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Back to the future: a look into ESMA's next decade

ESMA 10 Year Anniversary Conference
Closing remarks

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Introduction

Ladies and Gentlemen,

in taking up my duties as first Chair of the newly established European Securities and Markets Authority in 2011, I declared that "*The creation of this new body marks a clear and fundamental change towards a new approach in European financial markets supervision*". I embarked in that challenge conscious of its complexity, but also with pleasure for having the opportunity to contribute to strengthening the European financial system.

It is with these same feelings that today, ten years down the line, I will reflect on how ESMA's role has progressively evolved into one of an established and recognised European authority. Considering some of the uphill battles that are still in front of us, I want to also contemplate what might lie ahead for ESMA, after I switch off the light in my Paris office for the final time this week.

ESMA's formative decade

ESMA was set up as part of the European System of Financial Supervision (ESFS) based on the recommendations, back in 2009, of a high-level committee chaired by Jacques de Larosière. These recommendations were meant to overcome the issues encountered with building a single market for financial services under the coordination of the previous Level 3 Committees and, in particular, ESMA's predecessor: the Committee of European Securities Regulators (CESR).

As recalled in a recent book by Jacques de Larosière, the core aim of these recommendations was to '*come up with a European system of common rules and combat the extreme fragmentation of the "national exceptions" which, in fact, encouraged regulatory trade-offs and prevented the operation of a genuine common market in terms of finance*'[1].

The powers and governance of CESR and the other Level 3 committees were inadequate to deliver on these tasks and, when confronted with the dramatic consequences of the financial crisis, Member States were at a crossroads: strengthen European regulation and cooperation or further entrench themselves behind national lines. We know what the final decision was.

ESMA was therefore established with strong, but at the same time – we can say it today – rather vague expectations. Inspired by the principle of subsidiarity, co-legislators entrusted ESMA with supervisory and active market monitoring tasks, which were regarded as being best dealt with at European rather than at national level. ESMA would also be responsible

[1] de Larosière J., 50 Years of Financial Crises, 2018, p . 208

for setting out measures to implement the then new financial markets legislation and to ensure its converged supervision.

And yet, notwithstanding such a broad mandate so clearly enshrined in our founding regulation, I can neatly recall the somewhat tangible uncertainty that welcomed me upon the first confirmation hearing in front of the European Parliament in February 2011.

I was under the impression that some were still unsure as to how this newly created body would work in practice, whether our mandate was broad enough to make an impact or whether, on the contrary, the only partial transfer of sovereignty of some tasks from the national to the EU level had ultimately been a wise choice.

As it often happens, the abstract mandate of an authority seldom defines its role in practice. It is rather the day-to-day implementation of that mandate and how it responds to continuous challenges which define that role. And so it happened for ESMA.

Let me just name three examples of areas in which ESMA has progressively strengthened this role within the European and international regulatory community.

Firstly, ESMA's direct supervisory powers in relation to Credit Rating Agencies represented an absolute innovation in the EU architecture of financial supervision. For the first time, an EU Authority could directly intervene, without the intermediation of national regulators, on entities carrying out credit rating activities in the Union. Over the years, ESMA showed its ability to deliver on this important mandate by developing an effective supervisory regime and conducting significant on-site supervisory work focusing on the transparency, conflicts of interests, and governance and controls of CRAs, thus contributing to improving the quality of credit ratings across the EU.

Secondly, ESMA has proved capable of providing swift and timely response to investor protection and financial stability challenges arising from major and sometimes unexpected market events. Most notably, I recall the exercise of our product intervention powers which, between 2018 and 2019, resulted in restricting, or even banning, the marketing and distribution of particularly risky financial products targeting retail investors. But, more recently, ESMA’s response to Brexit and to the COVID-19 crisis showed ESMA’s ability to coordinate the action of EU authorities and effectively face what will be remembered as critical moments in the history of EU financial markets and beyond.

Thirdly, I want to mention ESMA’s work on promoting the convergence of supervisory practices. Back in 2011, we could not have envisaged how effective ESMA’s role would become in this area. Today, national securities regulators increasingly seek EU-wide coordination within ESMA on areas of common interest, as a basis to take their regulatory and supervisory decisions. Moreover, the practice of peer reviews has shown ESMA’s ability to provide rigorous and independent assessments of national supervisory practices. With these initiatives, ESMA not only creates a virtuous circle to improve national supervision, but most importantly, it ensures that all national authorities converge towards a common understanding of how EU law should be implemented and adjust their supervisory actions accordingly.

Across these and other areas, ESMA has consistently shown that it was capable of rising to the challenge and also becoming a reference point for national authorities in the field of data, economic analysis and research which ultimately support our supervisory and standard-setting activities.

ESMA into the future

The experience of the past years showed that the response to one crisis is in effect the preparation for the next one. When taking office ten years ago, in the middle of a financial crisis, I would have not imagined leaving office in the middle of another crisis – a health crisis with heavy financial and economic implications. However, this time I am confident that Europe’s financial markets are more adequately supported by an effective regulatory and supervisory system to face such adverse events.

Certainly, part of this confidence stems from the track record that ESMA has built as an authority that is able to weather the storm. However, it is also partially due to three fundamental features of ESMA which, I believe, should continue to characterise ESMA’s focus in the years to come to further enhance the resilience and effectiveness of financial market regulation and supervision in the EU.

Firstly, ESMA’s European reach is crucial to face the challenges posed by an increasingly integrated EU-market and ensure coherent protection for European investors. This is also a critical factor to build a stronger Capital Markets Union. It is, therefore, important to achieve a gradual, but steady expansion of convergence tools and direct supervisory mandates, where appropriate, in order to further strengthen the effectiveness of the EU supervisory system as a whole. This is particularly the case when issues and risks have EU-wide relevance and therefore a stronger role for EU-level supervision and regulation, in close cooperation with NCAs, is justified. The most obvious example of this currently would be the argument for EU-level supervision of EU CCPs.

Secondly, it is essential to preserve ESMA's independence within a complex regulatory and supervisory system which involves many actors. This is necessary not only to maintain ESMA's credibility as a direct supervisor, but also as a reliable standard-setter supporting the development and maintenance of a high-quality EU financial markets rulebook. In this respect, it is helpful to recall the words of Michel Barnier, the former Commissioner tasked with reforming the European supervisory system during the last financial crisis. Speaking at the inauguration event of ESMA in July 2011[2] he said: '*This independence is crucial for ESMA's credibility. We will work together. We will support each other. But we will always respect each other's independence.*'

Thirdly, it is necessary to build on ESMA's resilience and adaptability in response to two macro-trends which will increasingly impact the financial system, both in the EU and internationally: digital finance and sustainable finance. In these areas, we are already very active, but it is important that ESMA continues working to establish high-quality standards and ensures an adequate supervisory response to emerging risks in a context of increasing complexity and high probability of regulatory fragmentation. This work will place ESMA at the forefront in facing the multiple challenges that will come in these areas for financial markets, such as ESG-washing, an even bigger reliance by market participants on technology to run their

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[2] Barnier M., The new European Supervisory Markets Authority: helping enhance the resilience of financial markets, available at: https://www.esma.europa.eu/sites/default/files/library/2015/11/110711_esma_inauguration_michel_barnier.pdf 11 July 2011

day-to-day operations, and a change in (retail) investors' ease of trading facilitated by digitalisation.

Conclusion

Ladies and Gentlemen,

As I approach the end of my tenure and see the start of a new decade for ESMA, I can't help but reflect on this time with a sense of pride for what this organisation has achieved. More importantly, I reflect upon who made that possible. I would like to express my gratitude and appreciation to the multiple institutions and people who have contributed to ESMA's work in bringing EU financial regulation and supervision to a better place than it was ten years ago.

I would like to thank our two fellow authorities EBA and EIOPA, the ESRB, the ECB and the Commission, for the strong cooperation and the sense of collegiality with which we have faced common challenges together.

My appreciation goes also to the Parliament and the Council for the fair relationship that kept ESMA accountable for its duties.

I am also grateful to the international bodies such as IOSCO, the FSB and more recently the NGFS, within which we share as regulators around the globe the desire to drive the post-crisis global reforms and face future common challenges.

I would like to thank the various stakeholders from the private sector and, in particular, investors and industry representatives. Your constructive and critical views have helped build much of the rules and initiatives that we have put in place.

To my fellow Board members, and all NCA staff, goes my gratitude for having made ESMA a fruitful place of exchange and cooperation. Over the past years I have experienced, first-hand, the power of collaboration amongst EU countries and increasing reliance of national authorities on ESMA's coordination role, and as a result, on each other; and

Finally, let me thank ESMA staff. If, as I said at the beginning, my time at ESMA remained a pleasure notwithstanding the sometimes bumpy road, it is because of the committed and talented group of individuals that this organisation can count on and the strong support that the ESMA family have always provided to me throughout the years.

Thank you.