

Closing keynote speech

CMU Mid-Term Review Public Hearing

European Commission – Brussels

Steven Maijoor

Chair

European Securities and Markets Authority

Ladies and gentlemen,

Firstly, I would like to thank the European Commission for inviting me to deliver the closing speech following what has been a productive day of discussion on progress made in achieving the Capital Markets Union (CMU).

It is widely recognised that there are significant benefits to be had from an improved balance between the banking system and financial markets as sources of funding for the economy. These benefits to the European Union's financial system include more diverse funding sources, increased levels of equity financing, more competitiveness and improved transmission of monetary policy to the real economy. The future of our financial markets is highly dependent on the CMU and the fact that the UK



has decided to leave the EU reinforces the urgency for the EU27 to progress on CMU.

In its response to the CMU Mid-Term Review, ESMA shared its recent experiences and suggested further steps that could positively contribute to the CMU in four specific areas. Instead of reiterating the four specific suggestions included in our answer, let me focus on one area, which is supervisory convergence. I believe this is a key pillar in building a genuine CMU and one which contributes in two ways.

First, as bigger and more interconnected financial markets also imply bigger risks, supervisory convergence provides a consistent approach to achieving financial stability and investor protection in the EU, two of ESMA's objectives. While, secondly, supervisory convergence can contribute to the removal of barriers between Member States, fostering the single market.

In this speech I will take a step back and look at what has been achieved in this area, what went well and the improvements needed to support a successful CMU. Supervisory convergence is also one of the topics highlighted in the current consultation by the European Commission on the operation of the three European Supervisory Authorities (ESAs). ESMA, like many stakeholders, is still reflecting on the range of important issues raised in the consultation, such as the governance of the ESAs, ESMA's direct supervision mandate and the supervisory architecture, and I will not comment on these during my speech today. However, in the context of the CMU, it is clear to me that successful EU financial markets need to go hand in hand with strengthened EU supervision.



Rationale for supervisory convergence

Let me begin at a higher level and set out the rationale for supervisory convergence. Unique to the European Union is the combination of integrated financial markets, where market participants have extensive freedoms to decide where to locate their activities, with most day-to-day supervision being conducted by competent authorities at national level (NCAs).

As providing cross-border financial markets services is relatively easy, and probably easier than in banking or insurance, concentration of financial market activities has increased, with financial centres developing their focus on such activities as market infrastructures, asset management, high frequency trading firms or the provision of CFDs and binary options.

The result is that a substantial part of national supervision concerns cross-border activities, posing the question as to whether national regulators sufficiently assess and address the risks that their supervised entities might be creating outside their jurisdiction, in other parts of the EU. In the financial crisis we have learned the hard way that not all cross-border activity is good and, in some cases, it may amplify risks to consumers and the stability of the financial system.

Supervisory convergence comes from the recognition that freedom of establishment across the Union should not provide any room for regulatory and supervisory arbitrage. The key policy question is how to ensure that national regulators take the best possible supervisory decisions from an



EU perspective. To summarise, the freedom to provide services across the EU is one of the main building blocks of the CMU, but the related cross-border risks could undermine the CMU when not addressed adequately.

Supervisory convergence: the experience so far

Convergence work is complex and the instruments used concern both generic tools available to ESMA as well as legislation-specific tools. The well-known general tools include, for example, guidelines, opinions, Q&As, peer reviews and mediation. Legislation-specific tools concern for example the obligation for CCPs to obtain ESMA's approval when they want to change their margin models and the upcoming banning powers under MIFID 2. Effective convergence work requires the right combination of general tools and legislation-specific tools. I would like to illustrate our convergence work with three examples.

CCPs

A first example are CCPs. The establishment of an integrated EU market for post-trading has made a significant contribution to the CMU. Thanks to specific convergence powers, CCPs are effectively subject to identical obligations across the Union. ESMA has supported the consistent implementation of the EU's approach to fostering CCP resilience set out under EMIR. We have promoted supervisory convergence through a number of general measures, such as issuing guidelines and Q&As, as well as through active participation in CCP supervisory colleges and the



conduct of an EU-wide stress test on CCP resilience. We have also contributed to the prudential review of individual CCPs when validating significant changes to CCPs' risk models. As said, these changes need ESMA's approval in addition to that of the home regulator.

CFDs and binary options

A second example of ESMA's experience with supervisory convergence is illustrated by the case of CFDs and binary options, which continue to create consumer detriment across the EU. The offering of CFDs and binary options to the EU retail market is mainly concentrated in one EU member state, where investment firms use aggressive marketing campaigns and large call centres to sell their products.

ESMA has undertaken various convergence activities on this matter, like issuing warnings, Q&As, and channeling information on consumer detriment between the host regulators and home regulator. Additionally, the home regulator concerned has stepped up its supervision and enforcement activities. However, our current tools are not sufficiently effective to ensure that the risks to consumer protection are appropriately controlled or reduced. While the host regulators have tried to control the distribution of CFDs and binary options with measures at host-country level, the number of authorisations by the home regulator continued to grow.



UK exit from the EU

The third example concerns the recently started convergence work following the UK's decision to leave the EU. This work is aimed at avoiding competition on regulatory and supervisory practices between Member States, and a possible race to the bottom, which might be detrimental to the CMU.

As UK-headquartered market participants are considering their options across the EU27, it is essential that national regulators do not compete on regulatory and supervisory treatment. Some practical examples where this may be a risk, include such issues as UK firms seeking authorisation from one of the EU27 financial markets regulators and subsequently outsourcing and delegating some of the activities back to the UK entity.

ESMA is currently working towards developing a convergent position on key issues to be taken into account when market participants move some of their activities from the UK to the EU27. These views will be included in a general opinion on cross-cutting issues, along with three specific thematic opinions which will be published before the summer. The general opinion will cover issues such as how NCAs should ensure on-going effective supervision of re-located activity, in particular when certain functions are subject to outsourcing and delegation. Potential limitations to outsourcing and delegation are also being discussed.

The three specific opinions will address in more detail the areas of asset management, investment firms and secondary markets, to provide sector specifications on the aspects described in the general opinion.



In addition, ESMA is working to establish a mechanism whereby NCAs would share live cases at EU level regarding UK market participants seeking authorisation in the EU27. This will allow ESMA to coordinate the consideration of key issues in the authorisation procedures for these entities in order to reach common views on significant relocation files.

The case for stronger supervisory convergence powers

Overall, since ESMA's establishment, the supervisory convergence tools have improved, compared to those available to our predecessor, but experience shows that the current set of instruments is still too weak. This is especially true in those areas where specific sectoral legislation does not provide ESMA with greater powers than the general ones.

Now, it is high time to strengthen the instruments to support supervisory consistency across the EU and deal properly with situations of consumer detriment and risks to stability across borders. A structural upgrade of ESMA's convergence powers could include the following, some general, others specific to individual pieces of legislation, and should be accompanied by a bolder strategy on financial data.

General powers

In the first place, to ensure a timely response to emerging supervisory convergence issues, the right for ESMA to collect information on such issues should be improved. Currently, the ESMA Regulation provides for certain powers to collect information for stability concerns. I think we should have similar powers when convergence issues are at stake.



It would also be important to clarify the scope of the Breach of Union Law powers. As you may be aware, if a Breach of Union law is proven, and the NCA concerned does not take the necessary action, ESMA has powers to address market participants directly where the relevant requirements are directly applicable to them. However, as substantial parts of financial markets legislation concerns Directives, and not directly applicable Regulations, it would be key that these powers also relate to those provisions of Directives that establish unconditional obligations that are sufficiently clear and precise to be directly effective.

Specific powers

As mentioned, some of our convergence measures are general, others are legislation-specific, such as the earlier mentioned upcoming powers to ban certain products under MIFID II. Actually, there are several other areas where some specific additional tools would be highly beneficial.

Let me take the example of asset management where there are no legislation-specific convergence powers. The asset management sector plays a very important role in the CMU as it is one of the main vehicles for both retail and institutional investors to participate in financial markets. However, there is evidence that asset managers are still facing many obstacles in carrying out cross-border business, thereby hampering the development of a pan-European asset management market. Here, increased convergence powers would allow to reduce those barriers which would represent a positive contribution to the CMU. Additionally, the evidence on the choice of location of asset managers shows that most of their clients are located outside their home member state. We need to



ensure that the supervision of these asset managers takes the interests of clients in host member states into account.

One possible avenue could be to provide ESMA with convergence powers to ensure consistent authorisations across the EU. This could help to further reduce barriers between member states and ensure that the interests of investors in host member states are appropriately taken into account during the initial authorisation phase.

Financial data

The above mentioned upgrade of powers on supervisory convergence should be accompanied by a bolder strategy on financial data. Transparency and data availability are essential to reduce the fragmentation of EU financial markets and facilitate cross-border supervision.

Since the global financial crisis, EU legislation has reduced the information gaps needed to achieve greater transparency for market participants and consumers, promoting market integrity as well as better financial stability assessments through the collection of granular market data.

A common strategy and close interaction among the relevant EU authorities should guide all processes to design requirements that establish reporting obligations for supervised entities. This approach should reduce compliance costs on reporting entities, and enhance the capacity of financial authorities to use the data to fulfil their objectives.



ESMA is in a unique position to contribute to the design of a common EU financial data strategy given its regulatory experience in multiple areas and regarding multiple types of information.

Conclusion

Ladies and gentlemen, it is time to conclude. The arguments supporting the acceleration of the CMU have only become stronger and we need to increase the role of financial markets in the financial system. Consistent supervision across the EU will be a very important condition to support the CMU. It is needed to further reduce barriers between member states and to address cross-border risks, especially those related to investor protection. Investors are only willing to participate in financial markets when they are well-protected.

ESMA's focus has shifted markedly from the single rule-book to supervisory convergence, but the experience indicates that stronger powers to ensure consistency across the EU are needed. Stronger tools would allow more effective and timely intervention to promote convergence of practices across the EU, while different combinations of tools might be needed to address specific convergence issues.

I look forward to working over the next months and years in making the CMU a true success.

Thank you for your attention.