

Towards a genuine single European financial market – the role of regulation and supervision

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Ladies and gentlemen,

It is a pleasure for me to be here this afternoon and I would like to thank you for inviting me to speak to this distinguished audience in Lisbon.

We are not very far away from the Belém Tower; a symbol of the extraordinary age of discovery which saw the emergence of the extensive overseas exploration that began the process of what we now see as globalisation. The trade boom that followed the voyages of Christopher Columbus and Vasco da Gama introduced a scale of interaction between different empires that had never been contemplated before.

At European level, the single market was (one could argue) a similarly ambitious step in economic integration. Today, the single European financial market's benefits are visible and have a direct impact on many EU citizens. The single European market creates a level playing field where commonly agreed rules and standards are upheld by common supranational bodies. This allows a consumer to invest in confidence outside his member state of residence and a firm to conduct business cross-border.

Today, the severe strain on the European financial markets from the financial and sovereign crisis has subsided. A decade of regulatory reforms has produced a robust and integrated regulatory framework that bolstered the single market in financial services. This is just as well, given that Europe's financial markets are facing again unprecedented risks.

Having a robust regulatory framework in place is only the first step. Effective supervision - making the regulatory framework live – is essential. Regulation and supervision of financial services work best when done consistently and in a spirit of close cooperation.

This is the main theme I want to develop today with particular reference to ESMA's work.

The rationale for supervisory convergence

For the European single market to function smoothly and efficiently, regulatory and supervisory practices between the competent authorities of the European Member States need to converge. The presence of gaps in the regulatory landscape can present a risk to the development of a real level playing field in the financial services industry. While there are common rules applicable across much of the EU financial market, we still note divergent supervisory practices across the Member States and the national competent authorities.

The proper implementation of legislative initiatives requires significant time and effort from regulators and firms alike to ensure efficient implementation. To foster a common EU approach to how new requirements are actually made effective on the ground, we need to focus on convergence and consistency at an early stage - when implementation is under way and the relevant supervisory policies and processes are determined and executed for the first time. Creating a common supervisory culture to allow for and support cross-border business, while challenging, is important for regulators and Member States alike. We need to find common EU solutions and approaches to the new market trends and risks that we are all facing.

For ESMA, supervisory convergence does not mean a one-size fits all approach. It means promoting the consistent and effective implementation and application of the same rules and using sufficiently similar approaches for similar risks. Our goal is to strive for comparable regulatory outcomes.

Having focussed much effort since inception on ensuring a complete and appropriate rulebook for the provision of financial services, ESMA has already a couple of years ago identified supervisory convergence as its main strategic priority. We expect that it will remain a priority also over the coming few years.

Convergence in capital markets - The example of MiFID

In a period defined by the preparation for, and implementation of, MiFID II/ MiFIR, I thought it would be appropriate to use this piece of legislation to highlight the various tools used by ESMA to ensure convergent supervision. Many of these tools also answer to the nearly inexhaustible demand for clarification and guidance reaching us from market participants, either directly or via national supervisors.

In fact, ESMA has undertaken a broad range of activities aimed at facilitating implementation for market participants and relevant stakeholders. Let me briefly outline the key areas we have worked on to provide guidance on MiFID II/MiFIR and to promote convergent supervisory approaches.

Coming to consistent views across all national authorities can at times be time consuming. Nonetheless, we managed to publish a variety of Guidelines, Opinions and Q&As to drive the consistent and sound implementation of MiFID, while striving to limit the burden imposed on financial market participants. I will give you some examples:

Guidelines

In addition to the important guidelines on product governance, regulating all stages of the life-cycle of products or services, ESMA also issued two other important sets of MiFID II Guidelines in 2017 on the calibration of circuit breakers and the publication of trading halts, and on the management body of market operators and data reporting service providers. These guidelines represent a vital component in ensuring the successful application of MiFID II in terms of market operation and investor protection.

Opinions

Ahead of implementation day, ESMA also published first opinions on commodity derivative position limits, transitional transparency calculations, and issued 239 opinions on waivers from pre-trade transparency under MiFID II to NCAs. The purpose of these opinions is to have a clear EU-wide view to support a consistent approach of national authorities to using exemptions to the important transparency requirements of the MiFID provisions.

Q&As

EU law isn't always easy to interpret and the ESMA Q&As are a helpful instrument to provide additional clarity and support to market participants. An extensive set of Q&As covering investor protection, transparency, market data, market microstructure and commodity derivatives have been produced by ESMA over the last year with recent additions being 10 new Q&As covering the topics of best execution, client categorisation, provision of investment services and activities by third country firms, and other issues. We have also issued Q&As on the important first temporary product intervention measures that ESMA took on the marketing, distribution or sale of CFDs and Binary options to retail clients.

Other tools

We do not only use Guidelines, Opinions and Q&As but also spend time to promote and facilitate practical supervisory discussions between national authorities about their respective implementation experiences and challenges, exchanging views and sharing best practices.

Looking ahead, ESMA, together with NCAs, will continue monitoring the application of the new requirements by market participants in order to exchange practical supervisory experiences and identify and prioritise the areas where additional work might be appropriate.

Peer Reviews

Looking more broadly than the recent MiFID II/ MiFIR work, another important tool used by ESMA to evaluate the level of supervisory convergence are peer-reviews carried out by assessment groups made up of NCA and ESMA experts. Through peer-reviews ESMA assesses the levels of compliance by NCAs with the rules and guidance in force, and seeks information on the levels of supervisory convergence.

IT/Data

Data and how it is reported, analysed and used is increasingly becoming priority work for ESMA and other regulators and supervisors in Europe and beyond. The increased quantity, and the more frequent submission of data, present an opportunity for regulators to enhance their understanding of the institutions and markets they regulate.

Here again MiFID II/ MiFIR is an excellent example. ESMA's EU-wide IT projects supporting the various reporting requirements under MiFID are a key undertaking, supporting supervisory convergence and the exchange of financial data amongst and between NCAs.

Given the significant amount of data that ESMA is receiving, we are committed (as far as we can based on our limited resources) to enlarging the scope of our data management and data analysis, to support all of our activities. Over the last few months, we carried out a variety of activities aimed at enhancing data quality, focusing first of all on completeness and subsequently on the quality of the data reported. ESMA is harmonising data reporting rules, not just for MiFID but across different regulations, thus facilitating firms' reporting and the supervisory use of data. This also includes promoting common data reporting standards and identifiers.

Convergence across sectors

ESMA's focus is on financial markets, however it is also important to look at convergent supervisory approaches across sectors.

A potential difficulty in the course of applying reform is that regulators in one area do not talk sufficiently to those in another area. Through the Joint Committee, the three European Supervisory Authorities (or ESAs) coordinate their supervisory activities within the scope of their respective responsibilities regularly and closely and ensure consistency in their practices. In this way, we ensure there is not only consistency within sectors but also between sectors.

The ESAs, within the Joint Committee, jointly explore and monitor potential emerging risks for financial markets participants and the financial system as a whole. I would like to mention today just two important pieces of convergence work that we have conducted together with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA).

In February of this year the ESAs issued a pan-EU warning to consumers regarding the risks of buying Virtual Currencies (VCs) following mounting concern about an increasing number of people buying virtual currencies without being aware of the risks involved.

Monitoring developments in financial innovation, in particular through the analysis of emerging and existing instruments, platforms and technology forms an integral part of identifying emerging risks. The rapid pace of financial innovation across the EU markets necessitates further in-depth analysis of the emergence of instruments like virtual currencies, platforms like ICOs and tools like distributed ledger technology.

Another example of a work-stream that saw ESMA cooperating with another ESA concerns the recent EBA/ESMA work on cross-sectorial implications of the retail holdings of debt financial instruments subject to the Bank Recovery and Resolution Directive (BRRD). With the entry into effect of the BRRD in January 2016, the issue of the placement of banks' debt liabilities to retail investors has become particularly relevant.

The joint project has benefited from the EBA prudential role and expertise in resolution and from the ESMA role and expertise in the distribution of financial instruments to investors and on securities markets. The work was also complemented by a data analysis based on data derived from the ECB securities database. A joint statement has been published on both ESMA and EBA websites on 30 May. It explores (a) the implications arising from these holdings for the resolution of financial institutions, (b) the relevant investor protection requirements for the existing and future issuances of debt liabilities and (c) potential actions that resolution and market authorities as well as institutions should consider to address this issue.

These are only a couple of examples. I believe that as we shift focus from regulatory to supervisory tasks, there continues to be the need to develop cross-sectoral consistency across the three financial sectors: banking, insurance & pensions, and securities.

Convergence, Brexit and the ESA Review

The need for supervisory convergence now is even stronger, following the decision of the United Kingdom to withdraw from the EU.

Certainly, it reinforces the urgency for the EU to progress with the CMU, the flagship project designed to ensure better access to capital markets in the EU to the benefit of growth and jobs.

But Brexit poses two key challenges for the CMU. First, it increases the importance for the EU27 of strengthening further the EU internal capital market. While big steps have been made towards achieving a single rulebook, large national differences remain regarding the supervision and enforcement of that single rulebook. Second, it underlines the need to ensure an appropriate framework for third-country regulation and supervision.

ESMA's work on supervisory convergence is critical in the Brexit context. This focus on supervisory convergence comes from the recognition that individual firms' freedom of establishment across the Union should not provide any room for regulatory and supervisory arbitrage among Member States (particularly when national supervisors are being approached by UK companies that are considering moving from the UK to the EU27). ESMA has published general and sectoral opinions in order to address the risk of regulatory arbitrage between the EU27 Member States receiving UK business. Through the opinions, we have re-emphasised important principles aimed at fostering consistency in authorisation, supervision and enforcement related to relocation, without questioning in any way the freedom of establishment, one of the main pillars of the EU.

The opinions are not the end of the story when it comes to our efforts towards achieving supervisory convergence in the Brexit context. We felt that it was important not to assume that these instruments on their own would be sufficient to achieve our objectives. Instead, we believed it was necessary to make the opinions "live" – which is why we created the Supervisory Coordination Network (SCN) – a new tool that is proving very successful.

This network, chaired by myself, brings together experts from a broad range of competent authorities who table actual cases that they are facing involving UK entities looking to move to the EU27. All the information provided is on an anonymised basis. While the national regulators ultimately retain full responsibility for authorisation decisions, the new forum is an important means of information sharing and promotion of convergent practices. The SCN has so far focused on different themes arising from authorisation requests or requests for extension of existing authorisations of firms seeking to relocate from the UK, in particular as regards outsourcing or delegation arrangements. The focus of our discussions has been on investment firms and fund managers, but we have also looked into trading venues

Through these discussions and exchanges, ESMA aims to foster similar authorisation approaches and supervisory treatment by national competent authorities across the EU27.

In this context, let me say a few words about the ESA review. ESMA welcomes the Commission's proposal and notably the draft provisions in the area of supervisory convergence. The Commission's proposal builds upon the finding that ESMA's powers and instruments are currently not sufficiently strong to deal with all cases of regulatory or supervisory arbitrage, such as in ensuring consistent authorisation scrutiny and consistent supervisory outcomes. The Commission's proposal to give ESMA the power to issue opinions regarding delegation is a standard convergence tool that we have already used hundreds of times on a range of different topics, including under MIFID (as mentioned earlier). It clearly maintains national authorities' responsibility for the authorisation and supervision of supervised entities. It just supports their decisions by consistent views from an EU-wide perspective, which

gives clarity to the financial sector and further contributes to the development of the EU single market.

Brexit has also shone a spotlight on the EU's relationship with third countries more generally. Based on the current framework which is open to the global market via the EU equivalence regime, a number of non-EU financial market infrastructure providers offer critical and systemic functions in the EU single market. However, the supervision of these non-EU entities is conducted by authorities that will not have EU financial stability, market order or investor protection foremost on their mind. It does not provide for any additional safeguards from an EU perspective. The proposals in the context of the ESA review, and the proposal for third country CCPs in EMIR 2.2 recognise this. They also recognise the benefits of pooling expertise and contact for such non-EU CCPs (and potentially other market infrastructure providers) centrally at the EU level. In the context of Brexit, it remains essential that EMIR 2.2 is implemented in time before March next year. EMIR 2.2 would allow the EU to supervise UK CCPs and to ensure that their risks to the EU financial system can be assessed and, when needed, mitigated.

The last aspect I want to mention in the context of the ESAs review are ESMA's level 3 measures described earlier. People say "don't fix what is not broken" and this in my opinion applies to the process governing our guidelines and Q&As. These supervisory convergence tools have been used by ESMA mostly "per request" of individual national regulators and industry stakeholders seeking more guidance. These are not some sort of dish ESMA cooks up behind closed doors to surprise guests.

While we consult extensively on draft guidelines, the Q&As are reserved for more technical issues and are clearly better suited for providing faster responses. In my view there is no need to change the governance principles around these supervisory convergence tools which are debated extensively in our standing/ technical committees where all NCAs are represented, and are finally approved by our Board of Supervisors. However, it does not mean that we should not explore ways to improve our interaction with stakeholders in this and other areas. For this reason, we recently conducted a dedicated stakeholder relations survey to get stakeholders views on how we may best interact with them.

Moreover, it is important (and this is an area where we can further improve in my view) to find the right match between a convergence issue and relevant convergence tool we chose to address it. For example, while we initially considered to address target market issues with a Q&A, we finally decided to draft guidelines on this important and far-reaching issue, and – as a result - had a full consultation process.

In conclusion, I would like to say that I believe ESMA has shown we can use our supervisory powers, as well as the other tools available to us, appropriately and in full pursuit of our market oversight, investor protection and financial stability goals. While supervisory convergence must remain the focus of our work, there are wholesale market infrastructure areas like benchmarks, data providers, and CCPs that could benefit from EU level oversight to further strengthen the single market and push forward the CMU.



Concluding remarks

Let me finish here.

What I have tried to outline this afternoon is the fact that while the single market in financial services has brought many benefits, not only does it continue to be work in progress, it also faces specific challenges: not least from Brexit and from the fast pace of financial innovation. These need to be addressed through a collective effort at a national and EU level.

I am confident that the positive effects of the ongoing convergence initiatives, some of which I have outlined today, will enable us to further strengthen the European financial markets, making them more stable, a safer place for investors, and a better place to do business.