

## Keynote Speech

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Good morning Ladies and Gentlemen,

It is a great pleasure for me to be here at the 3<sup>rd</sup> Annual AFME European Compliance and Legal Conference and I would like to thank AFME for inviting me today. The timing of this event is quite pertinent, as we are at a point where there is so much uncertainty looming on account of Brexit, and this is surely resulting in daily challenges for many of you, especially those of you in legal, compliance and risk functions. However, this is also a timely moment for us to look back at the past year or so, and the many changes that have been made to the regulatory and supervisory framework in the EU and reflect on what these mean for financial markets and ESMA.

The review of the founding Regulations of the European Supervisory Authorities (ESAs), alongside the review of prudential rules for investment firms and a revision of the European Market Infrastructure Regulation (EMIR), so called EMIR 2.2, has introduced changes affecting the financial services sector in the EU and beyond, for both regulators and market participants. These changes represent important progress as part of the Capital Markets Union project, but they also deliver an improved framework for ensuring financial stability, investor protection and supervisory convergence in the EU. I will go through the key changes here and explain how they will enhance the robustness of the European system.

Finally, no speech would be complete these days without addressing Brexit. On almost a daily basis, people are glued to the twists and turns of what is happening in the UK like a well written TV soap. However, the real knock-on effect of this turbulence is that the associated risks

continue to change. I will recap on ESMA's work in ensuring market preparedness and mitigating cliff edge risks.

### Enhancing the role and responsibilities of ESMA

The European Supervisory Authorities (ESAs) have been in existence now for almost 9 years – although in theory they have existed for longer than that, as Level 3 Committees under the Lamfalussy Process. In its relatively short lifespan so far, ESMA has played a vital role in sculpting the EU's regulatory and supervisory landscape, through its work in building the single EU rulebook and ensuring its consistent application and establishing credible and effective risk-based supervision of Credit Rating Agencies (CRAs) and Trade Repositories (TRs).

In recognising the changes brought about by the numerous post-crisis reforms, and the role of the ESAs in helping achieve that progress, the European Commission's review on the operation of the ESAs in 2017 focused on how their roles could be adapted to better face the challenges of the future. The Commission's proposal, amending the founding regulations of the ESAs, was quite ambitious and comprehensive, focusing on improving the ability of the ESAs to ensure the correct and consistent application of Union law, and also proposed transferring supervisory powers to ESMA in targeted areas with predominantly cross-border relevance. Unsurprisingly, the ensuing political negotiations curbed the extent of those changes, but the ultimate outcome is still a very important evolution of ESMA's role and powers.

The most important changes come via new and improved instruments to foster convergence in the way the European financial sector is supervised. In particular, the assessment of the work of national supervisors, the so-called *peer reviews*, will be headed by senior ESMA colleagues and be carried out by ESMA staff together with representatives of competent authorities, bringing more efficient and objective steering to the process. The new legislation also arranges for the establishment of Coordination Groups to examine any emerging supervisory issues in a collective way. This is codifying the success of already existing groups like the one ESMA established regarding convergence risks related to Brexit relocations.

ESMA's direct supervisory powers have also been expanded to include EU critical benchmarks (and recognise non-EU benchmarks) and large, cross-border data service providers. These additional supervisory powers will offer benefits from newly created efficiencies in pooling

expertise centrally at the EU level, help ensure better quality and reliability of certain services, and will facilitate easier access to EU capital markets.

The outcome of the ESAs Review introduces a range of changes across the spectrum of ESMA's duties and objectives. But instead of remarking on all of those now, I will comment only on two other key changes that will help improve the functioning of EU financial markets. Firstly, ESMA will now be able to use a tool similar in nature to so called *non-action letters* used by other financial markets regulators, in cases where certain regulations can be conflicting and/or not compatible with dynamically changing market realities. Secondly, ESMA will play a more pronounced role in the advising, monitoring and following up on equivalence decisions with third countries. These are both changes that will bring more supervisory certainty and stability to the EU.

With some of these new tasks and powers coming into effect in January 2020, ESMA is now preparing to implement the new provisions in order to be ready to effectively and swiftly use them.

### Strengthening the supervision of EU and non-EU CCPs

In parallel to the general review of the ESAs, the Commission carried out an extensive assessment of EMIR and proposed a more pan-European approach to supervision of EU central counterparties (CCPs) to ensure better supervisory convergence and significantly enhance the framework for the recognition of non-EU CCPs and their supervision.

By way of background, EMIR implements the post-crisis G20 commitment to increase the stability and transparency of the global market for over-the-counter (OTC) derivatives. It achieves this by imposing an obligation to centrally clear standard derivative contracts via CCPs, thus mitigating the counterparty credit risk, reducing the associated operational risk, and ultimately reducing systemic risk. It also established a comprehensive regulatory framework for CCPs in the EU, which improved their ability to face possible financial distress.

Since the financial crisis, the scale, concentration, and significance of CCPs has progressively expanded. Combined with the fact that CCPs are also highly interconnected with other financial market participants, the strengthened supervisory framework for CCPs, which was proposed by the Commission and agreed by co-legislators in March 2019, improves the ability of CCPs in EU and non-EU countries to tackle emerging risks and challenges. It also addresses some of the limitations of the current recognition regime for non-EU CCPs. The impending departure

of the UK from the EU also compounded the need to revise this third country approach, especially as a significant volume of financial instruments denominated in the currencies of EU Member States will soon be cleared by CCPs in non-EU countries.

For EU CCPs under EMIR 2.2, supervision will continue to be carried out at national level but there is an enhanced role for ESMA under the supervisory framework. For example, ESMA will be able to provide an opinion on some draft decisions prepared by national authorities in relation to a CCP. ESMA will also have a broader role in ensuring supervisory convergence for EU CCPs.

The more significant changes come for non-EU CCPs operating in the EU, based on an equivalence decision. As part of a more rigorous recognition and supervisory process, a proportionate two-tier system is introduced in order to classify whether a non-EU CCP is systemically important or not for the EU financial system. Additional conditions may then be set for those CCPs of systemic importance in order to mitigate any additional risk they may pose in the EU. In this enhanced framework, ESMA will play a central role in deciding if a non-EU CCP is systemically important, based on a number of criteria, and will subsequently be responsible for supervising those systemically important non-EU CCPs. This work in ESMA will be led by a new CCP Supervisory Committee, composed of independent ESMA representatives, some NCAs, and some central banks.

The new framework once again recognises the success and experience of ESMA in monitoring and assessing risks for the EU-wide financial system, as well as in the direct supervision or coordination of supervisory activities for individual supervised entities. In addition, ESMA's experience and expertise on CCPs, gained from its pivotal role in ensuring supervisory convergence for EU CCPs, including through its active participation in the 17 CCP supervisory colleges, and its pioneering work in CCP stress-testing, provide essential building blocks for this new supervisory mandate.

I believe that this is also a very proportionate solution, as it does not introduce any additional requirements for non-systemic non-EU CCPs. The new framework is also quite sensible in the global context, as it brings us in substance closer to the US regime for third country CCPs, and that closer alignment is beneficial for all.

ESMA is now working on preparing for the implementation of these new tasks and responsibilities. In addition to establishing the new internal organisational arrangements,

ESMA is also preparing technical advice to the Commission on the criteria for tiering, how comparable compliance will work and on calculating recognition and supervisory fees. ESMA will soon finalise that advice.

### [Bolstering the approach to non-EU Investment Firms](#)

Alongside these two important reviews, I want to very briefly mention the importance of additional legislative changes that came about from the Investment Firm Review. This review focused on adjusting the prudential rules for EU investment firms, but it also evaluated the EU's approach to non-EU investment firms. As part of the changes introduced, ESMA will have better opportunities to assess and address the risks of investment firms from systemically relevant jurisdictions that are declared equivalent. These improvements are especially justified considering that investment firms from these jurisdictions will obtain passporting rights within the EU.

### [Brexit](#)

Finally, let me briefly cover some key points linked to the UK's withdrawal from the EU, and what ESMA has been doing to manage the risks and uncertainties linked to that. I do not want to dwell on well-trodden ground, as I know that several panels and speeches both today and yesterday have dealt with this eternal topic. But with less than a month to go to what is expected to be the UK's point of departure, it would be unwise of me not to reiterate ESMA's key standpoint.

While preparations are ongoing for a potential no-deal Brexit, ESMA once more urges all market participants, investors as well as consumers to ensure contingency planning, as you should not rely on public solutions to mitigate potential cliff-edge effects, should they materialise. ESMA has been aiding this work as much as possible. For example, in 2017, ESMA clarified what is expected from different market players, including asset managers, investment firms, and trading venues when setting up and operating in the EU27. The relevance of these opinions remains today.

In the area of the clearing and settlement, which was an area generally considered to entail the highest stability risks in the event of a no-deal, ESMA has taken contingency actions as private sector actions could not sufficiently address these risks. Based on a temporary equivalence decision by the Commission on the UK's regulatory framework for CCPs and central securities depositories (CSDs), ESMA has taken conditional decisions on the



recognition of three UK CCPs and one UK CSD so that they may continue to offer their services in the EU in the case of a no-deal Brexit.

Finally, on Brexit, I should mention that in the coming days we will publish several technical statements recapping the full list of measures issued previously by ESMA and some measures that require updates, for example regarding the use of UK data in ESMA data bases and our operational plans regarding databases and IT-systems.

## Conclusion

Let me conclude by expressing my positivity on the steps taken in recent times to strengthen the EU's regulatory and supervisory framework, through initiatives such as the ESAs Review and the introduction of EMIR 2.2. The EU's financial system will continue to face many challenges, including those challenges stemming from Brexit, and the system must be robust enough to tackle those head on. With many opportunities and challenges to come, we should also not lose sight of the key objective of the CMU - to make the financial system work as safely, efficiently, and fairly as possible for the citizens of the EU, and effective regulation and supervision will of course contribute to that.