particularly acute in areas where the next systemic stress event is most likely to originate: liquidity risks in open-ended funds and private credit vehicles;[96] leverage accumulation in shadow banking entities outside the prudential perimeter;[97] cross-border counterparty concentrations; crypto-asset exposures;[98] and ESG-related misrepresentation in investment products.[99]

A concrete illustration is instructive. The Omnibus I agenda has moved substantially from proposal to enacted recalibration. At its heart, Directive (EU) 2026/470 materially narrows the population subject to mandatory CSRD reporting by limiting the principal EU scope to undertakings with more than 1000 employees and net annual turnover above EUR 450 million, alongside corresponding amendments to the CSDDD framework. The sustainability-reporting simplification has been complemented by Commission Delegated Regulation (EU) 2026/73 [2026] OJ L 2026/73 ('Taxonomy Simplification Delegated Regulation')., which simplifies taxonomy disclosures and certain technical screening criteria. On 3 July 2026 the Commission also adopted substantially revised European Sustainability Reporting Standards intended to reduce the reporting burden on undertakings remaining within CSRD scope, subject to completion of the applicable scrutiny and publication process. SFDR reform, by contrast, remains on a different legislative trajectory. The result is therefore not a single act of deregulation but a multi-layered recalibration of scope, disclosure content, and reporting architecture.[100] Each measure is defensible as a reduction of disproportionate burden. But the aggregate effect is to reduce materially the volume of ESG-related data available to supervisors, investors, and counterparties at precisely the moment when the financial materiality of sustainability risk—in credit portfolios, in insurance underwriting,

[95] See GA Akerlof, 'The Market for "Lemons": Quality Uncertainty and the Market Mechanism' (1970) 84 Quarterly Journal of Economics 488; applied to financial regulation in D Awrey, 'Complexity, Innovation and the Regulation of Modern Financial Markets' (2012) 2 Harvard Business Law Review 235.

[96] See FSB, 'Vulnerabilities in Open-Ended Funds: Systemic Risk Assessment and Policy Implications' (December 2024); IMF, *Global Financial Stability Report* (April 2025) ch 3.

[97] See FSB, 'Global Monitoring Report on Non-Bank Financial Intermediation' (December 2024).

[98] See FSB, 'The Financial Stability Implications of Crypto-Asset Markets' (February 2023); ECB, 'Financial Stability Review' (November 2024) Special Feature on crypto-asset interconnections.

[99] See ESMA, 'Progress Report on Greenwashing' (ESMA30–1668416927-2498, June 2024).

[100] Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements; Commission Delegated Regulation (EU) 2026/73 of 4 July 2025, OJ L 2026/73, 8 January 2026; European Commission, 'Commission adopts revised sustainability reporting standards' (3 July 2026).

and in asset valuation—is becoming more apparent.[101] The supervisory visibility being sacrificed is the capacity to identify greenwashing, assess transition risk concentrations, and to detect the mispricing of climate-related exposures before they crystallize as losses.

European regulators spent 15 years building a comprehensive data infrastructure for financial supervision. Simplification, if it proceeds with insufficient discrimination between genuinely low-value reporting and substantively important supervisory data, risks partially dismantling that infrastructure at the moment when its outputs are beginning to become analytically usable.

2. Increased reliance on supervisory judgement

The shift from prescriptive rules to broader principles necessarily involves a re-expansion of supervisory discretion. This shift can improve flexibility: principles-based supervision allows rules to be applied in a manner sensitive to the specific circumstances of individual firms and markets; it reduces the incidence of formally correct but substantively meaningless compliance; and it can reduce the compliance burden on smaller firms.[102]

But the shift also creates systemic risks of inconsistency, increased scope for commercial pressure to influence supervisory outcomes and differential enforcement that advantages larger institutions with more sophisticated regulatory engagement capabilities.[103] The Banking Union was predicated on the proposition that oversight by the SSM—the ECB's banking supervision arm, directly supervising significant credit institutions in participating Member States—would produce genuinely consistent prudential standards across the eurozone, consistency achieved partly through the highly prescriptive nature of the Capital Requirements Regulation.[104] Simplification that returns significant discretion to NCAs risks undermining that consistency.

The pre-2008 experience with principles-based supervision—particularly the FSA's 'light touch' approach—remains the relevant cautionary precedent. The Turner Review's diagnosis was precisely that supervisory discretion had failed: that it had been exercised inconsistently, under commercial influence,and in a manner that tolerated risk accumulation.[105] The post-crisis shift to prescriptive rules was a deliberate response to that failure. Reversing it, even partially, requires an honest reckoning with the reasons it was adopted.

3. Weakening of compliance culture

Heavy regulation, notwithstanding its costs, produced a compliance infrastructure that at minimum institutionalized governance processes, formalized escalation mechanisms, and required boards to engage with regulatory obligations at a level of seriousness they

[101] See Network for Greening the Financial System (NGFS), *Scenarios for Assessing Climate-Related Financial Risks* (September 2024); ECB, 'Climate Risk Stress Test—Results' (July 2022).

[102] Julia Black, 'Forms and Paradoxes of Principles-Based Regulation' (2008) 3(4) Capital Markets Law Journal 425, 435–41..

[103] ibid 441–450; see also Ford (n 12) 30–35 on the distributional consequences of principles-based approaches.

[104] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions [2013] OJ L287/63, recitals 30–31 and 87 and art 6(1); Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 [2013] OJ L176/1, recitals 9–12 and art 1; Guido Ferrarini and Fabio Recine, 'The Single Rulebook and the SSM: Regulatory Polycentrism vs. Supervisory Centralization' in Danny Busch and Guido Ferrarini (eds), European Banking Union (2nd edn, Oxford University Press 2020) 193–222.

[105] Turner Review (n 12) paras 2.1–2.9; see also J Black, 'Paradoxes and Failures: "New Governance" Techniques and the Financial Crisis' (2012) 75 Modern Law Review 1037.

might otherwise have avoided. The literature on organizational behaviour and compliance suggests that external regulatory pressure is, for many institutions, a necessary condition for the maintenance of internal control discipline—particularly during periods of competitive pressure and risk appetite expansion.[106]

For the larger population of firms for which compliance infrastructure was constructed primarily in response to regulatory obligation rather than intrinsic risk appetite, simplification creates conditions for reversion toward minimum viable compliance. This risk is particularly acute late in a credit cycle. The timing of the current simplification agenda should therefore be a source of specific concern. Reducing regulatory obligations during a period of benign economic conditions and compressed credit spreads may create an impression that the risks those obligations were designed to address have diminished. In most cases, they have not. They have merely become less visible.[107]

4. Regulatory arbitrage and structural fragmentation

Simplification measures characteristically operate by introducing proportionality thresholds, exemption categories, and reduced requirements for defined classes of institution or activity. Each calibration creates incentives for regulatory engineering.[108]

This is not a hypothetical risk. The post-crisis AML framework generated structuring to move activities into non-perimeter entities. The AIFMD proportionality thresholds generated fund structures calibrated to remain below relevant limits.[109] SFDR's disclosure tiers generated product categorization strategies oriented as much toward regulatory labelling as toward actual sustainability characteristics.[110] These dynamics tend to be cumulative and self-reinforcing: simplification of reporting requirements reduces precisely the visibility that supervisors would need to detect the accumulation of risk in restructured entities.

5. Cumulative systemic fragility

Systemic crises rarely originate from a single missing rule. They tend to originate from the intersection of degraded visibility, weakened institutional challenge, and delayed intervention.[111] The cumulative effect of multiple individually modest simplifications may be precisely to degrade each of these dimensions simultaneously, in ways that are difficult to detect until the stress event occurs.

The post-crisis regulatory framework, for all its imperfections, represented an attempt to address this vulnerability. Simplification that is not conducted with a clear analytical framework for identifying which functions each obligation serves risks dismantling resilience that will only be appreciated in its absence.

106 Parker and Nielsen (n 31); see also T Tyler, *Why People Obey the Law* (Princeton University Press 2006) on the relationship between external enforcement and internalized compliance motivation.

107 See C Borio, 'The Financial Cycle and Macroeconomics: What Have We Learnt?' (2014) 45 Journal of Banking & Finance 182, on the counter-cyclical nature of financial risk.

108 On regulatory arbitrage in financial services, see F Partnoy, 'Financial Derivatives and the Costs of Regulatory Arbitrage' (1997) 22 Journal of Corporation Law 211; V Fleischer, 'Regulatory Arbitrage' (2010) 89 Texas Law Review 227.

109 Directive 2011/61/EU (AIFMD), Art 3 (exemptions for managers below specified thresholds).

110 See ESMA, 'Final Report on Greenwashing' froom 4 June 2024; see also D Busch, G Ferrarini and S Grünewald, 'Sustainable Finance in Europe' (EBI Working Paper Series No 153, 2023).

111 See C Goodhart, *The Basel Committee on Banking Supervision: A History of the Early Years 1974–1997* (Cambridge University Press 2011) ch 1; AG Haldane, 'Rethinking the Financial Network' (Speech at the Financial Student Association, Amsterdam, April 2009).

VI. THE POLICY TRILEMMA: SAFETY, COMPETITIVENESS AND ADMINISTRABILITY

The central structural difficulty that the simplification debate exposes is a genuine and inescapable policy trilemma. Modern financial services are inherently complex: the interconnections between institutions, markets, and jurisdictions; the velocity and volume of transactions; the sophistication of instruments through which risk is originated, distributed, and transformed create a regulatory problem of genuine complexity. Regulation that is genuinely risk-sensitive must therefore also be complex.[112] Simple rules applied to complex activities will either over-constrain activity that is not genuinely risky or under-constrain activity that is.

At the same time, regulatory complexity produces its own risks—the industrialized compliance dynamic analysed above. The trilemma is therefore between: safety—requirements that are genuinely risk-sensitive and sufficiently granular; competitiveness—a regulatory environment that does not systematically disadvantage EU-supervised entities; and administrability—a framework that can be operationalized, supervised, and enforced with reasonable efficiency.

These three objectives are in genuine tension and it is difficult for any regulatory programme to optimize all three simultaneously. The post-2008 settlement attempted to maximize safety, accepting significant damage to competitiveness and administrability. The current simplification movement is attempting to recover ground on competitiveness and administrability, accepting some retreat from maximum safety.

This trade-off is compounded by a further consideration that the ECB has articulated with directness unusual in central banking discourse: that 'deeper financial integration must be built on a foundation of resilience' and that further integration 'also entails higher cross-border contagion risks to financial stability'.[113] The ECB's position—that simplification and integration are only safe if accompanied by enhanced macroprudential oversight, including for non-bank financial intermediation—represents a direct challenge to the political narrative in which simplification is presented as costless.

This trade-off is further compounded by the question of backstop mechanisms. If preventive supervision is weakened through simplification, the adequacy of resolution frameworks as an alternative line of defence becomes critical. The Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR) were designed to ensure that the failure of individual institutions could be managed without systemic contagion or taxpayer-funded bailouts.[114] But the credibility of resolution as a backstop

112 Awrey (n 95); see also Haldane and Madouros (n 9) (arguing the contrary—that simple rules may outperform complex ones in complex environments—but acknowledging the conditions under which this proposition holds).

113 ECB, Opinion CON/2026/13—calling for 'developing a complementary macroprudential approach for non-banks alongside microprudential oversight' and warning that cross-border integration increases contagion risk if not accompanied by enhanced systemic oversight.

114 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms [2014] OJ L173/190 (BRRD), recitals 4–5 and art 31(2)(b)–(c); Regulation (EU) No 806/2014 of the European Parliament and of the Council 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 [2014] OJ L225/1 (SRMR), art 14(2)(b)–(c); see also Danny Busch, 'Governance of the Single Resolution Mechanism' in Danny Busch and Guido Ferrarini (eds), European Banking Union (2nd edn, Oxford University Press 2020) 343–402; Victor de Serière, 'Recovery and Resolution Plans of Banks in the Context of the BRRD and the SRM: Fundamental Issues' ibid 403–450; Anna Gardella, 'Bail-In: Preparedness and Execution' ibid 451–474; Guido Ferrarini and Alberto Musso Piantelli, 'Bank Resolution in Practice: Analysis of Early European Cases' ibid 475–512.

depends on the same informational visibility and institutional preparedness that simplification risks degrading. The March 2023 banking stress events—and the Financial Stability Board (FSB)'s subsequent assessment of resolution framework readiness—demonstrated that resolution mechanisms remain imperfectly developed even under current levels of supervisory information.[115] Simplification that reduces supervisory visibility while relying implicitly on resolution as a safety net may be building on foundations that are less robust than policymakers assume.

What is largely absent from official discourse is an explicit acknowledgement of the trade-off being made. The simplification agenda is presented as a reduction of 'unnecessary' burden—as if the obligations being removed were, by definition, burdens without corresponding benefit. In practice, virtually every obligation being considered for simplification was introduced for a reason and its removal entails a corresponding loss. The question is whether that loss is tolerable and whether policymakers are making it with their eyes open—a question that the public choice literature suggests is rarely answered affirmatively in periods of political pressure for deregulation.[116]

VII. WHAT IS ACTUALLY HAPPENING: SELECTIVE RETREAT AND CONCENTRATED SCRUTINY

It would be analytically unfair to characterize the current EU simplification agenda as pure deregulation. The more accurate characterization is selective retreat from obligations that generate disproportionate compliance costs relative to supervisory value, combined with concentration of supervisory attention on systemically relevant risks. The ECB has articulated this distinction with characteristic precision: its simplification agenda 'is therefore not a deregulatory initiative; it is the means by which a fragmented but heavily layered framework can be re-engineered into a single, more harmonized rulebook capable of supporting both stability and competitiveness'.[117] This formulation captures the aspiration. Whether it can be realized in practice is a separate question.

This approach has coherent logic. Universal reporting obligations that generate vast quantities of low-quality data impose costs on all firms and generate little useful supervisory intelligence. Risk-based supervision focusing enhanced scrutiny on systemically relevant entities may achieve superior outcomes with lower aggregate compliance cost. Greater data sharing between authorities may reduce duplicative reporting without reducing supervisory visibility.

The critical question is whether the identification of 'low value' is sufficiently rigorous. The historical record is not reassuring. Transaction reporting requirements that seemed excessive during calm markets provided critical visibility during periods of market dislocation. Governance attestations that appeared bureaucratic during normal times proved essential for establishing accountability during crises. Due diligence documentation that seemed disproportionate during benign credit conditions turned out to be the only reliable record of decision-making when defaults materialized.

The challenge is that the value of many regulatory obligations is counter-cyclical: they appear least useful precisely when they are most important and most burdensome precisely

115 FSB, 'Lessons Learnt from the March 2023 Banking Turmoil' (October 2023); FSB, '2023 Resolution Report: Completing the Agenda' (July 2023) (noting gaps in resolution planning and cross-border cooperation); see also Basel Committee on Banking Supervision, 'Report on the 2023 Banking Turmoil' (October 2023) ch 4.

116 Admati and Hellwig (n 18) ch 12; Calomiris and Haber (n 19) ch 14.

117 ECB, Opinion CON/2026/13—framing the Governing Council's December 2025 endorsement of simplification of regulatory, supervisory and reporting frameworks as 're-engineering' rather than deregulation.

when they are least likely to be tested.[118] Designing a simplification programme that accurately distinguishes between genuinely low-value obligations and obligations whose value is merely latent requires a degree of foresight that has historically been in short supply.

VIII. SUPERVISORY IMPLICATIONS: WHAT COMPETENT AUTHORITIES MUST DO DIFFERENTLY

The simplification agenda places significant responsibilities on supervisors that have not been comprehensively articulated in the public reform discourse. If the framework becomes less prescriptive and more principles-based, if reporting obligations are narrowed and supervisory data becomes less comprehensive, then supervisors must compensate for reduced data inputs through enhanced analytical capability and more proactive supervisory engagement.

This requires investment in the analytical infrastructure necessary to derive more intelligence from less data—through better data science capabilities, more sophisticated risk-based modelling, and more effective use of the information that remains available. It requires supervisors to develop and exercise supervisory judgement of a quality and consistency that reduced prescription demands—and to do so in a manner that is demonstrably independent of commercial and political pressure. And it requires supervisors to maintain and in some respects extend, the supervisory proactivity that early intervention—acting before stress has reached crisis proportions—requires.

The ECB's administered SREP methodology, the EBA's risk assessment framework and the NCA supervisory cycles will all need to adapt to a less data-rich supervisory environment.[119] As the analysis in section IV demonstrated, the SREP has developed into a significant form of preventive supervisory enforcement, capable of altering bank behaviour through continuous engagement and credible escalation. That effectiveness depends, however, on the quality of supervisory information. The adaptation required is not primarily a matter of legal framework—it is a matter of supervisory culture, analytical capability, and institutional willingness to act on judgement in the absence of the evidentiary comfort that prescriptive reporting obligations previously provided.

In practical terms, this means that the ECB and NCAs will need to place greater reliance on horizontal thematic reviews, targeted on-site inspections, and qualitative supervisory assessments to compensate for the reduced granularity of routine reporting. The SREP methodology, which currently draws heavily on quantitative data submitted through regular supervisory returns, will need to develop more sophisticated qualitative assessment criteria and invest in the supervisory resources necessary to conduct deeper, more frequent engagement with individual institutions. The tension is real: simplified reporting reduces the data available for desk-based risk assessment, but the alternative—more intensive on-site supervision—is resource-intensive, difficult to scale across the full population of supervised entities, and dependent on the very supervisory judgement capabilities that are themselves in question.

[118] Borio (n 107); see also C Reinhart and K Rogoff, *This Time Is Different: Eight Centuries of Financial Folly* (Princeton University Press 2009) on the recurring pattern of regulatory relaxation preceding financial crises.

[119] See ECB, 'Supervisory Review and Evaluation Process (SREP)—Methodology' (2024); EBA, 'Guidelines on Common Procedures and Methodologies for the Supervisory Review and Evaluation Process' (EBA/GL/2022/03).

The MISP's proposed data architecture offers one potential resolution to this tension. The 'collect once, share many times' principle—embedding harmonized templates and secure portals through ESMA central databases covering authorizations, notifications, supervisory requests, and settlement efficiency metrics[120]—represents an attempt to derive greater supervisory intelligence from fewer but more standardized data inputs. If successfully implemented, this approach could partially compensate for the reduction in firm-level reporting by improving the quality, comparability, and analytical usability of the data that remains. But it requires substantial investment in supervisory data infrastructure, analytical capability, and institutional coordination that has not yet been demonstrated at scale.

There is also a supervisory college dimension that warrants attention. Cross-border risk—in leverage, in liquidity, and in operational interdependence—is more difficult to identify and manage with less reporting data. Within the Banking Union, the Joint Supervisory Team architecture brings together the ECB and relevant NCAs in the ongoing supervision of significant institutions; where significant banking groups also operate outside the Banking Union, colleges of supervisors provide the principal framework for coordination and information sharing with other home and host authorities. Any material reduction in granular regulatory reporting may therefore increase the importance of effective information sharing between the ECB, NCAs, the ESAs and, where relevant, third-country supervisors. Whether existing legal gateways and institutional arrangements are sufficient to compensate for any resulting loss of standardised supervisory data warrants careful examination—particularly in light of the lessons from the March 2023 banking turmoil concerning the importance of timely cross-border supervisory cooperation and the potential need for broader information-sharing arrangements.[121]

The UK's post-Brexit supervisory model offers a partial comparator. The Prudential Regulation Authority (PRA) and FCA have explicitly embraced a more judgement-based supervisory approach—one that relies less on prescriptive rules and more on intensive, relationship-based supervision of significant institutions.[122] But this approach is predicated on supervisory resources and institutional culture that the ECB's SSM, supervising over 110 significant institutions across multiple jurisdictions and legal traditions, may not be able to replicate at scale. The UK model works, to the extent that it does, because it supervises a relatively concentrated financial sector with deep institutional relationships between supervisor and supervised. Whether a comparable approach can function effectively in the more fragmented, multi-jurisdictional environment of the Banking Union is an open question.

[120] Under the proposed Master Regulation, ESMA will operate central databases and digital supervisory platforms covering authorizations, notifications, supervisory requests, and responses for PEMOs, significant trading venues, CCPs, CSDs and CASPs, with the 'collect once, share many times' principle embedded through harmonized templates and secure portals: European Commission

[121] See eg the coordination challenges identified in the supervisory response to the March 2023 banking stress: European Central Bank, Annual Report on Supervisory Activities 2023 (2024) s 4.1.1.1; European Banking Authority, 'The EBA updates technical standards on supervisory colleges' (9 January 2024); Basel Committee on Banking Supervision, Report on the 2023 Banking Turmoil (October 2023) 21–23, especially 22 (noting generally effective cross-border cooperation during the 2023 events while identifying scope for broader information-sharing protocols and greater coordination). See also Kern Alexander, 'European Banking Union: Effectiveness, Impact, and Future Challenges' in Danny Busch and Guido Ferrarini (eds), European Banking Union (2nd edn, Oxford University Press 2020) 27–92.

[122] See PRA, 'The PRA's Approach to Supervision' (2024); Bank of England, 'Annual Report of the Prudential Regulation Committee' (2024) (describing the judgement-led supervisory model).

IX. THE RESPONSIBILITIES OF REGULATED FIRMS: AGENCY, CHOICE, AND THE GOVERNANCE SPACE THAT SIMPLIFICATION VACATES

It would be analytically incomplete, in examining the simplification agenda, to focus exclusively on the design of regulatory policy without also considering how firms responded to that design. The analytical framework developed above emphasizes that the industrialization of compliance was substantially a rational institutional response to a framework that rewarded formal outputs over substantive outcomes. That emphasis is important and correct. But it should not obscure the fact that the regulatory framework did not compel identical responses from all firms—and that the variation in firm responses reveals something important about the scope for institutional agency even within a challenging regulatory environment.

The shift from substantive risk management toward compliance approaches oriented around formal outputs was not inevitable. While the regulatory framework created strong incentives in that direction, institutions varied in their responses. Some firms—despite facing the same regulatory environment—invested in genuine risk culture, integrated compliance into strategic decision-making, and treated regulatory obligations as a floor rather than a ceiling for risk governance. The existence of these institutions demonstrates that alternative responses were possible, even if they were not the modal response. The relevant question for the simplification debate is whether the changed incentive structure that simplification creates will produce different institutional responses—or whether the patterns established during the post-crisis period will persist under lighter prescription.[123]

For regulated firms, the simplification agenda creates both an opportunity and a temptation. The opportunity is to use the reduction of prescriptive obligation as an occasion to rebuild compliance frameworks on a more substantive footing—to move from industrial compliance toward genuine risk culture, from reporting generation toward risk intelligence, from formal governance toward effective governance. Institutions that use the simplification period for this purpose will emerge from it more resilient than they entered it.

The temptation is to treat simplification as permission to reduce compliance investment—to optimize the cost base of the compliance function in line with the reduced regulatory obligation and to return the savings to commercial activity. Institutions that respond in this way will emerge from the simplification period more fragile than they entered it and will discover the extent of that fragility at the worst possible moment.

The uncomfortable reality is that regulators are unlikely to be able fully to protect the financial system against firms that are determined to minimize substantive compliance. The post-crisis framework attempted to do so through prescription and surveillance and produced, as the foregoing analysis demonstrates, a system of documented compliance that was often substantively inadequate. Simplification, if it is to work as its architects intend, requires firms to step into the governance space that simplified obligations vacate—to maintain internal discipline not because a specific regulatory obligation requires it, but because the risk being managed demands it. Whether the current generation of senior management functions, board members and compliance leadership in EU financial institutions is sufficiently equipped and motivated to do so is the question to which the following section turns.

[123] On the heterogeneity of compliance responses among regulated firms and the conditions under which genuine compliance culture emerges, see Parker and Nielsen (n 31) 15–18; see also C Hodges, *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics* (Hart Publishing 2015) ch 8.

X. THE HUMAN CAPITAL DIMENSION: TALENT, MOTIVATION AND INSTITUTIONAL CAPACITY

The simplification debate has focused overwhelmingly on regulatory design—on the architecture of rules, the calibration of obligations, and the structure of supervisory frameworks. What it has largely neglected is the human capital dimension: the quality, experience, motivation, and empowerment of the people who populate both regulated institutions boards, compliance leadership, and supervisory authorities may suffer from structural talent deficits. This article argues that the human capital deficit on both sides of the supervisory relationship may represent a binding constraint on the effectiveness of any regulatory model—whether prescriptive or principles-based—and that simplification exposes this constraint without addressing it.

1. The firm-side talent deficit

A significant number of boards and senior management functions treat compliance and risk governance roles as career way-stations rather than substantive leadership positions. Chief compliance officers are frequently under-resourced, under-empowered, and excluded from genuine commercial decision-making.[124] Board-level risk committees are populated with individuals whose expertise lies elsewhere—or whose appointment is driven by political, diversity, or relationship considerations rather than by genuine regulatory and risk expertise. The 'fit and proper' assessments conducted by supervisors under CRD IV[125] have, in practice, rarely been used to block appointments on grounds of substantive inadequacy.

The result, in a significant number of institutions, is a governance architecture that meets formal requirements but may not be optimally configured for substantive challenge. This matters for simplification because a lighter regulatory framework places greater weight on the quality of internal governance. If the current governance configurations—developed in response to prescriptive regulatory requirements—do not adapt to the different demands of a principles-based environment, then simplification transfers responsibility from regulatory architecture to internal governance structures that may require strengthening. This is not a critique of individual institutions so much as an observation about the system-wide implications of the transition.

2. The supervisory talent deficit

The supervisor-side problem is different but equally material. A significant proportion of supervisory staff—particularly at the ECB's SSM and at the ESAs—are trained economists, with strong analytical and quantitative capabilities but limited direct experience of operational financial services.[126] They understand capital ratios and liquidity metrics but may lack intuitive understanding of how a trading floor, a lending committee, or a compliance function actually operates. Supervision conducted by people who have never worked inside a regulated institution has an inherent tendency toward formalism—toward measuring what can be measured (reports filed, ratios maintained, and documents produced) rather than assessing what matters (culture, judgement, and institutional behaviour under stress).

124 See M Armour, 'Who Should Be the Chief Compliance Officer? Organisational Structure and Accountability' in D Busch, G Ferrarini and G van Solinge (eds), *Governance of Financial Institutions* (Oxford University Press 2019).

125 Directive 2013/36/EU (CRD IV), articles 91–95; EBA, 'Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders' (EBA/GL/2021/06).

126 See Armour (n 124).

The literature on regulatory agency staffing and the 'revolving door' identifies a genuine dilemma here. Hiring supervisory staff from industry brings operational experience but creates capture risks;[127] hiring from academia brings analytical rigour but creates formalism risks. The ECB's SSM has leaned predominantly toward the latter model, with consequences for supervisory style and effectiveness that have been noted by practitioners but insufficiently examined in the academic literature. The contrast with the UK's PRA—which actively recruits from industry and operates a more permeable boundary between supervisor and supervised—is instructive, though the capture risks that accompany that model are equally real.[128]

3. The feedback loop

These two deficits are not independent. They create a structural feedback loop that the simplification debate has not adequately confronted. Supervisors who measure compliance by reference to documentation incentivize firms to invest in documentation. Firms that invest in documentation rather than substance produce compliant-looking institutions that are substantively fragile. When fragility is exposed, the response is more documentation requirements—rather than better people, on both sides, asking better questions.

The compliance patterns that emerged on the firm side and the formalism of supervision on the authority side are mutually reinforcing expressions of the same underlying dynamic: a system that did not consistently place suitably experienced, motivated, and empowered people in the roles where judgement is most consequential. Simplification that reduces prescriptive obligations without addressing this human capital dimension risks merely changing the form of compliance without changing its substance. The forms will change—fewer reports, lighter documentation, broader principles—but the underlying dynamic may persist unless both firms and supervisors invest in the capabilities that principles-based regulation demands.

XI. THE STRONGEST CASE FOR SIMPLIFICATION: STEELMANNING THE REFORM AGENDA

Before proceeding to conclusions, intellectual honesty requires engaging with the strongest versions of the arguments for simplification—not the politically expedient rhetoric of burden reduction, but the most sophisticated analytical defences advanced by the European institutions themselves. The critique developed in preceding sections should not obscure the genuine analytical force of certain arguments for regulatory reform.

[127] On the revolving door and regulatory capture, see D Lucca, A Seru and F Trebbi, 'The Revolving Door and Worker Flows in Banking Regulation' (2014) 65 Journal of Monetary Economics 17; ED Klemm and S Lutz, 'Regulation and the Revolving Door in the Financial Sector' (2022) 11 Journal of Financial Regulation 89.

[128] See Prudential Regulation Authority, 'Response to the Financial Services Regulation Committee's Report Growing pains: clarity and culture change required' (13 August 2025) 12–13 (noting that many PRA supervisors have industry experience, that the PRA uses inward and outward secondments with regulated firms, that its senior advisers are usually experienced industry practitioners, and that recruitment criteria are being reassessed to emphasise up-to-date industry experience; also noting its policy of rotating managerial supervisors after a maximum of five years to mitigate regulatory capture); House of Lords Financial Services Regulation Committee, Growing pains: clarity and culture change required—An examination of the secondary international competitiveness and growth objective (2nd Report of Session 2024–25, HL Paper 133, 13 June 2025) paras 130–32; Samuel McPhilemy, 'Formal Rules versus Informal Relationships: Prudential Banking Supervision at the FSA Before the Crash' (2013) 18 New Political Economy 748, 748–67; Andrew Baker, 'Restraining Regulatory Capture? Anglo-America, Crisis Politics and Trajectories of Change in Global Financial Governance' (2010) 86 International Affairs 647, 647–63..

1. The re-engineering thesis

The ECB's characterization of simplification as 're-engineering' rather than deregulation deserves serious engagement. The proposition is that the post-crisis framework, whatever its intentions, produced a fragmented and inconsistently layered architecture that impedes both effective supervision and genuine single market integration. On this view, simplification is not a retreat from regulatory ambition but a precondition for its realization: only by consolidating overlapping obligations, harmonizing divergent national implementations, and reducing the sheer volume of low-value reporting can supervisors focus attention on genuinely systemic risks and firms allocate compliance resources to substantive rather than formal controls. The ECB's support for the MISP—simultaneously reducing prescriptive obligations while expanding ESMA's direct supervisory powers and enforcement toolbox—reflects this logic: fewer rules, but rules that are genuinely enforced; less data, but data that is actually used.

This argument has analytical force. The literature on regulatory complexity supports the proposition that excessively detailed rules can produce worse outcomes than simpler ones—Haldane's 'dog and the frisbee' argument, whatever its limitations, identifies a genuine phenomenon. If supervisors are overwhelmed by data they cannot process, if compliance officers spend their time on formal documentation rather than substantive risk assessment, and if the legal framework has become so complex that even well-intentioned actors cannot reliably identify their obligations, then simplification may genuinely improve regulatory effectiveness rather than diminishing it. The question is empirical: whether the obligations being removed are genuinely low-value, or whether their value is merely latent—visible only in stress conditions that have not recently occurred.

2. The integration imperative

The Commission's framing of simplification as integral to capital markets integration—now embodied in the SIU agenda—also warrants serious consideration. The structural underdevelopment of European capital markets relative to the United States is not contested: the capitalization gap, the fragmentation along national lines, the barriers to cross-border investment, and the resulting dependence on bank intermediation are well-documented and economically significant. If regulatory complexity is among the barriers to deeper integration—if divergent national implementations, duplicative reporting requirements, and legal uncertainty deter cross-border activity—then simplification may be a necessary condition for achieving the economic benefits that integrated capital markets would provide.

The counterargument to this article's critique would note that the choice is not between the status quo and simplification, but between simplification pursued thoughtfully and simplification pursued reactively under political pressure. The MISP's combination of reduced firm-level obligations with enhanced ESMA powers represents an attempt to thread this needle—to achieve the benefits of lighter prescription while strengthening the enforcement infrastructure that this article identifies as the missing element. The ECB's explicit endorsement of comprehensive enforcement powers for ESMA, drawing on its own experience as banking supervisor, reflects institutional recognition that simplification and enforcement are complements rather than substitutes.

3. The proportionality principle

A third defence of simplification rests on the proportionality principle embedded in EU law. The argument is that the post-crisis framework, in its ambition to leave no risk category unaddressed, imposed obligations on smaller and less systemically significant institutions that were disproportionate to the risks those institutions posed. The compliance burden on a regional cooperative bank or a boutique asset manager may consume resources that would be better allocated to actual risk management. On this view, simplification—particularly through higher proportionality thresholds and reduced obligations for smaller entities—is not deregulation but right-sizing: ensuring that regulatory intensity corresponds to systemic significance.

4. The limits of the counterarguments

These arguments deserve respect and this article does not contend that simplification is necessarily wrong—only that its risks are being understated and its trade-offs insufficiently acknowledged. The re-engineering thesis is analytically coherent and receives partial support from the SREP experience: the SSM has demonstrated that judgement-led supervision can maintain prudential discipline with less reliance on prescriptive rules, provided supervisory capacity is adequate. But extending that model beyond prudential banking supervision depends on assumptions about supervisory capacity and enforcement credibility in other domains that the historical record does not support. The integration imperative is genuine but does not establish that regulatory complexity, rather than deeper structural factors—fragmented insolvency regimes, divergent tax treatment, absence of fiscal union—is the binding constraint on capital market development. The proportionality principle is sound but creates precisely the threshold effects and arbitrage incentives that this article has identified. The sophisticated defences of simplification succeed in demonstrating that reform is not inherently misguided; they do not succeed in demonstrating that the current reform programme, as politically constituted, will achieve its stated objectives without the losses this article has catalogued.

XII. POLICY RECOMMENDATIONS: PRINCIPLES FOR DISCRIMINATING SIMPLIFICATION

If simplification is to proceed—and the political momentum suggests it will—then its design should be guided by principles that minimize the risks this article has identified. The following recommendations are offered not as a comprehensive reform programme, but as criteria against which proposed simplifications should be assessed.

1. Design principles for discriminating simplification

First, simplification should be evidence-based rather than assumption-based. Obligations should not be removed on the presumption that they are 'low-value' without rigorous assessment of their supervisory utility—including their utility in stress conditions that may not have occurred recently. The counter-cyclical value of regulatory obligations should be explicitly considered: requirements that appear burdensome during calm markets may prove essential during periods of dislocation. Before removing reporting obligations, supervisors should be required to demonstrate that they have not used the data in question for risk identification, early warning, or enforcement—and to explain how they will compensate for its absence.

Second, simplification should be asymmetric rather than uniform. The case for reducing obligations on smaller, less systemically significant institutions is stronger than the case for reducing obligations on systemically important entities. Proportionality thresholds should be designed with explicit attention to arbitrage incentives—and supervisors should be resourced to monitor for restructuring designed to exploit threshold effects. The largest and most interconnected institutions should not benefit from simplification measures designed to relieve disproportionate burden on smaller entities.

Third, simplification of prescriptive obligations should be accompanied by strengthened enforcement rather than presented as an alternative to it. The MISP's expansion of ESMA's enforcement powers is a necessary complement to reduced prescription—but its effectiveness will depend on whether ESMA develops the institutional culture and political support to impose genuinely punitive sanctions. The co-legislators should resist industry pressure to weaken the enforcement provisions during trilogue negotiations. Member States should be required to report on national enforcement activity, with explicit benchmarking against peer jurisdictions.

2. Institutional reforms to address the punitive enforcement and individual accountability gaps

Fourth, the EU should develop an individual accountability framework comparable to the UK's SM&CR. The absence of credible personal liability for senior executives fundamentally weakens the incentive structure for substantive compliance. A European Senior Managers Regime—imposing direct regulatory responsibility on identified individuals for failures within their areas of responsibility—would address this gap. The EBA's existing guidelines on management body suitability should be upgraded to a binding regulation with direct supervisory enforcement powers.

Fifth, AMLA's development should be closely monitored as a test case for EU-level punitive enforcement credibility. If AMLA demonstrates that genuinely punitive enforcement is possible within the EU institutional framework, the model should be considered for extension to other high-risk regulatory domains. If AMLA fails to develop enforcement credibility—whether due to political constraints, resource limitations, or institutional culture—that failure should prompt fundamental reconsideration of the EU's approach to regulatory design, since principles-based supervision without credible deterrence—whether through punitive enforcement, preventive supervision, or individual accountability—has historically produced poor outcomes.

3. Criteria for supervisory assessment of retained obligations

Sixth, supervisors should develop explicit criteria for assessing which obligations to retain. An obligation should be presumptively retained if it: (i) provides visibility into risks that are difficult to observe through other means; (ii) serves as an early warning indicator for stress conditions; (iii) creates institutional discipline that would not exist in its absence; (iv) supports enforcement by creating evidentiary foundations for regulatory action; or (v) facilitates cross-border supervisory coordination. An obligation should be considered for removal only if it: (i) generates data that supervisors demonstrably do not use; (ii) duplicates information available from other sources; (iii) imposes costs materially disproportionate to its supervisory value; and (iv) does not serve the counter-cyclical functions identified above.

Seventh, simplification should be accompanied by enhanced investment in supervisory capacity. If the framework becomes less prescriptive and more judgement-based, supervisors must be resourced to exercise that judgement effectively. The SREP experience demonstrates what intensive judgement-led supervision requires: deep institutional engagement, thematic analytical capability, on-site inspection capacity, credible escalation powers and—critically—supervisory staff with the expertise to challenge bank management on business models, risk frameworks, and governance arrangements. This requires investment in analytical infrastructure, in supervisory staffing with appropriate expertise and in the institutional independence necessary to resist commercial and political pressure.

Simplification that reduces regulatory burden on firms while simultaneously constraining supervisory resources would represent the worst of both worlds.

Eighth, the human capital constraints identified in section X require direct policy attention. Supervisory authorities should develop recruitment and retention strategies that attract individuals with operational financial services experience, while maintaining safeguards against capture. Regulated institutions should be expected to demonstrate—not merely to boards but to supervisors—that their compliance and risk leadership possess the authority, expertise, and resources to challenge commercial decision-making effectively. The 'fit and proper' assessment process should be reformed to include substantive evaluation of candidates' capacity to exercise independent judgement, not merely their formal qualifications.

XIII. CONCLUSION: STRUCTURAL DYNAMICS, SHARED RESPONSIBILITY AND THE LIMITS OF REGULATORY REFORM

The simplification movement in EU financial services reflects structural dynamics on both sides of the regulatory relationship. To attribute the current juncture exclusively to regulatory overproduction, or exclusively to firm-level compliance outcomes, is to misdiagnose the problem and thereby to risk prescribing inadequate remedies. The analysis in this article has also sought to qualify the enforcement deficit thesis as conventionally stated: the EU's Banking Union has developed, through the SSM and SREP, a form of intensive preventive prudential supervision that represents significant supervisory discipline, even if punitive public enforcement, individual accountability, and enforcement consistency across sectors and Member States remain less developed than in the historical US model or the contemporary UK framework.

Regulators contributed to the current situation because they built a framework of sprawling, overlapping, and excessively technical obligations that generated compliance effort without commensurate supervisory benefit; because they underestimated the operational complexity that their requirements would impose and the behavioural responses those requirements would produce; and because they conflated quantity of regulation with quality of supervision. Firms contributed because the incentive structures they faced led many to develop compliance approaches that prioritized formal outputs over substantive risk management; because compliance functions were frequently resourced to meet regulatory expectations rather than to deliver genuine risk insight; and because the resulting compliance architectures—however rational given the regulatory environment—created documentation that was not always equivalent to effective control.

The risk that the current simplification agenda will solve the wrong problem is real and material. If simplification successfully reduces visible bureaucracy without addressing the underlying structural fragilities in leverage, liquidity, operational interdependence, cyber concentration, and shadow banking, it will risk having achieved cosmetic reform at the cost of substantive resilience. The possibility that merits most serious consideration is that the simplification agenda, if implemented without discriminating analytical rigour, may remove more systemic resilience than is currently understood—and that when the next major stress event arrives, whether from leverage unwinding in private credit, from liquidity stress in open-ended fund vehicles, from operational disruption arising from concentrated cloud infrastructure or from some other source not yet clearly visible, the regulatory architecture may be found to have been weakened at precisely the points where it may have been most needed.

If another major crisis emerges within the next decade—and the historical frequency of systemic financial crises suggests that this is not improbable[129]—there is a meaningful possibility that policymakers will conclude that simplification went too far, too fast, and that it removed more resilience than expected. The resulting re-regulation would likely be rapid, reactive, and at least as poorly calibrated as the post-2008 framework it would seek to reconstruct.

The alternative is simplification pursued with greater analytical rigour, greater humility about the limits of foresight, and greater honesty about the trade-offs involved. That would require policymakers to resist the temptation to present simplification as costless; supervisors to invest seriously in the capacity necessary to compensate for reduced prescription—drawing on the SREP experience that demonstrates what intensive judgement-led supervision demands; and the financial services industry to resist the temptation to treat simplification as an invitation to reduce compliance investment. The firms that respond to lighter regulation by strengthening their internal risk governance will be better positioned to weather the next crisis and to avoid the re-regulatory backlash that will inevitably follow it.

There is, perhaps, a deeper question that the simplification debate has not adequately confronted. The ECB's emerging doctrine for Europe's digital finance architecture—articulated through its support for the MISP, its development of Pontes and Appia as tokenized central bank settlement infrastructure, and its vision of integrated digital capital markets anchored in central bank money[130]—suggests a fundamentally different approach to the complexity problem. Rather than simplifying rules to make them more administrable within existing institutional arrangements, the ECB is building the technological and institutional infrastructure that would make a genuinely integrated—and therefore necessarily complex—single market operationally feasible. The proposition is that integrated digital settlement infrastructure, harmonized finality frameworks, and centralized supervisory data architecture can resolve the administrability constraint without sacrificing either safety or the sophistication that genuine risk sensitivity demands. Whether this degree of technological optimism is warranted remains to be seen. But it offers an alternative framing of the trilemma: that the binding constraint may not be between safety and simplicity, but between investment in institutional infrastructure and the political will to make that investment.

The policy trilemma between safety, competitiveness, and administrability does not have a stable solution. It requires continuous, honest, and analytically rigorous management. The current simplification agenda represents one point in an ongoing cycle. Whether it proves to be a constructive recalibration or a dangerous relaxation will depend less on the quality of the political rhetoric that accompanies it than on the quality of the supervisory judgement and institutional discipline that sustain it.

129 See Reinhart and Rogoff (n 118); see also L Laeven and F Valencia, 'Systemic Banking Crises Revisited' (IMF Working Paper WP/18/206, 2018) (documenting 151 systemic banking crises between 1970 and 2017).

130 ECB, Opinion CON/2026/13. The ECB describes Pontes as a 'Eurosystem DLT solution that links market DLT platforms and TARGET Services to settle transactions in central bank money' and Appia as exploring 'concepts like a European shared ledger and a network of interconnected ledgers: infrastructures that could serve as a utility for issuing, recording, trading and settling tokenised assets while enabling programmability'.

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