The European Union's Role in International Economic Fora
Paper 6: IOSCO

Abstract
This paper forms part of a series of nine studies on the role of the European Union (EU) in International bodies and studies its role in the International Organization of Securities Commission (IOSCO). The first part presents the role of IOSCO in the G20 new global financial architecture. The second part explains the representation of the Commission, ESMA and authorities of Member States. The third part discusses the influence of the IOSCO on EU legislation as well as the influence of the EU in developing IOSCO principles and standards. The last part presents recommendations designed to enhance the role of the EU in IOSCO.

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This document was requested by the European Parliament's Committee on Economic and Monetary Affairs. It is part of a series of nine papers which cover from the same scientific angle: G20, FSB, IMF, OECD, BCBS/Basel, IAIS, IOSCO, IASB, and IOPS.

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<th>Description</th>
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<tr>
<td>AIFMD</td>
<td>Alternative Investment Fund Managers Directive</td>
</tr>
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<td>AFM</td>
<td>Autoriteit Financiele Markten</td>
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<td>AMCC</td>
<td>Affiliate Members Consultative Committee</td>
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<td>AMF</td>
<td>Autorité des marchés financiers</td>
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<tr>
<td>Bafin</td>
<td>Bundesanstalt für Finanzdienstleistungsaufsicht</td>
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<tr>
<td>BCBS</td>
<td>Basel Committee on Banking Supervision</td>
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<td>BIS</td>
<td>Bank for International Settlements</td>
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<tr>
<td>BoS</td>
<td>Board of Supervisors</td>
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<tr>
<td>CCPs</td>
<td>Central Clearing Counterparties</td>
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<tr>
<td>CESR</td>
<td>Committee of European Securities Regulators</td>
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<tr>
<td>CFTC</td>
<td>Commodity Futures Trading Commission</td>
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<tr>
<td>Commission</td>
<td>European Commission</td>
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<tr>
<td>COB</td>
<td>Commission des operations de bourse</td>
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<tr>
<td>Consob</td>
<td>Commissione Nazionale per le Società e la Borsa</td>
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<tr>
<td>CNMV</td>
<td>Comisión Nacional del Mercado de Valores</td>
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<td>CPSS</td>
<td>Committee on Payment and Settlement Systems</td>
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<td>CRAs</td>
<td>Credit Rating Agencies</td>
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<tr>
<td>CRD</td>
<td>Capital Requirements Directive</td>
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<tr>
<td>DG FISMA</td>
<td>Directorate-General for Financial Stability, Financial Services and Capital Markets Union</td>
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<tr>
<td>ECB</td>
<td>European Central Bank</td>
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<tr>
<td>ECON</td>
<td>Economic and Monetary Affairs (Committee)</td>
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<tr>
<td>EEA</td>
<td>European Economic Area</td>
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<td>EFAMA</td>
<td>European Fund and Asset Management Association</td>
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<td>EMIR</td>
<td>European Market Infrastructure Regulation</td>
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<td>ERC</td>
<td>European Regional Committee</td>
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<td>ESAs</td>
<td>European Supervisory Authorities</td>
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<td>ESMA</td>
<td>European Securities and Markets Authority</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FCA</td>
<td>Financial Conduct Authority</td>
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<td>Financial Services Authority</td>
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The European Union’s Role in IOSCO

**FSAP** Financial Services Action Plan
**FSAPs** Financial Sector Assessment Programs
**FSMA** Financial Services and Markets Authority
**FMIs** Financial Market Infrastructures
**FSB** Financial Stability Board
**FSF** Financial Stability Forum
**GDP** Gross Domestic Product
**GEM** Growth and Emerging Markets
**IAIS** International Association of Insurance Supervisors
**IBRD** International Bank for Reconstruction and Development
**IFIs** International Financial Institutions
**ILA** International Law Association
**IMF** International Monetary Fund
**IOSCO** International Organization of Securities Commissions
**MoU** Memorandum of Understanding
**MMoU** Multilateral Memorandum of Understanding
**NCAs** National Competent Authorities
**ODRG** OTC Derivatives Regulatory Group
**OECD** Organization for Economic Co-operation and Development
**OICV** Organisation internationale des commissions de valeurs
**OTC** Over The Counter
**RRPs** Recommended Rules and Practices
**SEC** Securities and Exchange Commission
**SMSG** Securities and Markets Stakeholder Group
**SRB** Single Rule Book
**SROCC** Self-Regulatory Organisations Consultative Committee
**TFSD** Task Force on the Review of IOSCO’s Strategic Direction
**TFUFE** Task Force on Unregulated Financial Entities
**TFUMP** Task Force on Unregulated Markets and Products
**UK** United Kingdom
**US** United States
**US CFTC** United States Commodity Futures Trading Commission
**WTO** World Trade Organisation
EXECUTIVE SUMMARY

IOSCO, established in 1983, is the international association of securities commissions and gathers more than 95% of the world's securities markets in more than 115 jurisdictions. Therefore, IOSCO is a truly international and democratic organisation, especially compared to the Basel Committee. It can be described as the 'United Nations of securities regulation'.

IOSCO is a forum for securities supervisors to meet and discuss issues of common interest. It is the international standard setter for securities regulation and was officially endorsed by the G20 in 2009. However, IOSCO is not only an international standard setter. It is also a forum for technical cooperation in enforcement and supervision, and is designed to provide technical assistance for the development of securities markets and foster coordination among members.

Because of its worldwide membership, IOSCO is a very democratic organisation. Each authority receives one vote, although in practice decisions are almost always reached by consensus. This means that international principles and standards developed by IOSCO are usually not very granular, with some exceptions (e.g., Financial Benchmarks and Money Market Funds) as they need to be supported by all supervisory authorities.

Because of its wide membership and consensus culture, which leads to a lack of granularity, the impact of IOSCO international principles and standards on EU legislation is not very strong. Even when those principles and standards are more granular, which has occurred since the 2008 financial crisis, they are still very general in comparison with EU directives and regulations. Therefore, IOSCO is not comparable to the Basel Committee.

The influence of the Member States in IOSCO is very strong due to their large presence in the Board of IOSCO as permanent members. Because each authority has one vote and decisions are taken by consensus, it is very unlikely that international standards in securities markets could be adopted by IOSCO and be in contradiction with existing or possible EU legislation.

The EU is also very well represented with ESMA having gained very quickly recognition as an Associate Member with observer status at the Board of IOSCO. This is an ad hoc status resulting from a political compromise, as IOSCO is not used to deal with supra-regional securities supervisors. Therefore, ESMA does not have a vote like an ordinary member. However, it is a remarkable and deserved success for ESMA and a very satisfactory position. This observer status allows ESMA to participate in the executive body of IOSCO and have access to other major and emerging securities markets foreign supervisors. The Commission is also an Associate Member but has not observer status at the Board due to the fact that it is not considered to be a supervisor and to lingering concerns of overrepresentation of Europe.

Since the coordination between ESMA and the Commission IOSCO is excellent and takes places at several levels, the fact that the Commission does not get the same access as ESMA is not problematic. Also, since IOSCO is a technical more than a political body, it seems logical, although the Commission is both technical and political, that ESMA take the lead.

Short term recommendations

As an Associate Member of IOSCO, the Commission should have more easy access to IOSCO Task Forces of interest to it because of its impact on considered or future EU legislation. This implies a decision by IOSCO and the way to achieve this should be subject to further analysis as decisions have to be taken by IOSCO members and the new position
of ESMA should not be put at risk. A very close cooperation between ESMA and the Commission should be considered when/if the Commission is not accepted in a Task Force.

IOSCO is currently considering to move into the area of settlement of disputes in Cross-Border Regulation. This is a very important work stream for the future of global financial regulation. The EU should strongly support IOSCO in this effort to shape a global multilateral system. As many members of IOSCO, especially from Asia, are supporting this project, if Europe would take the lead, it would certainly strengthen considerably its influence within IOSCO.

**Long term recommendations**

One possible issue is that the EU does not speak with one voice. However, even if IOSCO prepares and adopts international standards, it is an organisation of supervisors, with day to day supervisory responsibility, more than an organisation of regulators. Therefore, it has to be ruled out that ESMA should replace supervisory authorities from Member States in the Board. In addition, there would be no interest to move from 9 votes in the board to just one vote.

A better coordination, when possible, could be achieved. This is all the more justified that the EU has developed a Single Rule Book (SRB) so that all national authorities of the Member States are applying the same rules. The place where this coordination of a possible EU position can take place is the BoS of ESMA where the Commission is also an observer, as well as authorities from the European Economic Area (EEA).

Better coordination through ESMA could be achieved, when the ESMA regulation will be revised, through an amendment, as suggested by the Securities and Markets Stakeholder Group (SMSG) of ESMA as well as the ECON, and the Commission ESA’s review, giving a vote to the chair in the BoS of ESMA and have some appointed members in the Managing Board of ESMA, with voting right in the BoS, like at the ECB. This should facilitate the framing and the taking into account of a unified EU position in the BoS of ESMA rather than the expression of national preferences.

Finally, the EU Parliament should expend the role of ESMA as the ‘face of the EU’, together with the Commission, in all issues which require equivalence and discussion with the US or Asia. In sum, ESMA should be the EU *Securities and Exchange Commission* outside the EU.
1. THE ROLE OF IOSCO IN INTERNATIONAL FINANCIAL REGULATION AND SUPERVISION

IOSCO (International Organisation of Securities Commission)\(^1\) was created in 1983, when 11 securities regulators from North and South America agreed to build the ‘Inter-American conference of Securities Commissions’, created in 1974, into an international cooperative body. The Securities and Exchange Commission (SEC) of the United States (US) was the driving force behind the creation of the ‘Inter-American conference of Securities Commissions’ and also supported the creation of IOSCO. In 1984, securities regulators from France, Indonesia, Korea and the United Kingdom (UK) joined the organisation. As a sign of its internationalisation, in 1986, IOSCO held its annual conference in Europe (Paris) and members agreed to create a permanent General Secretariat.

IOSCO is a non-profit organisation incorporated under a private act in Canada recognised by the Quebec National Assembly (personne morale sans but lucratif)\(^2\). IOSCO is not an international organisation according to international public law. It is a private association under Québec civil law. In 1987, a permanent General Secretariat was established and based in Montréal. In 2001, IOSCO changed its domicile to Madrid (Spain). It is recognised by the Spanish Government by means of the Third Additional Disposition of Law 55/1999\(^3\). IOSCO is considered to be also a non-profit association under Spanish law (asociación de utilidad pública). However, it is still a non-profit organisation incorporated under Québec law. One author (Marcacci, 2013) provides an excellent definition of the legal nature of IOSCO: ‘IOSCO can be classified as multilateral regulatory network of (usually public) regulators with the formal structure of a private-law based non-profit entity incorporated by a statutory act’\(^4\).

In 2011, IOSCO signed a ‘Headquarters Agreement’ with the Kingdom of Spain upgrading and improving the current legal and tax framework for IOSCO in Spain\(^5\). In this agreement, Spain provides IOSCO with a location to conduct its activities\(^6\). The agreement also grants traditional guarantees associated with international organisations such as inviolability of its seat, tax exemptions for IOSCO and its employees and freedom of access to its territory.

1.1. The objectives and missions of IOSCO

The goal of IOSCO is, according to its by-laws:

‘to cooperate in developing, implementing and promoting adherence to internationally recognised and consistent standards of regulation, oversight and enforcement in order to protect investors, maintain fair, efficient and transparent markets, and seek to address systemic risks;

to enhance investor protection and promote investor confidence in the integrity of securities markets, through strengthened information exchange and cooperation in enforcement against misconduct and in supervision of markets and market intermediaries;

to exchange information at both global and regional levels on their respective experiences in order to assist the development of markets, strengthen market infrastructure and implement appropriate regulation’.

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2. L.Q. 1987, Chapter 143
5. Acuerdo de Sede entre el Reino de España y la Organización Internacional de Comisiones de Valores (OICV/IOSCO), hecho en Madrid el 23 de noviembre de 2011, BOE de 17 de diciembre de 2011, p. 138400.
6. IOSCO is located, Calle Oquendo 12 28006 Madrid, Spain.

8 PE XXX.XXX
IOSCO is active in four areas, the first two being of more particular interest to the EU:

- international standards (development and implementation) (1.1.1)
- cooperation in enforcement and supervision (1.1.2)
- development of markets
- coordination, outreach and research

IOSCO is considering to move into the area of settlement of disputes in Cross-Border Regulation. This is a very important work stream for the future of global financial regulation (1.1.3).

1.1.1. Cooperation in enforcement and supervision

Historically, IOSCO has been very active in the area of cooperation in enforcement. This is due to the fact that the US Securities and Exchange Commission (SEC), which was one of the driving forces being the creation of IOSCO, is essentially an enforcement agency and wanted to develop exchanges of information between securities regulators to investigate market abuses, especially insider trading, on a cross-border basis (Conac, 2014).\(^7\)

Traditionally, the US SEC had been bared by banking secrecy regulations and blocking statutes. Cooperating with similarly minded foreign securities regulators was one way to circumvent this obstacle.

As soon as 1986 (*Rio declaration*), 21 authorities, including three from the EU (UK, France and Italy) committed themselves to provide to one another the requested information under condition of reciprocity and provided that their national legislation allowed such cooperation\(^8\). In 2002, IOSCO went one step further and adopted a Multilateral Memorandum of Understanding (MMoU) ‘concerning consultation and cooperation and the exchange of information’. The MMoU provided for the establishment of a screening group charged with verifying the ability of an applicant to comply with each MOU provision cited in the questionnaire\(^9\). A ‘monitoring group’ was also established in order to monitor possible changes ‘in the willingness or ability of a signatory to meet the provisions of the MOU’\(^10\). In 2005, IOSCO decided that, until 2010, all ordinary members and associate members with primary responsibility for securities regulation in their jurisdictions should have applied for and been accepted as signatories of the MMoU or have expressed a commitment to seek legal authority to enable them to become signatories. To pursue implementation of the MMoU, IOSCO has decided to ask all members to apply to become full signatories to the MMoU by 2013 or face progressive loss of their participation and voting rights. In addition, the Financial Sector Assessment Programs (FSAPs) by the IMF take into account compliance with the MMoU. As of year-end 2005 the total number of signatories of the IOSCO MMoU was 29\(^11\). As of April 2015, the number was 105. This success is an illustration that peer pressure can be effective in certain circumstances.

Therefore MMoU has ‘become a quasi-binding benchmark’ (Van Cauwenberge, 2012)\(^12\). It is not an International Treaty and is not even a legally binding instrument either in national or

10. OICV-IOSCO, Multilateral memorandum of understanding, p. 15.
international law. It is simply a statement of intent of the willingness of signatories to cooperate. Securities markets authorities of Member States have all signed the IOSCO MMoU. The MMoU of IOSCO serves as a model for MoUs signed by them among themselves and with third country regulators, as their cooperation can be more developed than envisioned by the MMoU. It serves also as a model for the MoUs signed by the European Securities and Markets Authority (ESMA). For instance, the MoUs signed by ESMA as supervisor of EU registered Credit Rating Agencies with six third-country authorities (Australia, Argentina, Canada, Dubai, Singapore, US) are modelled for the relevant parts on the IOSCO MMoU.

1.1.2. International standards (development and implementation)

One of the main roles of IOSCO is to develop international principles and standards for securities regulation. Since the 2008 financial crisis, IOSCO has been recognised as the international standard setter for securities regulation. However, these standards are, with some exceptions, not very granular. Therefore they generally have a limited substantial impact on EU legislation which is much more detailed.

Soon after its creation, IOSCO considered to become the equivalent of the Basel Committee for investment firms. As a follow up to the Basel I agreement IOSCO, which at the time included much less members, attempted in 1989 to develop capital ratios for investment firms. However, this attempt failed in 1992 in the Technical Committee of IOSCO due to the opposition of the SEC which considered that the minimum capital ratio supported by some Europeans Member States such as the UK and France was much too low. This opposition was not surprising as the SEC was usually a very conservative prudential regulator of US broker-dealers. As noted by Ben Steil (Steil, 1994), ‘The ambitions of those in the Technical Committee and the General Secretariat who wished to see IOSCO assume the role of an international rule-making body, comparable to the Basel Committee, were dealt a severe blow. The SECs forthright rebuttal of the need for harmonised capital standards well illustrated the difficulties in establishing effective multilateral regimes when the dominant actor sees no benefit from abandoning unilateralism’. This has remained. Due to the difficulty to reach a consensus among so many Members, IOSCO has tended to developed international standards which are not very granular.

Among the most significant standards are the ‘International Conduct of Business Principles’ for financial intermediaries (1990), the ‘Objectives and Principles of Securities Regulation’ (1998), the ‘International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers’ (1998). Some standards are updated from times to times such as the ‘Objectives and Principles of Securities Regulation’ (1998, 2003, 2010). IOSCO ‘Objectives and Principles of Securities Regulation’ are part of the three standards designated by the Financial Stability Board (FSB) for Financial Regulation and Supervision.

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1.1.3. Settlement of disputes in cross-border regulation

In a ground-breaking speech at the Atlantic Council in 2012 in the US, the Secretary General of IOSCO, speaking in a personal capacity, advocated for a reform of the global financial architecture in order to promote regulatory convergence among G20 members and beyond. David Wright asked the crucial question in the post financial crisis world ‘will the agreed global policies and standards that are emerging be properly implemented by all jurisdictions? Evenly? Equivalently? Without distortion of competition or capital flows? Without regulatory arbitrage?’. His proposal is to develop a global institutional framework, probably established by International Treaty that has some enforcement authority, binding disputes settlement and sanctioning possibilities. [...] This global Institutional framework should encompass at least the FSB and the main global sectorial standard setters. Its role would not be to try to enforce a one-size-fits-all harmonized set of rules – but rather to ensure and, if necessary legally require, that the basic globally agreed policy principles are properly implemented by all jurisdictions who are signatories to the Treaty arrangements.¹⁷ Such an idea would essentially turn IOSCO into an equivalent of the World Trade Organisation (WTO). It would substitute multilateralism to bilateralism or unilateralism.

In June 2013, IOSCO established a Task Force on Cross-Border Regulation to consider these issues and to assist policy makers and regulators in addressing the challenges.¹⁸ In November 2014, IOSCO published a very important Report on Cross-Border Regulation and started a consultation.¹⁹ The consultation was closed in February 2015. The result of this consultation will have a large influence on the IOSCO strategic review and on the face of global financial regulation.

1.2. The structure and governance of IOSCO

Article 1.1 of the by-laws of IOSCO provides that ‘securities commissions and similar bodies with responsibility for securities regulation are joined together in the International Organization of Securities Commissions (IOSCO)’. The membership of IOSCO covers more than 95% of the world’s securities markets in more than 115 jurisdictions. Securities regulators in emerging markets account for 75% of its ordinary membership. Therefore, IOSCO is a truly international and democratic organisation, especially compared to the Basel Committee. It can be described as the ‘United-Nations of securities regulation’.

1.2.1. The members of IOSCO

There are three categories of members: ‘ordinary’, ‘associate’ and ‘affiliate’. The currently 124 ordinary members of IOSCO are securities regulators and supervisors from all other the world with day-to-day responsibility for securities regulation and the administration of securities laws.²⁰ Associate members (12) are usually supranational governmental regulators, subnational governmental regulators, intergovernmental international organisations and other international standard-setting bodies, as well as other governmental bodies with an appropriate interest in securities regulation. ‘Associate members’ include as supranational governmental regulators ESMA and the European

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¹⁷ Remarks by David Wright Secretary General of IOSCO The Atlantic Council, Washington, DC 10 December 2012.
¹⁸ The Task Force was chaired by Ashley Alder from the Hong Kong SFC and Anne Lachat from the Swiss FINMA.
²⁰ In general, the ordinary members (124) are the national securities commissions or similar governmental bodies with significant authority over securities or derivatives markets in their respective jurisdictions (Article 6 of the by-laws). A stock-exchange or a self-regulatory organization can become a member if it is the jurisdiction’s primary securities regulator and only if a government regulatory body is not established in this jurisdiction and becomes an ordinary member (Article 7.1 of the by-laws).
Commission. They also include the International Bank for Reconstruction and Development (IBRD) which is part of the World Bank and the International Monetary Fund (IMF). Associate membership is also granted to second regulators in one country. For instance, the US CFTC was granted this statute before being upgraded to Ordinary Member in 2014. ‘Affiliate members’ (63) are private sector organisations (self-regulatory organisations, securities exchanges…) with an appropriate interest in securities regulation. Only Ordinary members have a decision power within IOSCO while Associate and Affiliate members have essentially an observer status.

**IOSCO Membership Map**

![IOSCO Membership Map](image)

**Source:** IOSCO website (4 March 2015)

### 1.2.2. The governance of IOSCO

The governance has changed significantly with the financial crisis and the recognition of IOSCO as an international standard setter. Before the crisis, IOSCO was dominated by securities regulators from developed and more mature markets. Following a request by the Washington G20 of November 2008 to expand to emerging economies, the Technical Committee of IOSCO, which was at the time the decision making body of IOSCO, and which before the 2007 financial crisis had no developing country members apart from Mexico, expanded its membership in February 2009 to include Brazil, India, and China.

These changes were not enough and an Executive Committee Task Force on the Review of IOSCO’s Strategic Direction (TFSD) was set up in 2009. As stated by IOSCO the reason for

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21 ‘The Financial Stability Forum (FSF) must expand urgently to a broader membership of emerging economies, and other major standard-setting bodies should promptly review their membership’, Point 9.

22 Press Release, IOSCO Technical Committee invites Brazil, China and India to join its membership, 19 February 2009.
the reform was that, among others, ‘there is an increasing need for IOSCO to contribute with a clear and coherent voice in global discussions within the G20, the Financial Stability Board (FSB), and with the international financial institutions (IFIs). These reasons suggest that the current structure, which is built on a distinction between the interests of members in developed markets (represented by the Technical Committee) and emerging markets (represented by the Emerging Markets Committee), is no longer structurally sound’. The reform was aimed at making IOSCO more effective, in order to be more able to answer G20 requests, and more inclusive in order to represent better all the members (e.g. emerging markets) in decision making bodies. The reform entered into force in May 2012.

The current structure of IOSCO comprises the following organs: (a) the Presidents Committee; (b) the Board; (c) the Growth and Emerging Markets Committee; (d) the General Secretariat; (e) the Regional Committees; (f) the Consultative Committees, the Task Forces (g) and the assessment committee (h).

(a) The Presidents Committee

The Presidents Committee (e.g. the members general assembly) is the general assembly of IOSCO and meets once a year during the IOSCO Annual Conference which usually lasts one week and includes private meetings for members as well as a public part. It is composed of ‘ordinary members’, ‘associate members’ and ‘affiliate members’. Associate members do not vote but may attend and speak at annual meetings of the Presidents Committee where resolutions are voted. Affiliate members may only attend the second part of the Presidents Committee meeting to hear detailed reports from IOSCO. No vote takes place during this second part. The Presidents Committee meeting takes place in one of the countries of the members of IOSCO.

According to the IOSCO by-laws, a majority of the ordinary members constitutes a quorum. If necessary, resolutions are put to a vote. A resolution to amend the By-Laws must have the support of 2/3 of the members in attendance. Other resolutions must have the support of a majority of the members in attendance. All members are represented and have an equal vote irrespective of the size or development stage of their markets. Therefore, IOSCO is a very democratic organisation. In addition, in practice, resolutions are adopted by consensus. In rare cases, some supervisory authorities requested that their opposition be mentioned.

(b) The Board

The executive body is the Board which was established in 2012 following the governance reform. The Board sets the strategy, takes decisions on IOSCO’s key activities, such as adopting principles and standards before subjecting them to the Presidents Committee, and represents IOSCO to the outside world. The Board decides on applications to become Member of IOSCO. The board meets around four times a year in different parts of the world.

After the appointment of a new Board, the Board Members choose, from among themselves, a Chairman and such a number of Vice-Chairmen as the Board may decide, for a period of two years. The Chairman of the Growth and Emerging Markets Committee is IOSCO the Board Vice-Chair ex-officio, unless he is the Chairman of the Board. The Chairman of the Board calls and chairs the meetings. Since 2004, no Chairman of the Board came from the EU.

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23 From Presidents Committee Executive Committee Chairman and Secretary General to Presidents Committee, Proposal to the Presidents Committee, Proposal for a new Committee Structure for IOSCO and potential Amendment to the IOSCO By-Laws, 31 March 2011, p. 2.
Half of the members of the Board constitute a quorum. If necessary, decisions are put to a vote and must have the support of the majority of the members in attendance. In the event of a tie, the Chairman has a casting vote. However, like in the Presidents Committee, resolutions are adopted by consensus. In very rare and exceptional cases an authority requested a vote.

From 2012 to 2014, for a transitional period, the board was made up of 32 members. Since September 2014, the number was increased to 34 members. The composition of the Board seeks to strike an appropriate balance between developed and emerging markets as well as a balanced regional representation (America, Europe, Africa/Middle-East and Asia/Pacific). To reflect these distinctions, the board is divided between 18 permanent and 16 elected members.

The 18 permanent members originate from jurisdictions with the largest markets based on measures of equity market capitalisation, debt market issuance, assets under management and derivatives trading. Out of these 18 members, six are supervisory authorities from Members States with large securities markets: France, Germany, Italy, Netherlands, Spain and the UK.

The 16 other members are elected according to a geographical repartition. They are:

- The Chair and the Vice Chair of the Growth and Emerging Markets (GEM) Committee (2),
- The Chairs of the four Regional Committees (4),
- Two members elected by the GEM Committee from its membership (2), and
- Two members elected by each of the four Regional Committees from their memberships (8 members).

There is a geographical balance within the board between the largest and the developing markets. This is a characteristic of IOSCO compared to other international standard setters.

The IOSCO board also includes observers. Observers can attend board meeting, get access to all documents, and speak but they do not vote. As part of the Headquarters agreement of 2011, Spain is ex-officio an observer if it were not to be a member of the Board. In addition, since 2014, two other institutions, including one from the EU, were granted an observer status: ESMA and the Chairman of IOSCO Affiliate Members Consultative Committee (AMCC).

(c) The General Secretariat

The Board appoints the Secretary General for a period of up to three years. The Secretary General manages the organisation on a day to day basis as the Chairman of the IOSCO Board is the chair of a national securities supervisor and therefore is not permanently in Madrid. Among other duties, the Secretary General assists the IOSCO Board and Committees of the Organization in their functions and represents IOSCO in meetings with or presentations to other groups and bodies, subject to the review of the Chairman of the IOSCO Board.

The current General Secretary is David Wright who was elected in March 2012. Before, David Wright was first Director, then Deputy Director-General for securities and financial markets, then for all financial services policy in DG Internal Market and Services of the

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24 Article 44.1 of the IOSCO by laws.
25 These authorities are the Autorité des marchés financiers (AMF), France; the Bundesanstalt für Finanzdienstleistungsaufsicht (Bafin), Germany; the Commissione Nazionale per le Società e la Borsa (Consob), Italy; the Autoriteit Financieele Markten (AFM), Netherlands; the Comisión Nacional del Mercado de Valores (CNMV), Spain; the Financial Conduct Authority (FCA), United Kingdom.
European Commission. He chaired the Securities and Banking Committees and was the rapporteur on the De Larosière Committee on financial services reform. He has also represented the European Commission in international fora such as the FSB and G20, and has played a key role in developing the EU's bilateral financial services relations.

(d) The Growth and Emerging Markets Committee (GEM)

The Growth and Emerging Markets Committee is the largest Committee (87 members) within IOSCO, and represents 75% of the IOSCO ordinary membership. The GEM includes 10 of the G20 members. The specific role recognised to developing markets is part of the tradition of IOSCO and dates back to its creation. Ten authorities of Member States of the EU, essentially from Central and Eastern Europe are members of the GEM, in addition to being also member of the European Regional Committee (ERC): Bulgaria, Croatia, Estonia, Hungary, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia.

(e) the Regional Committees

A Regional Committee is comprised of members from the same region, being one of the regions recognised by the Presidents Committee. IOSCO has four (4) Regional Committees, which meet to discuss problems specific to their respective regions and jurisdictions: Africa/Middle-East Regional Committee, Asia-Pacific Regional Committee, European Regional Committee (ERC) and the Inter-American Regional Committee.

The chair of the ERC, as well as the vice-chairs, is usually elected by consensus. However, if there are more candidates than positions, a vote takes place. Since the mandate is short (two years) every member can expect to be elected if he wishes so.

(f) The Consultative Committees.

The policy work of IOSCO, and standard setting activity, is conducted by the following eight committees under the aegis of the Board:

- Committee 1 Issuer Accounting, Auditing and Disclosure
- Committee 2 Regulation of Secondary Markets
- Committee 3 Regulation of Market Intermediaries
- Committee 4 Enforcement and the Exchange of Information and the Multilateral Memorandum of Understanding Screening Group
- Committee 5 Investment Management
- Committee 6 Credit Rating Agencies
- Committee 7 Commodities Derivatives Markets; and
- Committee 8 Retail Investors

Those committees take decisions by consensus like the Board and the Presidents Committee. They are made up of experts from the ordinary and associate members of the IOSCO. Their composition changes over time but permanent members of the Board are well represented.

There is also an Affiliate Members Consultative Committee (AMCC). This Committee was originally established under the name of the SRO Consultative Committee (SROCC) in

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26 The AMCC is comprised of 64 affiliate members. One European federation is a member: the European Fund and Asset Management Association (EFAMA). Other members from the EU are businesses based in one Member
1989. The name was changed in 2013, as part of the revision of IOSCO by-laws, to reflect its wider membership. Since 2012, IOSCO has accepted that some representatives of the then SROCC, today the Affiliate Members Consultative Committee (AMCC) to participate as members in certain Consultative Committees. This shows a certain degree of growing openness to the private sector.

(g) Task Force

Task Forces are developed on each given topic. Task Force are appointed by the IOSCO Board which can directly designate the Members and appoint the chair of the Task Force. In practice, this is combined with a call for interest to all Members of IOSCO. Members are experts from authorities interested in the topic, with limited IOSCO staff involvement. Task Forces prepare the principles and standards which will be adopted by the Board and the Presidents Committee.

Task Force are temporary bodies. They are set-up for a limited period of time and are disbanded once their mission is accomplished.

Some Task-Force on important topics are called 'Board Level Task Forces' such as on Financial Markets Benchmarks which was established in September 2012. A Board Level Task Force means that its initial membership include all or most of the Member of the IOSCO Board, although it can be extended later to non Board Members.

(h) The Assessment Committee

The Assessment Committee was established in 2012 in order to identify and assess implementation of IOSCO principles and standards by its members.

1.2.3. The decision making process at IOSCO

Only ‘ordinary members’ have a vote in the decisions of IOSCO, be it at the Presidents Committee or at the Board. Each authority receives one vote.

There are specific rules regarding elections in order to take into account special situations while at the same time not lead to an overrepresentation. Article 28.1 of the by-laws provides that ‘In the case of a country where the subdivisions have exclusive jurisdiction over securities, the regulatory bodies of the subdivisions of that country that are ordinary members shall have a maximum of three votes for all the subdivisions together in elections in meetings of the Presidents Committee, IOSCO Board, Growth and Emerging Markets Committee, Regional Committees, and in meetings of any other committee or on any other occasion where elections are held’.

For all elections, the Financial Conduct Authority (FCA) of the UK receives one vote which it can use freely. The supervisory authorities of Gibraltar and of the ‘Crown dependencies’ (Guernsey, Isle of Man and Jersey), all located in Europe, also receive one vote and they have to agree together how to exercise this vote.27 The supervisory authorities of the ‘UK Overseas Territories’ (British Virgin Island and Cayman Islands) receive one vote too and also have to agree how to exercise this vote.28 This system is designed to allow a fair representation of financial centres which are dependent of the UK for their international representation while conducting their own policy in the area of financial supervision and, for

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those financial centers outside of the EU, regulation. This arrangement is also designed to prevent the UK from having otherwise indirectly 7 votes in elections. For other votes (on principles and standards for instance), each supervisory authority has one vote.

A similar rule applies to Canada where, despite some attempts to centralise supervision, financial supervision is not federal but organised at the level of the provinces. The Securities Commission of Alberta, British Columbia, Ontario and Québec have also 3 votes shared\(^ {29} \). Only one supervisory authority from Canada is *de jure* member of the IOSCO Board but any other Canadian supervisory authority(ies) can be elected. In such case, each authority has one vote but if all Canadian supervisory authorities would be member of the IOSCO Board, they would be capped together at 3 votes.

Although there is no special arrangement for the United States, there are two supervisory authorities which are the Securities and Exchange Commission (SEC) for securities markets, and the Commodity Futures Trading Commission (CFTC) for futures markets. This division is due to historical reasons and reflects the fact, which seems unique in the world, that there are two regulators, one for securities markets and one for derivative markets. Since both are automatically represented in the IOSCO Board, the US receives in practice two votes.

Stakeholder involvement is excellent due to the international representation of IOSCO membership. In addition, IOSCO prepares its principles and standards through consultation on its website which assures external stakeholder involvement. On this issue, the creation at the level of IOSCO of an equivalent to the Securities and Markets Stakeholder Group (SMSG) of ESMA, which is designed to provide input from stakeholders such as retail investors and prevent regulatory capture, does not seem advisable due to the impossibility to represent such a diverse group on a worldwide basis. Therefore, an IOSCO stakeholder group would be subject to criticism for not being representative enough. In addition, this would raise a serious issue of financing by IOSCO as it would need to cover the costs of these members. Finally, since IOSCO develops high level principles and standards, or deals with very technical or even sensitive (e.g. enforcement) issues, a public interest involvement at the level of IOSCO would probably not yield positive results, while being costly to run and still subject to criticism.

\(^{29}\) See. Appendix 4 – Voting arrangements under By-law 28.1 and 28.2.
The Emerging Markets Committee is now the Growth and Emerging Market Committee (GEM).

Reporting to members of IOSCO is done through the Annual Conference where resolutions and reports are presented for a vote to all members of the IOSCO. The Annual Conference lasts for approximately five days and includes meetings of the different bodies of IOSCO.

In addition, the IOSCO Board, the GEM Committee, the Consultative as well as Regional committees meet regularly around the year which allows for input from the members and accountability. The GEM Committee organizes an annual meeting and conference.\(^30\)

Reporting to other organisations is done to the Financial Stability Board (FSB) and the G20. As stated before, following the financial crisis, IOSCO has been recognised as the global securities-markets standard-setter by the G20, the IMF and the World Bank.

Reporting to the general public is done through different channels: the Annual Conference of IOSCO, the Annual report and mostly through the IOSCO website. The Annual Conference is widely advertised and includes a public part. A website is dedicated to the conference by the authority of the country where it takes place where stakeholders and interested persons can register. However, they need to register for a fee which is usually high due to the costs of organising the conference and the financial risk that the organising authority takes. In practice and in general, access to the conference is closed to representative of public interest groups or to academics unless invited as speakers or otherwise by IOSCO or the organising supervisory authority. Academics, including the author of this report (Luxembourg Annual Conference, 2013) have been invited from times to times to take part in panels or present their views, but this is rather limited. Most speakers in the public part are regulators and industry representatives. Most individuals attending are senior representatives from financial entities such as banks, stock exchanges, management companies, asset managers, distributors, brokerage firms, specialised service providers, for example in the IT field, but also officials from ministries of finance and embassies from various countries. The press is invited to attend the public part of the meeting which usually also includes a press conference.

\(^{30}\) www.ioscogem2015.com
The public documents of each conference are later available on the IOSCO website. This assures an excellent level of transparency. For instance, documents dating back to the 2000 conference are available on the website as well as resolutions since 1986.

IOSCO publishes an Annual report which can be downloaded from its website. The report is prepared by the General Secretariat. It provides valuable and detailed information about the activities and priorities of IOSCO as well as audited annual financial statements.

1.2.4. The financing of IOSCO

The budget of IOSCO is very modest. IOSCO is mostly financed by the fees paid by its members and does not benefit from the infrastructure of another large institution like for instance the Bank for International Settlements (BIS) in the case of the Basel Committee.

The annual membership fee from 2012 to 2015 is shown in the following chart. The fees for each Member are not very high and are adjusted to the GDP of the country to take into account the diversity of the members. ESMA and the Commission each pay a fee.

<table>
<thead>
<tr>
<th>National Per Capita Income</th>
<th>1. Low Income</th>
<th>2. Middle Income</th>
<th>3. High Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Low GDP</td>
<td>€ 12,500</td>
<td>€ 15,000</td>
<td>€ 16,000</td>
</tr>
<tr>
<td>B. Medium GDP</td>
<td>€ 16,000</td>
<td>€ 16,000</td>
<td>€ 21,000</td>
</tr>
<tr>
<td>C. High GDP</td>
<td>€ 16,000</td>
<td>€ 21,000</td>
<td>€ 30,000</td>
</tr>
</tbody>
</table>

IOSCO Annual report 2013, p. 62.

For the year ended December 31, 2013, the annual revenue was 4.176.831 euros, almost exclusively originating from Contributions from members. The member hosting the Annual Conference provides a contribution of 120,000 euros. In 2013, IOSCO made a significant 'profit' of 613.428 euros. The ‘equity’ of IOSCO (members’ funds) is 3.064.923 euros. This amount was 1,813,511 in 2004 when they were published for the first time.

IOSCO also benefits from a significant contribution in kind from Spain which can be estimated to represent almost 10 % of the revenue of IOSCO and 65 % of its 2015 'profit'31. In addition, there is an agreement between IOSCO and the Comisión Nacional del Mercado de Valores (CNMV) for meeting the costs of security and maintenance of security systems in the IOSCO premises; insuring the premises; and municipal and local property taxes32. This significant support from Spain, as well as favourable tax regime provided to IOSCO and its employees, makes Madrid a very attractive location for the IOSCO secretariat.

Finally, IOSCO General Secretariat also benefits from secondment of national experts. About a third of the IOSCO staff (almost 30 people) is seconded from by members33. In 2013, three supervisory authorities (BaFin, FSA and CNMV) from the European Union, out of 12 supervisory authorities or affiliate members, provided secondment. The sponsoring member covers a portion of the seconded staff's salary costs and in some cases all the costs. This subsidy is substantial and represented 7,2 % of the income of IOSCO in 2013.

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31 As part of the 2011 Headquarters agreement, IOSCO has the right to use a 56 % share of the 12 Oquendo premises free of charge, exclusive of non-structural maintenance expenses (electricity, water, elevator maintenance, etc.). The estimated revenue in kind associated to the 56 % share to use free of charge of the 12 Oquendo premises was estimated to be 408,000 Euros.

32 These revenues in kind have been estimated at € 89.207,84 for 2013 (€ 85,185 in 2012).

33 IOSCO Annual report 2013, p. 21.
In 2012, IOSCO explored the feasibility of setting up an IOSCO Foundation to raise and apply additional funds to certain key activities, such as capacity building for emerging markets. This attempt failed for various reasons but, as a transitory solution, the Board accepted a temporary increase in contributions from the permanent Board members in 2015.

### 1.3. The development of international standards by IOSCO

IOSCO produces principles and standards, including MMoUs. Part of its work is on its own initiative whereas part of its work, since 2008, has been requested by the G20 and the FSB. IOSCO has currently around 90 work streams, half related to the crisis, the G20 or the FSB. Approximately 50% of the time of the General Secretariat is devoted to G20 agenda.

For instance, in 2013, the G20 charged IOSCO to work on OTC derivatives, shadow banking and 'Too Big To Fail'. The FSB also requested IOSCO to work on long term finance and securitisation, jointly with the Basel Committee. Currently, the FSB is interested in risk in asset management and IOSCO is working on ‘Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions’ (NBNIG-SIFIs).

A large part of the work of IOSCO is also decided by its own members. For instance, in June 2013, IOSCO established a Task Force on Cross-Border Regulation. IOSCO also decided in 2013 to work on identifying and protecting against cyber-risks and detecting, responding to and recovering from a cyber-attack. IOSCO is also interested in monitoring implementation of its principles and standards and as created in 2012 an Assessment Committee.

The IOSCO board mandates a Committee to prepare a report. IOSCO work stream has been sometimes directly influenced by the EU especially in new areas (e.g. benchmarks).

Principles and standards are prepared by Task Forces which gather 10 to 20 authorities who have an interest and an expertise in the subject matter. The Task Force has a chair and a vice-chair who are in charge of the drafting. Principles and standards are subject to a consultation which is announced on the website of IOSCO together with the Consultation document. IOSCO published in 2005 a document on Consultation Policy and Procedure. IOSCO mentions that ‘Work projects that contemplate the issuance of international standards and principles for the securities sector will generally include the conduct of a public consultation as part of the project’. Consultation is being done through the website of IOSCO. The consultation period is generally of three months. In some cases, IOSCO organises an industry roundtable in various location to receive input from the industry, such as in the case of Financial Markets Benchmarks.

All comments received on a Consultation Report are made public and posted on the IOSCO internet website. If anonymity is specifically required the comment are posted without reference to its author. IOSCO consultations draw a variable input from the public, depending on the subject matter, and mostly experts and business associations. Another element of transparency is that a summary explanation of the manner in which public comments received have been addressed is included in an accompanying memorandum to Final Reports.

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34 The Task Force was chaired by Ashley Alder from the Hong Kong SFC and Anne Lachat from the Swiss FINMA.


36 IOSCO Annual Report 2013, p. 34.
The process is very transparent as there is a consultation process and reports are detailed. However, the adoption of standards takes place in camera which is necessary because of the sensitivity of the information involved and is also usual for securities regulators.

The time to agree on the IOSCO principles and standards varies. As an average it takes around one and a half to two and a half years from the constitution of a Task Force to the publication of the report.

However, there have been situations where IOSCO has been extremely fast. This is the case of Financial Markets Benchmarks. IOSCO established a Task Force in September 2012 and published a Final Report on 17 July 2013, which is less than 10 months. It is an outstanding achievement. IOSCO was very motivated to move quickly in order to shape the debate as no legislation existed among its members in this field. When no national legislation exists, which was the case for financial benchmarks; IOSCO enjoys a first mover advantage and can hope to shape the future regulatory landscape. Time is then of the essence as it is always harder to try to develop international standards in case one major jurisdiction already has one standard as it tends to try to ‘upload’ its own legislation at the international level (Quaglia, 2014). IOSCO has demonstrated its ability to develop detailed standards in a very short time. The benefits of having IOSCO taking the lead before any national legislator introduces a bill has immense benefits in terms of regulatory convergence and should certainly be supported.

This also shows that IOSCO can develop international standards with some granularity essentially when there is a G20 commitment and no pre-existing national legislation.
2. THE REPRESENTATION OF THE EU IN IOSCO

2.1. The EU membership in IOSCO

Supervisory authorities of the 28 Member States of the EU are ‘ordinary members’ of IOSCO. This represents 22% of the membership of IOSCO which is a large number.

ESMA is an ‘Associate Member’ of IOSCO. ESMA was established by regulation n°1095/2010 of 24 November 2010 and started to be operational in the first semester of 2011 after the appointment of the chair and the executive director. In 2011, ESMA was accepted as an ‘Affiliate Member’. Then, its status was upgraded to ‘Associate Member’ in September 2013. Therefore, the application of ESMA to IOSCO, and its admission, was swift. The by-laws of IOSCO were modified so that ESMA could become an ‘Associate Member’ since no other country in the world has an equivalent situation with both national and supra-national side by side securities supervision. IOSCO crafted a special status for ESMA. Despite this quick upgrade, ESMA is not an ‘Ordinary Member’ but only an ‘Associate Member’.

The fact that ESMA received a status of ‘Associate Member’ is justified on two grounds. ESMA is a direct supervisor in the European Union for Credit Rating Agencies, since Regulation n°513/2011 of 11 May 2011, and for Trade repositories, since Regulation n°648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (European Market Infrastructure Regulation or EMIR). However, those two areas of jurisdiction make ESMA a securities markets supervisor, they are limited in scope and make ESMA a partial supervisor in comparison with the other full-fledged supervisors which are members of IOSCO. From the EU perspective a second justification for the participation of ESMA is that it is in charge of preparing draft Regulatory or Implementing Technical Standards and draft Regulatory or Implementing Technical Advice for the European Commission. Therefore, it is important for ESMA to be aware of international developments in order to anticipate and to provide an input from a European perspective. However, many authorities members of IOSCO cannot adopt regulations and are only supervisors so that this argument does not have a lot of weight for them. One final reason why ESMA was not granted by the Board a status of ‘Ordinary Member’ is that it might lead to an overrepresentation of the European Union. Since IOSCO is an international organisation, other countries and continents are reluctant to reinforce what they consider to be already an overrepresentation of Europe.

The European Commission is currently an ‘Associate Member’ of IOSCO. The Commission is represented by DG Fisma. Depending on the subject matter, the Commission representation is assured the Head of Unit C3 Securities Markets or the Head of Unit C2 Financial Markets Infrastructure from Direction C (Financial Markets). One author (Marcacci, 2013) thinks that this level of representation ‘seems to be too little in light of the impact that EU Law has had on its Members' national financial laws in the last decades’. In view of the fact that IOSCO develops standard with usually a limited level of granularity and is mostly a forum for discussions, at least so far, this criticism is not founded.

39 ESMA dedicates a large number of its staff to the supervision of credit rating agencies.
Until 2000, the European Commission was an ‘Ordinary member’ of IOSCO, when it was decided that participation was not necessary anymore. The main reasons for this decision were, on the one hand, the lack of resources, and, on the other hand, the priorities set in the securities sector by the Financial Services Action Plan (FSAP) of 1999. At this time, the European Commission activities were focussing on getting the legal framework right within the EU and opening cross-border business in EU Member States securities markets. Following the financial crisis, the Commission requested in 2008 to be a member of IOSCO because it had established at EU level a good principles-based regulation and the rapid globalisation had shown that the EU needed to take into consideration international developments if it wanted to remain globally competitive. In this sense, the Commission considered that policy development by the EU must consider and also influence developments at international level. From 2009 until 2013 the Commission was an ‘Affiliate Member’. As mentioned above, this status only provides for a limited access to IOSCO activities and is designed for private sector entities. Therefore, it did not really correspond to the public nature of the Commission and did not provide any access to the decision making process. However, in 2014, the Board of IOSCO upgraded the Commission’s status to ‘Associate Member’.

Although the Commission is not an ‘Ordinary Member’, its membership of IOSCO as an ‘Associate Member’ can be considered to be an exception. No other legislator, or more precisely in the case of the Commission, co-legislator, of any other country in the world is a member of IOSCO. Other ‘Associate Members’ are either securities regulators waiting to become ‘Ordinary Members’ or international or regional public banking institutions engaged in the development of securities markets. In addition, the Commission, since not being a regulator, cannot be part of the IOSCO MMoU which is an essential part of IOSCO’s activity.

Therefore, the membership of the Commission can be considered an exception leading, for some other third-country supervisors, to an overrepresentation of the EU in IOSCO. Any request by the Commission for an upgraded status could lead to an opposition by those authorities requesting their legislators or Treasuries to become also ‘Associate Members’.

2.2. The EU membership in internal bodies of IOSCO

There are several internal bodies within IOSCO to which EU institutions or Member States participate. The most important internal body of IOSCO is the board. The other important bodies are the GEM Committee and the ERC. Then, there are the Consultative Committees. Finally, IOSCO establishes ad hoc Committees and Task Force to prepare principles and standards.

2.2.1. The EU membership in the IOSCO Board

Supervisory authorities from EU Member States have 9 members in the Board out of 34 which represents more than 25 % of the votes\(^1\). They are well represented within the Board.

There are 6 permanent Members of the board which are supervisory authorities from EU Member States due to the size of their securities market (France, Germany, UK, Italy and Spain). The Chair of the European Regional Committee (ERC) currently comes from a Member State (Belgium). The two members elected by the ERC also come from a Member State (Greece and Sweden). Although they do not vote as one body, supervisory authorities from EU Member States constitute a majority within the ERC (56 % of the members). In addition, those who are not from Member States and have large securities markets (Switzerland and Turkey) are already permanent members of the Board. This

\(^1\) Supervisory authorities from Member States are typically represented by the Chair.
means that the three positions allocated within the Board to the ERC will at least partially and regularly be filled by authorities from EU Member States increasing the representation of the EU in the Board.

In addition to its status as an ‘Associate Member’ granted in September 2013, ESMA was accepted simultaneously as an ‘observer’ to the Board. The decision to request a status as an observer in the IOSCO Board was taken by the Board of Supervisors (BoS) of ESMA, which is made up of the National Competent Authorities (NCAs). In accordance with article 43 of the ESMA Regulation, the BoS is the principal decision-making body of the Authority and is involved in determining ESMA’s position on international strategy and strategic decisions.

As noted by Niamh Moloney (2014), the allocation of competences between ESMA and the NCAs led to frictions, raised for the first time by the German BaFin, following an invitation by the SEC to ESMA, as the responsible standard setting body in the EU, to participate to an OTC derivatives group to discuss equivalence between the EU and the US: ‘Some tensions clearly persist, particularly with respect to the respective roles of ESMA and the NCAs in international meetings: e.g., in the context of soTC derivatives markets supervision, Board of Supervisors Meeting, 14 February 2012 (ESMA/2012/BS29).’

This tension led to a discussion between the Chair of ESMA and the BoS and a clarification by ESMA of their roles. The minutes of the meeting are worth quoting as they mention that:

‘The Chair noted that it is important that the Board is involved in determining ESMA’s position on the relevant subject. This is done through discussions within the relevant Standing Committee while key policy discussions take place in the Board of Supervisors. The agenda of the meeting had been circulated to the Post Trading Standing Committee in advance and comments had been invited. Also, the Chair of the Post-trading Standing Committee attended the meeting as a representative of ESMA.

The Board discussed the letter and the clarification by the Chair, in particular

– the need for a clear policy with regard to the international activities by ESMA and the involvement of the members of the Board of Supervisors

– to find a balance between involving the Board while maintaining room for manoeuvre for ESMA acting on the international level

– the formal role of the Chair in representing ESMA externally according to the Regulation;

– the possibility to invite members of the Board of Supervisors to attend a meeting on a case-by-case basis; and

– when members of the Board of Supervisors would attend meetings they are representing ESMA and not their national competent authority.

Conclusion: The Chair concluded that policy debates will continue to take place at the level of the Board of Supervisors while specific international activities will be discussed within the Standing Committees, with the possibility of raising it at the level of the Board. Members of the Board can be invited to attend international meetings on a case-by-case basis, although the size of the EU delegation needs to be considered. When they are attending in their capacity as Board of Supervisors member, they are representatives of ESMA and not of their national competent authority. ESMA staff will draft a policy paper on ESMA’s international policy and strategy for discussion in the Board of Supervisors.’

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43 Board of Supervisors Meeting, 14 February 2012 (ESMA/2012/BS29)
In April 2012, the BoS discussed the international strategy of ESMA.\textsuperscript{44} The minutes of the meeting note that:

\textit{The Chair presented the paper, explaining that the note identifies the role of ESMA in international policy and strategy following a request by the members. The Board of Supervisors discussed the paper, noting in particular:}

- the importance of strengthening the international role of ESMA with a view at globalizing financial markets, its standard-setting role and the need for a strong European voice at the global level

- the need for a clear process for ESMA to undertake international activities in order to fulfil its responsibility in international standard-setting and supervision

- the involvement of the Board of Supervisors in determining ESMA’s position in discussions with third country regulators, at the initial stage and on an on-going basis

- when entering into formal negotiations with third country regulators, the Board would need to decide beforehand on a mandate. In case of broader policy discussions the Board would provide guidance to the Chair; and

- the desirability of avoiding overlap with IOSCO work.

\textit{Conclusion: The paper will be revised taking into account the discussion and sent to the Board for approval by written procedure ‘.}

The paper was adopted at the June 2012 meeting.

Like for the other members, ESMA is represented at the IOSCO Board by its Chairman. This compromise is ‘fair’\textsuperscript{45} and an excellent result since it provides ESMA to access to the decision making process at IOSCO while not, hopefully, reinforcing the feeling among other members of an overrepresentation of Europe in the decision making body of IOSCO.

In July 2014 DG Market, after having been granted an ‘Associate Member’ status, requested that the Commission participate as an observer to the Board meetings. This application was rejected in October 2014. This rejection is not surprising given that the Commission is not a supervisor but a co-legislator and that ESMA had just been granted an observer status. Having two observers from the EU was not acceptable to other Board members.

\begin{itemize}
  \item Description of how and by whom the ‘instructions/mandate’ for the participating person are determined including an indication if and how positions of EU participants are coordinated
\end{itemize}

As to ESMA, a distinction has to be made according to whether the issue is within the sole jurisdiction of ESMA or related to an issue where the NCAs exercise supervisory powers. In the case ESMA has sole supervisory powers (Credit Rating Agencies and Trade Repositories), the NCAs represented in the BoS of ESMA have agreed that ESMA would present the EU position. This approach is logical. In the case where ESMA has no supervisory powers, the BoS of ESMA has agreed to try to find a joint approach. However, this is not a binding commitment. Therefore, in practice, NCAs hold their freedom to represent national views at the IOSCO Board. This situation is also logical since the day to day supervisory responsibility lies with the NCAs, even if it means that the EU does not speak with one voice.

As to the European Commission, its position is decided internally after political discussion with the cabinet of the Directorate-General Internal Market and Services (before 2014) and

\begin{itemize}
  \item Board of Supervisors, Summary of Conclusions, 19 June 2012 ESMA/2012/BS/66.
  \item Marcacci, Antonio, ‘The EU and IOSCO: An Ever Closer Cooperation?’, EUI Working Paper LAW 2013/02, p. 27.
\end{itemize}

The lack of coordination should not be considered as such as a major issue at this stage since IOSCO usually adopts decisions at the Board level by consensus and usually proposes only high level standards. Also, this situation simply reflects the fact that ESMA is more a coordination authority than an EU authority like the European Central Bank (ECB).

2.2.2. The EU membership in the European Regional Committee

The European Regional Committee (ERC) includes all the 28 Member States of the European Union, as well as 22 European countries which are not members. Of these non-members, three are part of the European Economic Area (Iceland, Norway, Liechtenstein), several are ‘Crown dependencies ’ of the UK (Jersey, Guernsey, Isle of Man) and one is a ‘UK Overseas Territory’ which is also part of the EU (Gibraltar). One is micro-state (Andorra).

The remaining members are authorities from States in the Balkans (Albania, Federation of Bosnia and Herzegovina, Republic of Srpska, Former Yugoslav Republic of Macedonia, Montenegro and Serbia), in Eastern Europe (Ukraine), Russia, in the Caucasus (Armenia), as well as partly or fully in Asia (Turkey, Israel, Kazakhstan and Uzbekistan).

In 2012, ESMA joined the ERC as a member when it became ‘Associate Member’. In 2013 the Commission also joined the ERC as an observer after it also became an ‘Associate Member’. In practice, the Commission does not participate actively in the ERC because discussions are usually of a too general nature and are not related to standard setting.

2.2.3. The EU membership in the Consultative committees, ad hoc committees, Working Groups and Task Forces

As agreed by the BoS in June 2012, ESMA has engaged with IOSCO in those areas which are within its remit, such as for the purpose of drafting technical principles/standards. ESMA is a member in Committee 6 (Credit Rating Agencies) and an observer in Committees 2 (Regulation of Secondary Markets), 3 (Regulation of Market Intermediaries) and 8 (Retail Investors). The six NCAs which are permanent members of the IOSCO Board (France, Germany, Italy, Netherlands, Spain, and UK) are very often members of the Committees.

- Committee 1 Issuer Accounting, Auditing and Disclosure: This committee includes 29 members and 10 NCAs from Member States (Belgium, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Poland, Spain, and the UK). The vice-chair is the French AMF.

- Committee 2 Regulation of Secondary Markets: ESMA is an observer in this Committee. This committee includes 30 members and 9 NCAs from Member States (France, Germany, Ireland, Italy, Netherlands, Romania, Spain, Sweden and the UK). The chair is the German Bafin.

- Committee 3 Regulation of Market Intermediaries: ESMA is an observer in this Committee. This committee includes 27 members and 8 NCAs from Member States (France, Germany, Hungary, Italy, Netherlands, Poland, Romania and Spain).

- Committee 4 Enforcement and the Exchange of Information and the Multilateral Memorandum of Understanding Screening Group: This committee includes 31 members and 9 NCAs from Member States (Belgium, France, Germany, Greece, Italy, Netherlands, Poland, Spain and the UK). This committee is chaired by the UK FCA.
The European Union’s Role in IOSCO

• Committee 5 Investment Management: This committee includes 31 members and 9 NCAs from Member States (Belgium, France, Germany, Greece, Italy, Netherlands, Poland, Spain and the UK). This committee is chaired by the French AMF.

• Committee 6 Credit Rating Agencies: ESMA is a member since it has supervisory responsibility at the EU level on CRAs and succeeded to its predecessor CESR (Committee of European Securities Regulators). The Commission is observer in this Committee. This committee also includes 20 members and 6 NCAs from Member States (France, Germany, Netherlands, Poland, Spain and the UK).

• Committee 7 Commodities Derivatives Markets: This committee includes 25 members and 6 NCAs from Member States (France, Germany, Italy, Netherlands, Spain, and the UK). This committee is chaired by the UK FCA.

• Committee 8 Retail Investors: ESMA is an observer in this Committee. This committee includes 33 members and 10 NCAs from Member States (Belgium, France, Germany, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the UK).

There is also a permanent ad hoc committee:

• Committee on Emerging Risks (2011): ESMA is a member of this Committee and succeeded to its predecessor CESR. This committee also includes (as of February 2013) 25 members and 7 NCAs from Member States (France, Germany, Italy, Netherlands, Portugal, Spain and the UK).

There are also Working Groups. Working Groups is the name given to joint committees with other international financial. There are currently two Working Groups:

• BCBS-IOSCO Working Group on Margining Requirements: The Commission is observer in this Working Group.

• CPMI-IOSCO Steering Committee: ESMA is a member of this Committee. The Committee on Payments and Market Infrastructures (CPMI) promotes the safety and efficiency of payment, clearing, settlement and related arrangements and is a global standard setter in this area. This Committee was formerly called the Committee on Payment and Settlement Systems (CPSS).

IOSCO has several active Task Forces. The Commission is observer in the following Task Forces: Financial Benchmarks and OTC Derivatives Regulation. The Commission requests the right to participate in Task Forces when the topic has been regulated at the European level or if European legislation is or might be considered. Member States are also well represented.

• The Board-level Task Force on Financial Benchmarks (2012): The Commission is observer in this Task Force. This Task Force includes 19 members and 7 NCAs from Member States (Belgium, France, Germany, Italy, Netherlands, Spain and the UK). This Task Force is chaired by the UK FCA.

• Task Force on OTC Derivatives Regulation (2010): The Commission is an observer in this Task Force. This Task Force also includes 21 members and 7 NCAs from Member States (France, Germany, Italy, Netherlands, Portugal, Spain and the UK).
Task Force on Long-Term Financing (2013): This Task Force includes 15 members and 10 NCAs from Member States (France, Germany, Italy, Netherlands, Spain, and the UK).

Task Force on Cross-Border Regulation (2013): ESMA is a member of this Task Force. This Task Force includes 20 members and 10 NCAs from Member States (France, Germany, Italy, Netherlands and Spain).

Once a Task Force has finished its work, it is disbanded or merged into an existing Committee. For instance, the Task Force on Unregulated Markets and Products (TFUMP) was disbanded in 2014. The Task Force on Unregulated Financial Entities (Hedge Funds) was merged into the Committee 5 on Investment Management in 2014.

Admission in the Standing Committees, ad hoc Committees and Task Forces is decided by each Committee. In the case of ESMA admission is automatic when it has supervisory power (e.g. CRA). For new Task Forces, admission of ESMA is decided directly by the IOSCO Board. For existing Task Forces, the decision is taken by the Chair of the Task Force, usually in consultation with the existing members of the Task Force.

IOSCO has not agreed to the participation of the European Commission in the Peer-to-peer review Task Forces on securitisation and on Money Market Funds. This is a drawback of the situation of the European Commission which as an Associate Member cannot automatically participate in Task Forces of IOSCO. In the case of the Money Market Funds Task Force, the Commission was not admitted because it was argued that there was no European regulation of Money Market Funds at that time. However a proposal of regulation on Money Market Funds followed soon after. ESMA, as an Associate Member must also justify its participation in Consultative committees, ad hoc committees and Task Forces. Because it is an observer in the IOSCO Board, it has a better position but it also needs to argue its case.

In the cases where the Commission was not granted access to a Task Force, it entered into discussion with Member States authorities which are member of the Task Force in order that the European point of views can be taken into account in the report of the Task Force.

ESMA is represented in the Committees by ESMA staff members who are designated by the relevant Head of Division in agreement with the Executive Director and the Chair of ESMA. The expert is usually the reporter of the equivalent Standing Committee of ESMA. As to the Commission, representation in Task Forces is usually done by staff members who are expert in the specific field covered by the Task Force and by the Head of Unit in certain cases.
3. THE ACTIVITY OF THE EU IN IOSCO

3.1. The legal basis governing the role of the EU in IOSCO

The EU does not have an exclusive competence in the area of securities markets. The area of securities markets is not covered by the EU exclusive competence, granted by the Lisbon Treaty, for trade in goods and services, commercial aspects of intellectual property and foreign direct investment. However, the capacity and right of the Commission to act internationally at IOSCO is clear (Marcacci, 2013).

As for ESMA, international relations with supervisors and international organisations are explicitly mentioned in, mainly, recital 44 and article 33 of ESMA Regulation n°1095/2010 of 24 November 2010. As noted by Niamh Moloney (2014) ‘The 2010 ESMA regulation envisages a co-ordination-based role for ESMA in the international market. Under Article 33, ESMA may develop contacts and enter into administrative arrangements with supervisory arrangements with supervisory authorities, international organisations, and the administrations of third countries (Article 33(1))’. ESMA should strive to foster dialogue and cooperation with supervisors outside the Union but also strengthen international supervisory coordination and supervisory convergence. In particular ESMA should take into account the international works and discussions of systemic relevance, the work of international bodies and it shall fully take into account the relevant international approaches. Furthermore, it is specified that ESMA should allow third countries having adopted and applying Union law in the areas of competence of the Authority (members of the EEA) to participate in the work of the Authority and cooperate with third countries recognised as equivalent in the areas of competence of the Authority.

3.2. The coordination of EU participants in IOSCO

ESMA presents the view of the BoS of ESMA. The BoS will typically not give instructions to the chair of ESMA, although nothing would prevent the BoS from doing so if it wished. The coordination between ESMA and the Commission is close, constructive and excellent. In addition, since the Commission is also an observer at the BoS of ESMA, it can also follow ESMA involvement at IOSCO very closely when the Chair reports to the BoS.

The Commission has influence at IOSCO. Member States and ESMA also benefit from the participation of the Commission. Especially, if the authorities of the Member States agree on one position, which is supported by the Commission, it gives the EU a lot of weight. The Commission does not usually coordinate with the supervisory authorities of the Member States, but there can be exceptions where the Commission will engage with one authority. However, the level of implication of the Commission at IOSCO is less intense than, for instance with the Basel Committee, because IOSCO standards are more general.

Some coordination takes place at the level of the ERC depending on the topic. This means that the chair of the ERC, currently, the Financial Services and Markets Authority (FSMA) from Belgium, tries to develop a common approach so that the ERC, where most members

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46 Art. 270(1) TFUE.
48 Recital 11 and 66 of ESMA Regulation.
49 Recital 15 of ESMA Regulation.
50 Art. 23 para 2 of ESMA Regulation.
51 Recital 65 and Art. 75 para 2 of ESMA regulation.
come from the EU, speaks with one voice. The chair of the ERC noted in 2013 that 'Going forward, the ERC’s objective is to contribute to IOSCO’s work, with a view to uniting members around a set of common goals and create a common front on issues of concern, either to the ERC or to the broader international financial regulatory community, at relevant external international fora. The committee will continue to speak out on behalf of members who do not have a seat on the Board, ensuring that the views and concerns of all members are reflected in Board decisions.'

There is a specific issue of the double representation of Europe in IOSCO through both ESMA and the Commission. In 2009, the De Larosière report recommended ‘that a coherent EU representation in the new global economic and financial architecture be organised. In the context of a more ambitious institutional reform, this could imply a consolidation of the EU’s representation in the IMF and other multilateral fora’. The issue has been also raised to a certain extent in academic circles. Niamh Moloney (2014) noted that ‘ESMA’s developing international activities (...) open up a further line of potential tension with the Commission, which typically represents the EU on international standard-setters, notably the Financial Stability Board (FSB). This may particularly be the case where ESMA’s technical expertise trumps that of the Commission and where ESMA has built a strong relationship with the members of the standard-setters through, for example, its information exchange, equivalent and co-operation activities or where the Commission’s position is insecure’. Eilis Ferran (2012) adds that ‘The ESAs would arguably be a more appropriate participant than the Commission in international bodies comprised of supervisors, such as the International Organization of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS)’.

The nature of IOSCO, which is an organisation of supervisors, makes that ESMA fits certainly better the membership of IOSCO which is also why there was opposition of third country supervisors to the admission of the EU Commission as an Ordinary member. In addition, ESMA is a technical body while the Commission is both a technical and a political body. Therefore, the argument could be made that the Commission should rather focus its activity in other more political bodies such as the FSB and leave ESMA to represent the EU in IOSCO. However, the distinction between technical and exercising political discretion is blurred so that ESMA also engages to a certain extent into policy making while the Commission has also a strong technical expertise in the field of securities markets. Also the participation of the Commission increases the influence of the EU within IOSCO. Finally, on a long term perspective, if a better coordination among major jurisdictions takes place before any legislation is developed in any member of IOSCO, such as was the case on Money Market Funds, the participation of the Commission to IOSCO would be even more justified.

3.3. The accountability of EU participants in IOSCO

The chair of ESMA reports back to the BoS, but many NCAs are already members of the IOSCO board and all of them are members of IOSCO so that they also get direct access to information. However, not all of them are members of IOSCO Task Forces or Standing Committees. The chair of ESMA can also be asked to report back to European Parliament,
and more especially to the ECON. Such auditions take place regularly within the year. As to ESMA there is also transparency through the annual report of ESMA, although there are not many details as to the activities linked to IOSCO, and through the minutes of the meetings of the BoS and of the Managing Board which are available on the website of ESMA. As to the Commission, the EU Parliament can also organise an audition.

**SWOT Analysis**

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<tr>
<th>STRENGTHS</th>
<th>WEAKNESSES</th>
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<tr>
<td>• EU Member States have a very strong position in the IOSCO Board</td>
<td>• The Commission has limited access to IOSCO activities</td>
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<td>• ESMA has access to the IOSCO board as an observer</td>
<td>• Member States tend to defend their own agenda in IOSCO</td>
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<td>• Location of the General Secretariat of IOSCO in Madrid makes access to</td>
<td>• Coordination of Member States in the BoS of ESMA is not very strong</td>
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<td>meetings easier for supervisory authorities of Member States, ESMA and</td>
<td>• Cost of participating to IOSCO meetings and committees in the world is</td>
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<td>the Commission</td>
<td>very high and implies a strong financial and human commitment from</td>
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<td>supervisory authorities who are board members as well as ESMA and the</td>
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<th>OPPORTUNITIES</th>
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<td>• IOSCO isexpending its activity in international standards at a time</td>
<td>• Lingering concern of overrepresentation of Europe in the IOSCO board can</td>
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<td>where the EU and Member States are well represented in the IOSCO board.</td>
<td>lead to challenges to the participation</td>
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<td>This gives to European the possibility to shape international standards</td>
<td>• Emerging markets in the world will challenge the position of Europe in</td>
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<td>which in some case are becoming more granular</td>
<td>the next 10 to 20 years in IOSCO and especially in the Board as</td>
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<td>• EU should strongly support the expansion of IOSCO into settlement of</td>
<td>permanent members are appointed according to the size of their securities</td>
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<td>cross-border regulation disputes being considered by the recent</td>
<td>markets</td>
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**3.4. Conclusion on the evaluation of the EU in shaping IOSCO standards**

IOSCO standards have traditionally been taken into account by the European legislator. For instance, the Prospectus Directive mentions IOSCO ‘disclosure standards’ as one element to take into account by the European Commission in the assessment of the equivalence of third-country prospectuses. Delegated Acts of the Commission regarding the specific information to be included in prospectuses ‘shall be based on the standards in the field of

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financial and non-financial information set out by international securities commission organisations, and in particular by IOSCO.\(^{57}\)

Before 2008, IOSCO would develop international standards on its own move. Following the financial crisis, IOSCO has been recognised as the global securities-markets standard-setter by the G20, the IMF and the World Bank. Therefore, IOSCO is entrusted to develop standards and principles on request of the G20, sometimes in cooperation with other entities (e.g. CPSS-IOSCO Principles). The official endorsement came at the London G20 meeting of April 2009, where the G20 mentioned that the regulatory oversight regime of Credit Rating Agencies should be established by end 2009 and should be consistent with the IOSCO Code of Conduct Fundamentals.\(^{58}\) The following day, in a press release, IOSCO welcomed the statement of the Leaders of the Group of 20 as an endorsement of IOSCO’s recent work to close the regulatory gaps in financial securities markets.\(^{59}\) Because of this endorsement, international principles and standards developed by IOSCO have had a more direct impact on EU legislation than before. For instance, the Washington G20 of November 2008 made a commitment that all systemically-important financial institutions be appropriately regulated and the London G20 of April 2009 requested that hedge funds or their managers should be registered and required to disclose appropriate information on an ongoing basis to supervisors or regulators. Therefore, in June 2009, IOSCO published a report including six high-level principles on regulation of Hedge funds,\(^{60}\) which served as the basis for the proposal of the Alternative Investment Fund Managers Directive (AIFMD) of 2011. Also the regulation on OTC derivatives, central counterparties and trade repositories (EMIR) follows the recommendations developed by CPSS-IOSCO for Central Clearing Counterparties (CCPs).\(^{61}\)

International standards developed by IOSCO also had an influence on EU legislation. The most well-known examples are the Code of conduct of Rating Agencies (2004) and the Hedge Funds Principles (2009) which served as a model for the Credit Rating Agencies Regulation and the AIFMD (Quaglia, 2014). International standards developed since the 2008 financial crisis have also had an influence on EU legislation, such as Money Market Funds.

However, IOSCO standards are usually not granular enough to be considered as limiting the freedom of the EU legislator on securities markets legislation. This situation should not change significantly in the near future because of the consensus base approach of IOSCO. The recommendations developed by CPSS-IOSCO for CCPs are one of these exceptions.\(^{62}\) However, EMIR is still much more detailed than the CPSS-IOSCO recommendations.

In addition, the fact that, in addition to the consensus approach of IOSCO, supervisory authorities from Member States have 9 members in the Board out of 34 which represents more than 25% of the votes means that in practice, the EU has a veto right. Therefore, the chances of any international standard adopted by IOSCO being contrary to an existing EU legislation seem to be very low.

Therefore, IOSCO cannot be considered to be an equivalent to the Basel Committee. It is an international standard setter but because of its large membership and its consensus

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\(^{57}\) Art. 7.3, Issuers incorporated in third countries, Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, on the prospectus to be published when securities are offered to the public or admitted to trading.


\(^{60}\) IOSCO, High level principles on the regulation of Hedge Funds (June 2009).


\(^{62}\) CPSS-IOSCO’S Principles for Financial Market Infrastructures (FMIs), April 2012. The document is 188 pages long.
approach, it cannot usually produce international standards at a high level of granularity. As noted by Eilis Ferran (2012), ‘The vastly greater diversity of membership, coupled with the fact that chairs of securities regulators typically have shorter tenure than governors or heads of supervision in central banks, has made it more difficult for IOSCO to achieve consensus, even on matters much less complex than the Basel Accords, and hence to agree standards which raise the quality of securities regulation internationally. As noted again by Eilis Ferran (2012), ‘So, while IOSCO has undertaken a good deal of useful work of a comparative nature [...] much of the resulting work is largely descriptive in character. There have been few occasions on which IOSCO itself achieved an enhancement of regulatory standards internationally. The SEC’s lukewarm commitment to the organisation has not always helped. SEC chairmen have typically not personally attended the Technical Committee, although other country’s regulators are almost always represented by their chairs. That undoubtedly has the effect of devaluing the status of the Committee’. However, the situation has evolved since 2012 with some standards having more granularity.

The influence of EU on the development of international standards has been strong, but mostly through the supervisory authorities of the Member States. This situation is changing through the participation of ESMA although it does not have a vote in the Board.

In addition to being an observer to the IOSCO Board, ESMA also participates in consultations, even if it was part of the Task Force, in order to make proposals that go beyond the consensus. For instance, this was the case in the recent Cross-Border Regulation consultation.

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4. EVALUATION OF CONFORMITY WITH ILA RECOMMENDATIONS AND PRACTICES

The International Law Association (ILA) has established a Committee on Accountability of International Organisations which has published a Final Report in 2004. The Report contains i.a. a set of Recommended Rules and Practices (RRPs) in the relevant area. As for each recommendation, IOSCO can receive the following assessment: excellent, very good, good, average and poor.

Recommendation 1. Transparency in both the decision-making process and the implementation of institutional and operational decisions: good

Normative decisions are not evaluated in a public vote but this is due to the nature of IOSCO which is a network of supervisors and therefore cannot be easily opened to non-members. In addition the sensitive nature of certain topics makes it difficult to open its meeting to the public. Participation of stakeholders is assured through the Status of affiliate members. In order to increase transparency, affiliate membership could be open for free to public interest associations, whereas it currently covers only stock exchanges and business associations.

Recommendation 2: Participatory decision-making process: excellent

Participation of all IOSCO members is ensured through a balance representation at the Board with a large number of elected Members.

Recommendation 3: Access to information: excellent

Access to information to both IOSCO members and external members is excellent. The IOSCO website provides relevant information dating back to 1986, although not all documents.

Recommendation 4: Well-functioning international civil service: excellent

The staff of the General Secretariat reflects the international nature of its members. Experts seconded by national authorities are chosen after a competitive process and are of very high level.

Recommendation 5: Sound financial management: excellent

IOSCO publishes its detailed annual audited account in its annual report.

Recommendation 6: Reporting and evaluation: excellent

IOSCO publishes every year a annual report describing in detail its activities.

Recommendation 7: The principle of good faith: excellent

Recommendation 8: The principles of constitutionality and institutional balance: excellent

Recommendation 9: The principle of supervision and control: excellent

The ultimate decision power lies with the Presidents Committee which controls the Board.

Recommendation 10: The principle of stating the reasons for decisions or a particular course of action: excellent

As for IOSCO, the recommendation on the principle of due diligence does not apply.
Decisions of IOSCO regarding standard are explained in detail in the reports which are available on the website. The reasons for adopting other resolutions are also well explained in documents published by IOSCO.

**Recommendation 11: The principle of procedural regularity: excellent**

**Recommendation 12: The principle of objectivity and impartiality: excellent**

The high level of transparency of the activities of IOSCO guarantees that objectivity and impartiality are respected.
5. POLICY RECOMMENDATIONS FOR ENHANCING THE EU’S ROLE IN IOSCO

5.1. Short term policy recommendations

As an Associate Member, the Commission should have more easy access to IOSCO Task Forces of interest to it because of its impact on considered or future EU legislation. This implies a decision by IOSCO. However, the way to achieve this result should be subject to further analysis as decisions have to be taken by IOSCO members and the new position of ESMA should not be put at risk. A very close cooperation between ESMA and the Commission should be considered when/if the Commission is not accepted in a Task Force.

IOSCO is currently considering to move in the area of settlement of disputes in Cross-Border Regulation. This is a very important work stream for the future of global financial regulation. The EU should strongly support IOSCO in this effort to shape a global multilateral system. As many members of IOSCO, especially from Asia, are supporting this project, if Europe would take the lead, it would certainly strengthen considerably its influence within IOSCO.

ESMA is supporting this development and supports the drafting by IOSCO of an MMoU in relation to the supervision of securities markets. The purpose of this new MMoU (which would be complimentary to the existing IOSCO MMoU on enforcement) would be to provide a global and general framework for cooperation and the exchange of information between national regulators in relation to the supervision of securities markets.66

5.2. Long term policy recommendations

One possible issue is that the EU does not speak with one voice. However, having ESMA as the single voice for the EU in IOSCO, potentially with the European Commission would not enhance the position of the EU in IOSCO. Quite to the contrary, this option has to be discarded as it would significantly reduce the influence of Europe in the Board since IOSCO is based on a large membership, including in the Board which is a large body of 36 members. There would be no interest to move from 9 votes in the board to just one vote or two votes. In addition, securities supervisors of the Member States have exclusive responsibility over the supervision of their Member States securities markets, and also the expertise, so that they should not be replaced by ESMA or the Commission. A mixed approach is necessary.

However, a better coordination, when possible, could and should be achieved. This is all the more justified that the EU has developed a Single Rule Book (SRB) in securities markets so that all national authorities of the Member States are applying the same rules. The place where this coordination of a possible EU position can take place is the BoS of ESMA where the Commission is also an observer, as well as authorities from the EEA. Since the BoS is made of national supervisors with possibly different visions on the scope and nature of international standards, reaching a consensus. Better coordination through ESMA could be achieved, when the ESMA regulation will be revised, through an amendment, as suggested by the SMSG of ESMA in its July 2013 contribution to the ESFS Consultation67 as well as the ECON68 and the Commission69 ESA’s review to give a vote to the chair in the BoS of ESMA

66 The Chair, ESMA Comments on the Task Force on Cross-Border Regulation, 23 February 2015 ESMA/2015/422.
and have appointed members in the Managing Board of ESMA, with voting right in the BoS, like at the ECB. This should facilitate the framing and the taking into account of a unified EU position in the BoS rather than the expression of national preferences.

Finally, ESMA should become as much as possible the ‘face of the EU’ and, in cooperation with the Commission, the ‘door to the EU’ on all issues which require equivalence with third countries, especially the US and Asia, and conclusion of MMoUs with third country supervisors. As noted by Niamh Moloney, ‘ESMA’s early years suggest that its international engagement has the potential to significantly strengthen its capacity by extending its supervisory reach, conferring on it an international presence, and allowing it, potentially, to become the EU “face” of financial market supervision.’ The same author concludes that ‘The potential for ESMA to strengthen its supervisory capacity through international activities is all the greater given some evidence that the “substitute compliance” model may become more common as a means for managing international regulatory and supervisory co-ordination. [...] As NCAs become more accustomed to ESMA’s international role ESMA can be expected to assume a central co-ordination role in relation to any potential substitute compliance assessments, further strengthening its capacity.’

This is already becoming the case with the OTC Derivatives Regulatory Group (ODRG), which includes ESMA and the Commission in discussions with the US SEC on the issue of equivalence.

This analysis is the correct one and should be carried out as it would reinforce the visibility and the influence of the EU. ESMA should become the ‘EU Securities and Exchange Commission’ outside Europe while remaining a coordination agency within the EU.

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REFERENCES


Articles


Speeches

- Remarks by David Wright Secretary General of IOSCO The Atlantic Council, Washington, DC 10 December 2012.

Useful background reading

Books


Articles

Gold (Sir Joseph Gold memorial series, British Institute of International & Comparative Law, 2003, p. 635.)


• Quaglia Lucia, The European Union, the USA and the International Standard Setting by Regulatory Fora in Finance, New Political Economy, 2013.


• Reinisch, August, Securing the accountability of international organisations, Global Governance 7 (2001), p. 131 – 149.


