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Filippo Annunziata

THE REGULATION OF EU CAPITAL MARKETS

A textbook

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Introduction

1. EU financial markets law and the Treaties.

European financial markets law finds its roots in the architecture of the European Union ("EU"), its founding Treaties and institutional structure. The Treaties of the EU, primarily the Treaty on European Union ("TEU") and the Treaty on the Functioning of the European Union ("TFEU"), are the constitutional foundations of the EU: they define the values and goals of the Union and set the legal framework through which the EU integrates its Member States into a single market governed by common rules. Central to this integration are the four fundamental freedoms of movement–goods, services, persons, and capital–which are crucial in achieving its ultimate political, economic, and social objectives. Among these principles and objectives, the regulation of financial markets and, specifically, of capital markets stands out as one of the most relevant tools for the integration of Member States' economies and of the internal market.

The history of the EU represents a unique process of increasing integration, not devoid of difficulties and turnarounds. After the end of World War II, leaders like Robert Schuman and Konrad Adenauer recognised that binding European economies together could help ensure stability and peace, following centuries of endless confrontation and warfare. A first major step was taken in 1951 with the establishment of the European Coal and Steel Community (ECSC) by six countries: Belgium, France, Germany (West), Italy, Luxembourg, and the Netherlands, covering coal and steel–two key industries for military power.

Building on the ECSC, the same six countries signed the Treaties of Rome in 1957, which founded the European Economic Community (EEC) and the Euratom (European Atomic Energy Community). The EEC aimed to establish a common market with free movement of goods, services, people, and capital, moving towards a broader economic integration. Throughout

the 1960s, the EEC began removing tariffs and barriers to support intra-European trade and commerce.

The 1970s and 1980s saw important developments in institutional consolidation and geographic expansion. The United Kingdom, Ireland, and Denmark joined in 1973, followed by Greece in 1981, Spain and Portugal in 1986. These additions to the founding States also had political significance, as they reflected the EEC's symbolic role in consolidating democratic regimes after dictatorship. During this period, the EEC also introduced policies such as the Common Agricultural Policy (CAP) and structural funds aimed at reducing regional disparities.

A major turning point came with the Maastricht Treaty, signed in 1992, which formally established the EU as a political and economic entity. Maastricht introduced the three-pillar structure: the European Union (EU), a common foreign and security policy, and cooperation in justice and home affairs. It also laid the foundation for the Economic and Monetary Union (EMU) and set the stage for the creation of a single currency, the euro. The euro was introduced as a virtual currency in 1999 and in physical form in 2002, with 11 countries initially adopting it. As from January 2026, 21 of the 27 EU Member States are part of the euro area. The 2000s also saw efforts to streamline EU institutions through the Treaty of Lisbon (2007), which enhanced the role of the European Parliament, created the position of a High Representative for Foreign Affairs, and gave the EU legal personality.

Following the end of the Cold War, the EU embarked on its largest expansion in 2004: ten Central and Eastern European countries joined, followed by Bulgaria and Romania in 2007, and Croatia in 2013. At the same time, the EU faced growing challenges, including institutional strain, economic inequality among members, and the eurozone crisis (especially in Greece), alongside with debates over migration.

A major rupture occurred with the United Kingdom's decision to leave the EU based on a 2016 referendum: the process (so called "Brexit") was finalised in January 2020, shortly before the COVID-19 pandemic. During and after the pandemic, the EU faced further global challenges such as climate change, energy security, and geopolitical instability, particularly after Russia's invasion of Ukraine in 2022, and more recently, the wars in the Middle East.

Today, the EU is composed of 27 Member States sharing a single market, a customs union, and–in many cases–a common currency. Its institutional architecture is laid out in the Treaties, and comprises seven main institutions: the European Parliament, the European Council, the Council

of the European Union, the European Commission, the Court of Justice of the European Union ("CJEU"), the European Central Bank ("ECB"), and the Court of Auditors.

a) The European Parliament (EP) is the only EU institution directly elected by the citizens of the Union, with elections held every five years. The Parliament represents the citizens of EU Member States and plays a key role in the democratic oversight of the Union's activity. Its three primary functions are legislation, budgetary authority and political oversight. More precisely, the Parliament shares legislative power with the Council of the European Union under the ordinary legislative procedure, approves the appointment of the Commission President and its members, and can vote for their removal through a motion of censure. The Parliament is organised by political groups rather than national delegations and meets in both Brussels and Strasbourg.

b) The European Council brings together the Heads of State or Government of the Member States, along with its permanent President and the President of the Commission. It defines the general political direction and priorities of the Union but does not exercise legislative functions. The European Council consists of the highest political authority in the EU. It appoints the High Representative for Foreign Affairs and Security Policy and nominates candidates for key roles such as the President of the Commission and the President of the ECB.

c) The Council of the European Union (Council of Ministers), often simply referred to as the "Council", represents the governments of Member States. It has a variable composition: ministers from each country meet in different configurations depending on the policy area being discussed (e.g., Environment, Finance, Agriculture). The Council shares legislative and budgetary powers with the Parliament and is also responsible for foreign policy and defence coordination (alongside the European Council). Voting procedures vary: while most decisions are taken by qualified majority, some sensitive areas (such as taxation or foreign policy) still require unanimity.

d) The European Commission is the executive arm of the EU and represents the interests of the Union as a whole. It is composed of one Commissioner from each Member State, including a President appointed by the European Council and approved by the Parliament. The Commission's

key responsibilities include proposing legislation to the Parliament and Council; enforcing EU law, alongside with the Court of Justice, managing and implementing EU policies and the budget. The Commission represents the EU internationally, in trade and cooperation and is often described as the "guardian of the Treaties", being central in ensuring that EU law is uniformly and effectively applied.

e) The Court of Justice of the European Union (CJEU), based in Luxembourg, has exclusive competence to assess the legality of the acts enacted by EU bodies, and ensures that EU law is interpreted and applied consistently across all Member States. It comprises two main bodies: the Court of Justice, and the General Court. It also deals with requests for preliminary rulings from national courts, providing binding interpretations of EU law. The decisions of the Court have significantly shaped the legal order of the EU, promoting integration through the development of doctrines such as direct effect and supremacy (or primacy) of EU law.

f) The ECB, based in Frankfurt, is responsible for the monetary policy of the euro area. Its primary objective is to maintain price stability; it manages the Euro, sets interest rates, and is in charge of banking supervision through the Single Supervisory Mechanism ("SSM"). The ECB is independent from political influence and collaborates with the national central banks of eurozone countries through the European System of Central Banks ("ESCB"). In 2014 the SSM became effective, providing centralised banking supervision for credit institutions in the Euro area (and for other countries acting in close cooperation). The SSM has radically reshaped supervision of the EU's banking sector, providing a unique model of economic governance that combines centralisation in the ECB with articulated and complex cooperation mechanisms among the ECB and the competent authorities of Member States. Nothing similar to the SSM exists in EU capital markets law, where supervision is mostly decentralised and entrusted to the responsibility of national authorities, with few, minor exceptions related to the role of ESMA as direct supervisor of certain market actors (see Chapter 5).

g) The Court of Auditors checks whether EU funds are properly collected and spent in accordance with the law. Although it does not have judicial power, it contributes to the integrity of the Union's financial operations and works closely with both the Commission and Parliament.

The institutional architecture of the EU reflects a complex balance between supranational governance and respect for national sovereignty. It is a unique entity with no equivalent in the rest of the world. In this regard, it is quite different from a federal state (such as the USA or Switzerland), or a mere economic cooperation agreement. Its uniqueness lies also in the core of the several challenges that the Union must face, adapting and expanding its roles in response to political, economic, and social challenges, and in an increasingly complex geopolitical environment, bringing together 27 different countries, legal systems and traditions.

2. The Objectives of the European Union as Set Out in the Treaties.

The primary objectives of the Union are set out in Article 3 TEU and, to some extent, in the Preamble and other provisions of the TEU and TFEU. The objectives reflect both long-term political aspirations and practical commitments to integration in various sectors, most notably the internal market, social cohesion, economic growth, and global governance.
According to Article 3 TEU, the Union's key objectives include:

- Promoting peace, its values, and the well-being of its peoples (Article 3(1) TEU): an overarching goal that reflects the EU's origin as a project for political stability after the devastation of World War II and commits the Union to maintaining internal and external peace, democracy, and the rule of law;
- Establishing an internal market (Article 3(3) TEU): the EU aims to ensure the free movement of goods, persons, services, and capital–the so called "four freedoms"–as a means of integrating economies and fostering competitiveness, employment, and prosperity;
- Sustainable development: the Union commits itself to a highly competitive social market economy, aiming for full employment and social progress, balancing economic growth with environmental protection;
- Fighting social exclusion and discrimination: the EU aims to promote social justice and protection, equality between women and men, solidarity between generations, and the rights of children;
- Economic, social, and territorial cohesion, to reduce disparities between regions and ensure balanced development across the Union;

- A monetary union with a single currency: for participating Member States, the EMU provides for coordinated economic policy and a common currency (the Euro), overseen by the ECB;
- Promoting scientific and technological advance: the Union also seeks to be at the forefront of innovation, research, and technological development;
- Upholding and promoting its values in the wider world (Article 3(5) TEU): beyond its borders, the EU pursues objectives aimed at the protection of human rights, free trade, environmental protection, and sustainable development, thus acting as a global normative power.

These objectives have been interpreted by the CJEU as more than mere political aspirations. They guide the interpretation of secondary legislation and the actions of EU institutions, and they serve as constitutional principles informing the direction of European integration and its position at the global geopolitical level.

3. The Four Freedoms.

At the heart of the EU's internal market are the four fundamental freedoms of movement: goods, persons, services, and capital. These freedoms aim to eliminate barriers to trade and movement within the EU and ensure a level playing field among Member States. Each freedom is enshrined in the TFEU and has been significantly shaped by the jurisprudence of the Court of Justice.

a) Free movement of goods (Articles 28-37 TFEU): the free movement of goods involves the elimination of customs duties, quantitative restrictions, and measures having equivalent effect between Member States. It rests on two key principles:

- Customs union: Article 30 TFEU prohibits customs duties on imports and exports and charges having equivalent effect. This ensures that no internal taxation or tariff hinder trade between Member States.
- Quantitative restrictions and measures having equivalent effects: Article 34 TFEU prohibits quantitative restrictions and all measures having equivalent effect on imports. This has been

interpreted broadly by the CJEU (notably in *Dassonville* and *Cassis de Dijon*) to include many forms of non-tariff barriers.

Article 36 TFEU allows for certain exceptions, such as public morality, public security, and health, but these need to be proportionate and not a disguised restriction on trade.

b) Free movement of persons (Articles 45-48 TFEU; Directive 2004/38/EEC): this freedom allows EU citizens to move, reside, and work freely in other Member States without unjustified discrimination based on nationality. While Article 45 TFEU ensures the right to seek employment, work, and reside in another Member State, Directive 2004/38 establishes the right of residence for all citizens of the Union, even if they are not economically active, under certain conditions.
Rights can be restricted on grounds of public policy, public security, or public health, though the CJEU strictly scrutinises such limitations. The free movement of persons is both an economic and a symbolic cornerstone of the Union, fostering European identity and labour market flexibility, though it also raises challenges for national welfare and immigration systems.

c) Freedom to provide services (Articles 56-62 TFEU): the freedom to provide services allows economic entities and individuals to offer services across borders without facing unjustified restrictions. Article 56 TFEU has been given direct effect by the CJEU, thereby allowing individuals to invoke it before national courts; its jurisprudence, in leading cases such as in *Säger*, *Gebhard*, and *Alpine Investments*, has significantly shaped the broad interpretation of this freedom. The service sector accounts for more than 70% of EU GDP, making this freedom vital for economic growth, innovation, and competitiveness.
Certain areas – such as financial services, transport, and telecommunications – are however subject to specific legislation and harmonisation as a pre-requirement.

d) Free movement of capital (Articles 63-66 TFEU): the free movement of capital is the broadest and least conditional of the four freedoms. It prohibits all restrictions on the movement of capital and payments between Member States and between the EU and third countries. This freedom is of particular relevance for financial markets.

The freedom of movement of capital is set out primarily in Article 63 TFEU, which prohibits "all restrictions on the movement of capital between Member States and between Member States and third countries". This provision is directly effective, meaning that individuals and businesses can rely on it before national courts. In parallel, Article 64 TFEU permits certain restrictions with regard to third countries under specific conditions, while Articles 65 and 66 TFEU provide grounds for derogations and safeguard measures.

Although the Treaties do not provide a definition of "capital movements", reference is usually made to an annex to Council Directive 88/361/EEC, which classifies capital flows into categories such as direct investments; real estate investments; securities transactions (shares, bonds); loans and credits and personal capital movements (e.g., gifts, inheritances). Importantly, payments related to capital movements are also protected under Article 63(2) TFEU.

The capital freedom has undergone significant developments over time. Before the early 1990s, capital movements remained subject to significant national controls. Although the Treaty of Rome (1957) included provisions on capital liberalisation, they were limited in scope and largely dependent on Council action. The political climate–particularly the need to maintain exchange rate stability and the control of monetary policy–made full liberalisation unfeasible. However, starting in the 1980s, momentum for financial integration increased as part of the broader drive towards the Single Market. The landmark Council Directive 88/361/EEC, adopted in 1988, provided for full liberalisation of capital movements among Member States, with transitional periods for some. Although a directive, it had the effect of transforming the capital movement rules into broad principles of EU law. A major leap forward was achieved through the entry into force of the Treaty of Maastricht, in 1993. The Treaty enshrined the free movement of capital in primary law through Article 73b (now Article 63 TFEU), which elevated the status of capital freedom to that of a directly applicable treaty right, significantly expanding the role of the CJEU in shaping its interpretation and enforcement.

The Maastricht reforms also introduced the EMU, which strengthened the logic of capital liberalisation by requiring deep financial integration and the removal of barriers to investment. Moreover, the establishment of the euro further accelerated the development of integrated capital markets.

The CJEU has played a crucial role in defining the contours of the capital freedom and in striking a balance between liberalisation and legitimate public interests. There are various areas where the Court's ruling proved to

be paramount. In *Commission v Portugal* (C-367/98), *Commission v France* (C-483/99) and *Commission v Netherlands* (C-282/04), the Court clarified that special rights–granted to the state and not to private investors–constitute restrictions on the free movement of capital, unless objectively justified and proportionate. In addition, several cases have explored the interaction between capital freedom and national tax regimes, particularly regarding the taxation of cross-border dividends, inheritance, and capital gains. The main takeaway of these cases is that fiscal autonomy must not result in discrimination or undue restrictions on cross-border capital flows. These issues were in particular discussed in cases such as *Verkooijen* (C-35/98), where Dutch tax law treating foreign dividends less favourably was deemed to be incompatible with Article 63, and *Santander* (Joined Cases C-338/11 to C-347/11), where discrimination in tax treatment of foreign investment funds was deemed contrary to the Treaties. Moreover, in *Commission v Greece* (C-155/09), the CJEU found that restrictions on property ownership by non-nationals in border areas breached the capital freedom. Likewise, restrictions on cross-border mortgage lending or currency exchange limits have been subject to judicial scrutiny, with the Court requiring a high standard of justification for them.

Although Article 63 TFEU sets out a broad principle of freedom, restrictions may be justified under certain circumstances. A first case is that of Article 65(1) TFEU, which allows distinctions based on tax residence or anti-avoidance rules, if they are not discriminatory. Restrictions might be justified on the basis of overriding reasons in the public interest: as developed by the CJEU, these include public security, financial stability, consumer protection, and environmental protection. Article 64(1) permits restrictions on direct investment involving third countries in certain sectors, and Article 66 allows temporary restrictions in the event of serious economic or monetary disturbances. As a guiding principle, the Court of Justice in any event demands strict proportionality for any justification and is generally in favour of liberal interpretation, except in areas such as anti-money laundering or financial crime where stricter regulations and limitations are deemed legitimate.

3.1. A focus on freedom of establishment (Article 49 TFEU) and freedom to provide services (Article 56 TFEU).

The freedom of establishment and the freedom to provide services are particularly relevant for financial markets law. Article 49 TFEU prohibits

restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State. It applies to both natural and legal persons and covers the right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the conditions laid down for nationals of the host state. The term "establishment" encompasses the actual pursuit of an economic activity through a fixed establishment in another Member State for an indefinite period: it includes primary establishment (e.g., setting up a branch or subsidiary) and secondary establishment (e.g., setting up agencies or representative offices).

Article 56 TFEU prohibits restrictions on the freedom to provide services across borders within the Union. This freedom applies when the provider is not established in the Member State where the service is performed. It applies to services normally provided for remuneration, insofar as they are not governed by the provisions relating to the free movement of goods, capital, or persons. The concept of "service" is broadly defined in Article 57 TFEU to include activities of an industrial or commercial character, craftsmen, intellectual professions, etc.

The key distinction between establishment and free provision of services lies in duration and presence. Establishment involves a stable and continuous economic activity in the host Member State. In contrast, the provision of services is characterised by a temporary nature and the absence of a physical or permanent presence in the host country. However, the distinction may often be blurred in practice. The CJEU has adopted a functional approach, examining the actual nature of the activity to determine the applicable freedom.

Both Article 49 and Article 56 prohibit not only direct discrimination based on nationality, but also indirect discrimination and unjustified restrictions that hinder market access. In *Säger* (C-76/90), the CJEU held that national measures to prohibit or impede the activities of a service provider established in another Member State are incompatible with Article 56, unless justified. The same logic applies under Article 49. The so-called "market access test", developed in cases such as *Gebhard* (C-55/94) and *Commission v Italy (Trailers)* (C-110/05), indicates that any measure which hinders or renders less attractive the exercise of fundamental freedoms may fall within the scope of Articles 49 or 56.

Restrictions may only be justified on the basis of public policy, public security, or public health (Articles 52 and 62 TFEU), or by overriding reasons in the public interest, as recognised by the CJEU. These include consumer protection, the integrity of the legal profession, the fight against

fraud, and the protection of workers. To be valid, such restrictions must comply with the principle of proportionality: they must be suitable, necessary, and not go beyond what is required to achieve the legitimate aim. This proportionality test has become central to the CJEU's jurisprudence. The evolution of these freedoms is largely a product of the CJEU's expansive and purposive interpretation, aimed at removing obstacles to cross-border activity.

As to freedom of establishment, key cases include the aforementioned *Gebhard* (C-55/94), where the Court held that national measures liable to hinder or make less attractive the exercise of fundamental freedoms must be applied in a non-discriminatory manner, justified by imperative requirements in the general interest, and be proportionate; *Centros* (C-212/97), in which the Court invalidated Danish authorities' refusal to register a branch of a UK-incorporated company, emphasising that Member States cannot hinder companies from exercising their freedom to choose their place of incorporation; and *Commission v Italy* (C-58/08), where the Court condemned Italian rules requiring lawyers from other Member States to register with the national bar, finding the rules disproportionate and an obstacle to freedom of establishment.

On the freedom to provide services, notable cases include *Säger* (C-76/90), where the Court ruled that requiring authorisation for the temporary provision of services by a German patent agent was an unjustified restriction; and *Alpine Investments* (C-384/93), where the Court held that a Dutch ban on cold-calling for financial services was a restriction on service provision, albeit justified in this case by consumer protection.

All of these principles are particularly relevant in the context of financial legislation, which has, amongst its most relevant objectives, that of allowing market actors to make use of a "European passport", which enables the cross-border provision of services, thereby contributing to the integration of market.

4. The Evolution of EU Financial Markets Legislation (1957–2025).

The evolution of financial markets legislation within the EU reflects the broader trajectory of European integration: from modest beginnings under the Treaty of Rome to a complex regulatory framework encompassing the entire financial system. Over time, this evolution has been shaped by a complicated mix of factors: market integration, on the one side, but also response to crisis, and global competitiveness. It also mirrored the

expansion of the EU's competences and institutions, reflecting shifts in political priorities, economic realities, and market developments.
Throughout the decades, financial market regulation has transformed from a lightly coordinated, Member State–dominated domain into a highly harmonised field characterised by countless detailed directives, regulations, and an increasingly prominent role for EU-level supervisory bodies. The underlying goals have been to improve market efficiency, protect investors, enhance financial stability, and promote cross-border financial activity. Naturally, as all of these driving forces are in themselves changing, also financial law is subject to constant developments: it is, indeed, one of the most lively areas of EU legislation.
Considering the historical trend, one can identify, albeit with a certain degree of approximation, certain phases linked to specific periods:

- **Phase I: 1957–1985**. In the early decades following the Treaty of Rome (1957), financial services and capital markets were less central to the European integration project. National capital controls were widespread, and financial markets remained fragmented by legal, linguistic, and institutional barriers. The Treaty's provisions on the free movement of capital were largely dormant, and Member States resisted harmonisation in this sensitive area. Most of the initial directives, such as those on listing requirements for stock exchanges and disclosure obligations, had limited reach and impact. The absence of a fully integrated internal market for goods and services also implied there was little pressure to address capital markets. Cross-border investment remained scarcely developed, and banks and financial institutions operated almost exclusively within national boundaries. During this phase, legislation focused primarily on company law coordination, rather than specifically on financial regulation.

- **Phase II: 1985-1999**. The launch of the Single Market project under the Delors Commission marked a decisive shift in EU financial markets policy. The 1985 White Paper on *Completing the Internal Market* identified the removal of financial barriers as critical to achieving a fully integrated European economy. The Single European Act (1986) provided the necessary legal and political momentum. The result was a wave of legislative and regulatory measures aimed at creating a common financial space. The First Banking Directive (1977) and the Second Banking Directive (1989) introduced the principles of home-country control and mutual recognition. These measures

allowed banks authorised in one Member State to operate across the EU, subject to their home Authority's supervision. In the field of securities regulation, the Investment Services Directive (ISD) of 1993 (ultimately repealed and "transformed" in the Markets in Financial Instruments Directive – "MiFID I", later "MiFID II") aimed to create an integrated market for investment firms. It established harmonised rules on capital requirements, organisational standards, and conduct of business, enabling firms to operate throughout the EU with a single licence. However, the ISD suffered from implementation gaps, as Member States retained significant discretion and the directive lacked strong enforcement mechanisms.

- **Phase III (1999-2007)**. The Financial Services Action Plan (FSAP) and MiFID I marked the period from 1999 up to the financial crisis. Starting from 1999, the introduction of the euro and the increasing interconnectedness of European financial markets created new urgency for deeper legislative harmonisation. The Commission launched the FSAP in 1999, comprising 42 legislative and non-legislative measures aimed at creating a single market for financial services by 2005. It represented the most ambitious regulatory initiative to date. The FSAP led to several landmark legislative acts, including the Market Abuse Directive (2003), the Prospectus Directive (2003), and the Transparency Directive (2004). Each of these sought to enhance market integrity, investor protection, and markets transparency. The centrepiece of the FSAP was MiFID I, adopted in 2004. It replaced the ISD and expanded the regulatory framework for investment firms and trading venues. MiFID I introduced new rules on best execution, pre- and post-trade transparency, organisational requirements. It enabled competition between traditional exchanges and alternative trading venues, promoting market efficiency but also increasing complexity. To support the FSAP's implementation, the so-called Lamfalussy process was introduced. This four-level approach distinguished between framework legislation (Level 1), technical implementing measures (Level 2), coordinated implementation (Level 3), and enforcement (Level 4), in the attempt to provide a higher level of harmonisation.

- **Phase IV (2007-2015).** The global financial crisis of 2007–2008 exposed significant weaknesses in the regulatory framework and supervisory architecture of the EU. In response, the EU launched a sweeping programme of regulatory reforms aimed at addressing

systemic risk, restoring market confidence, and improving financial stability. A major institutional innovation was the creation of the European System of Financial Supervision ("ESFS") in 2010. The ESFS consisted of three new European Supervisory Authorities ("ESAs")– the European Banking Authority ("EBA"), the European Securities and Markets Authority ("ESMA"), and the European Insurance and Occupational Pensions Authority ("EIOPA")–as well as the European Systemic Risk Board ("ESRB"). These bodies were granted enhanced powers of coordination, standard-setting, and, in some cases, direct supervision. A series of major legislative measures followed. For credit institutions, the Capital Requirements Directive ("CRD IV") and the Capital Requirements Regulation ("CRR") implemented the Basel III standards in EU law. The European Market Infrastructure Regulation ("EMIR") addressed derivatives markets, introducing clearing and reporting obligations. The Alternative Investment Fund Managers Directive ("AIFMD") established a comprehensive framework for alternative funds operating in the EU. In parallel, the revised MiFID II and its companion regulation MiFIR were proposed in 2011 and adopted in 2014. They significantly expanded the scope of the original MiFID framework, introducing new categories of trading venues, enhanced transparency rules, product governance requirements, and strengthened powers for supervisors. In the banking sector, supervision was centralised in the ECB with the introduction of the SSM, effective since Nov. 2014 for the Euro area and other States in close cooperation.

- **Phase V (2015-2020).** After the great Financial Crisis, the EU turned its attention to fostering investment and deepening financial integration through the Capital Markets Union ("CMU") initiative. Launched in 2015, the CMU project aimed to improve access to financing for businesses, especially SMEs, diversify funding sources beyond bank lending, and enhance cross-border investment within the EU. The CMU Action Plan included measures to standardise securitisation (through the Securitisation Regulation), modernise the Prospectus Regulation, and establish a common framework for covered bonds. The Benchmark Regulation was adopted to improve the integrity of financial indices, and the Central Securities Depositories Regulation (CSDR) sought to enhance settlement rules. Despite some progress, the CMU faced significant obstacles, including differing national insolvency laws, tax regimes, and supervisory practices. The

withdrawal of the United Kingdom from the EU (Brexit) also was a major obstacle to the development of the CMU, due to the centrality of London for European financial markets. Nonetheless, the CMU remained a central pillar of the EU's long-term economic strategy.

- **Phase VI (2020 - ongoing)**. In the 2020s, EU financial regulation increasingly focused on digital transformation and sustainability. The Digital Finance Package, announced in 2020, aimed to modernise the EU's approach to fintech, crypto-assets, and operational resilience. In that context, the MiCAR provided the first comprehensive regime for digital tokens, stablecoins, crypto-assets service providers, and also the first global legislation on cryptos. The Digital Operational Resilience Act ("DORA") established requirements for financial institutions to manage ICT risks and ensure cyber resilience. These measures responded to the growing reliance on technology in financial services and the risks associated with it. At the same time, environmental, social, and governance ("ESG") considerations gained increasing importance. The SFDR, the Taxonomy Regulation, and the Corporate Sustainability Reporting Directive ("CSRD") were key elements of the EU's sustainable finance agenda. These rules require financial market participants to disclose the sustainability characteristics of their products, investments, and operations: the shift reflected the EU's broader Green Deal ambitions and its commitment to aligning financial flows with climate and environmental objectives. Financial regulation thus became a key tool for steering capital toward sustainable economic activities.

Looking ahead, EU financial markets legislation now faces the challenge of consolidation and simplification. The regulatory framework has become highly complex, and several initiatives aim to reduce administrative burdens while maintaining markets protection. The adoption of the AIFMD II and reviews of MiFID II/MiFIR, as well as of the Market Abuse Regulation, show a willingness to recalibrate existing legislation in light of market experience. At the same time, digital innovation continues to pose challenges for legacy regulations. The Commission is pursuing a strategy of open finance, enhanced supervisory convergence, and increased use of digital tools. Strategic autonomy has also emerged as a guiding principle. The EU seeks to reduce its dependence on foreign financial infrastructure and preserve financial stability in a volatile geopolitical environment. Greater emphasis is being placed on strengthening the role of the euro

in global finance, improving market infrastructures, and deepening pan-European supervision.

Over time, financial markets law evolved from a marginal policy area to a central feature of the EU's economic and political architecture. The creation of a single rulebook, the establishment of powerful supervisory authorities, and the growing convergence of regulatory standards have all contributed to a more integrated and resilient financial system. At the same time, fragmentation persists in several areas, and the need for consistent implementation across Member States continues to test the limits of the EU's institutional framework. Emerging issues such as digital finance, cyber risk, and sustainability require ongoing legislative adaptation, as will be extensively discussed in the dedicated Chapters.

Selected readings

- Annunziata, Filippo and Siri, Michele, eds., EU Banking and Capital Markets Regulation: Open Issues of Vertical Interplay with National Law. EBI Studies in Banking and Capital Markets Law. Cham: Palgrave Macmillan, 2025.
- Arnull, Anthony and Chalmers, Damian, eds., The Oxford Handbook of European Union Law. Oxford: Oxford University Press, 2017.
- Barnard, Catherine, The Substantive Law of the EU: The Four Freedoms. 7th ed. Oxford: Oxford University Press, 2022.
- Busch, Danny, Avgouleas, Emilios and Ferrarini, Guido, eds., Capital Markets Union in Europe. Oxford: Oxford University Press, 2018.
- Chalmers, Damian, Davies, Gareth and Monti, Giorgio, European Union Law: Text and Materials. 4th ed. Cambridge: Cambridge University Press, 2019.
- Craig, Paul, and de Búrca, Gráinne, EU Law: Text, Cases, and Materials. 8th ed. Oxford: Oxford University Press, 2024.
- Dashwood, Alan, Dougan, Michael, Rodger, Barry J., Spaventa, Eleanor and Wyatt, Derrick, Wyatt and Dashwood's European Union Law. 6th ed. Oxford: Hart Publishing, 2011.
- Ferran, Eilís, International Competitiveness and Financial Regulators' Mandates: Coming Around Again in the UK, in Journal of Financial Regulation 9, no. 1 (2023): 30–54.
- Giudici, Paolo and McCahery, Joseph A., eds., Research Handbook on EU Securities Law. Cheltenham: Edward Elgar Publishing, 2025.
- Horspool, Margot, Humphreys, Matthew, and Wells-Greco, Michael, European Union Law. 11th ed. Oxford: Oxford University Press, 2021.
- Lamandini, Marco and Ramos Muñoz, David, Finance, Law and the Courts: Financial Disputes and Adjudication. Oxford: Oxford University Press, 2023.
- Lehmann, Matthias and Kumpan, Christoph, eds., European Financial Services Law: Article-by-Article Commentary, Beck-Hart-Nomos, 2nd edition, 2025.

- Lenaerts, Koen and Van Nuffel, Piet, EU Constitutional Law. Oxford: Oxford University Press, 2022.
- Litten, Rüdiger, EU Capital Market Law: The Law of Financial Instruments. Cheltenham: Edward Elgar Publishing, 2025.
- Moloney, Niamh, EU Securities and Financial Markets Regulation, 4th ed. Oxford: Oxford University Press, 2023.
- Peers, Steve and Barnard, Catherine, eds., European Union Law. Oxford: Oxford University Press, 2023.
- Prechal, Sacha, Directives in EC Law. 2nd ed. Oxford: Oxford University Press, 2005.
- Schütze, Robert, European Union Law. 4th ed. Cambridge: Cambridge University Press, 2025.
- Tridimas, Takis, The General Principles of EU Law. 2nd ed. Oxford: Oxford University Press, 2007.
- Veil, Rüdiger, ed., European Capital Markets Law. 3rd ed. London: Bloomsbury Publishing, 2022.
- Veil, Rüdiger, ed., Regulating EU Capital Markets Union: Volume I: Fundamentals of a European Code. Oxford: Oxford University Press, 2024.
- Veil, Rüdiger, ed., Regulating EU Capital Markets Union: Volume II: Market Conduct and Corporate Disclosure in a European Code. Oxford: Oxford University Press, 2025.
- Weatherill, Stephen, Law and Values in the European Union. Oxford: Oxford University Press, 2016.