

Dinner Address

FESE Convention – Dublin

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Ladies and gentlemen,

I want to express my thanks to Petr Kobic and Rainer Riess of FESE for inviting me to give tonight's keynote. Considering the central role of exchanges in financial markets, I am very happy to be able to continue the tradition of speaking at FESE annual gatherings.

I want to talk about international cooperation in financial regulation and supervision. We all know that the world of trading, clearing, and market infrastructures is both international and extensively regulated and supervised. Effective regulatory and supervisory cooperation is therefore understandably very important to the FESE membership and this was illustrated with the publication of your recent position paper on equivalence, which I have read with great interest.

The perspective guiding your arguments is ensuring the integrity of the single market, financial stability, and a level playing field between EU and non-EU market players. I fully support that viewpoint and FESE sounds like a regulator on this matter! In addition, as recognised in your position paper, our approach should preserve the attractiveness and competitiveness of EU capital markets.

The challenge of cross-border regulation and supervision

Financial markets are – by their nature – global, while regulation and supervision are national or regional. This implies a continuous challenge both for the financial sector as well as for regulators and supervisors. As a result of differences in regulation and supervision, the financial sector may be confronted with barriers, limitations or increased costs, and,

understandably, requests resolution of those differences. Equally understandable, regulators are pointing to the constraints of their legal frameworks and mandates. Regulators, to respond to this continuous challenge, should do their utmost to find and use tools to adequately address cross-border issues and support the functioning of global financial markets.

In that context I want to briefly discuss the report published earlier today by IOSCO on Market Fragmentation and Cross-border Regulation. This report aims to inform the G20 Summit later this month in Fukuoka, organised by the Japanese Presidency, and will discuss, among others, market fragmentation in global financial markets.

For its report, IOSCO – and ESMA has been directly involved in this exercise – looked five years back to see how the cross-border regulatory and supervisory framework may have impacted global markets. Interestingly, the findings of the report are quite positive: the use of cross-border tools like equivalence, mutual recognition, substituted compliance or passporting has increased significantly to the benefit of the functioning of global financial markets. The EU, with its extensive equivalence and recognition framework in a range of areas, has been in the forefront of these developments and effectively provided the most far-reaching market access for third country firms by fully relying on the rules and supervision in the home country.

This full reliance on home country regulation and supervision is exceptional from a global perspective and has been very important in reducing and avoiding market fragmentation. As of October 2018, the EU had granted equivalence to thirty-five jurisdictions across eight securities and accounting files¹. For example, the 34 CCPs that are recognised by ESMA, based on equivalence decisions regarding 16 jurisdictions, can, without difficulty, fully participate in EU derivatives markets while the EU relies on home country regulation and supervision².

Talking about the challenge of avoiding market fragmentation, I should briefly touch upon the Share Trading Obligation (STO) for shares. As you will have seen, last week we have slightly adjusted ESMA's view on the application of the STO to further reduce potential market disruption by fully excluding shares with GB ISINs. This change would allow to avoid conflicting obligations in case the UK implements its own STO in a similar way.

¹ https://ec.europa.eu/info/sites/info/files/overview-table-equivalence-decisions_en.pdf

² Only one equivalence decision under EMIR introduces certain conditions that need to be met by foreign CCPs: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016D0377&from=EN>

Despite this adjustment, I should be clear that the STO will fragment markets and, being a supporter of open markets, I regret that result very much. However, it is important to point out that this is inherently related to the UK's decision to leave the EU and the risk of a no-deal Brexit. Under the Withdrawal Agreement and the related Political Declaration, equivalence is envisaged, and in this scenario we would continue to have open markets between EU and UK venues for the trading of equity.

As a final comment on the STO, I would like to share a concern. The UK has clarified that it plans to only disclose the application of the UK STO once it is clear there is a no-deal Brexit. Practically, this may mean that clarity will only be provided a few days, or perhaps even a few hours, ahead of a no deal situation. To allow market participants to properly prepare for the risk of a no-deal, I sincerely hope that this timing is reconsidered, and that clarity is provided well-ahead of the October Brexit date.

Strengthening the EU approach towards cross-border regulation and supervision

Looking to the future, the EU approach towards cross-border regulation and supervision is changing. The fact that the largest capital market will leave the EU has accelerated a reconsideration of our third country arrangements. As the UK will continue to be an important capital market for the EU post-Brexit, it is also vital that an appropriate EU framework for third-country regulation and supervision is in place. Based on the current EU equivalence regimes, regulation and supervision of third country entities would be conducted solely outside the EU, typically without the provision of any specific safeguards from an EU perspective.

At the same time, many third country market players will continue to play an important role in the EU financial system, while affecting its stability and how EU investors are protected. ESMA already pointed out well ahead of Brexit that full reliance on third country rules and supervision was not appropriate for systemically relevant CCPs.

The improved EU approach towards cross-border regulation and supervision is already reflected in EMIR 2.2, as well as EU legislation which will come into force later this year following the ESAs review. ESMA will receive a range of new supervisory tools regarding third country CCPs that may be systemically relevant to the EU, and monitoring and reviews of equivalence decisions will be conducted more frequently to detect differences between EU and non-EU regulation and supervision on time.

In my view, the EU's approach to cross-border regulation and supervision will become more proportionate than it is today. Full reliance on third country regulation and supervision will still be possible when there are no systemic risks for the EU. However, in cases where there may be systemic risks to the EU, the relevant toolbox available to EU regulators will become stronger, monitoring and reviews of equivalence decisions more regular, and EU legislation will apply directly.

Interestingly, not only will the EU third country framework become more proportionate, there are also plans in the US to make the approach towards foreign CCPs more proportionate. Obviously, the starting positions are very different: while the EU now has nearly full reliance on third country regulation and supervision, the departure point of the current CFTC's arrangements for foreign CCPs, referred to as "DCOs" under the applicable U.S. rules, are full registration and supervision with subsequently some relief when U.S. clients are not involved. While I am aware of the critical remarks made by CFTC officials about EMIR 2.2, I see it as a positive development that our respective approaches are converging.

In an effort to implement the EMIR 2.2 framework in a timely and effective manner, last week ESMA published three consultation papers regarding the cross-border dimension of EMIR 2.2. The three cover: tiering, comparable compliance, and fees for third country CCPs. The input of stakeholders received to this consultation will be a crucial building block in achieving the goals of EMIR 2.2 and I invite you and all interested parties to contribute to these important consultations.

Looking ahead, it will be important to examine other areas where our third country approach should become more proportionate. In that context I am happy that the Investment Firm Review has been agreed and that 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.

I should also mention that the ESA review legislation contains a clause that the Commission should review by 2021 the third country arrangements for trading venues and central securities depositories, including tabling legislative proposals when appropriate. As you will understand, I am looking forward to the result of this review.

How should we judge the changing EU approach towards cross-border regulation and supervision from the dimension outcome-based versus rule-based? A rule-based assessment compares regulatory systems on a line-by-line basis while the assessment is more holistic in case of an outcome-based comparison.

Looking back at the many EU equivalence decisions taken in financial markets, it is fair to say that they have been overwhelmingly outcome-based resulting in reliance on home country regulation and supervision. This is facilitated by the fact that frequently the relevant EU framework, the yardstick for the equivalence assessment, is based on internationally agreed standards, for example the IOSCO Principles for Benchmarks, Credit Rating Agencies or the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs). And in turn, the third country frameworks are also frequently based on these principles.

The changing EU approach towards cross-border regulation and supervision will in some cases result in more granular assessments. For example, while EMIR 2.2 will have limited impact on Tier 1 CCPs, CCPs falling into the Tier 2 category will, in principle, need to comply with the detailed EMIR requirements. However, as you will see in the previously mentioned Consultation Paper on Comparable Compliance, there will also be the opportunity to rely on the requirements of the home country of the Tier 2 CCP.

The assessment of this opportunity for home country reliance will be done at CCP-level and on a requirement-by-requirement basis. However, as the term used makes clear, comparability of requirements should be sufficient, it will not be necessary to have identical requirements.

As a final reflection on this topic, it is important to underline that focussing only on high-level outcomes may sometimes result in ineffective cross-border arrangements as it would allow regulatory and supervisory differences to persist that can result in, for example, regulatory competition, risks being unaddressed, extra costs, and market fragmentation.

In some areas and in some cases, more ambition is needed, and we should strive to further remove differences. Obvious examples are, in my view, margining models of systemically relevant CCPs and data reporting requirements. Open markets will only work well when market players need to adhere to the same standards in those areas.

In that context, I should point out that within the EU we have further removed regulatory and supervisory differences with the gradual establishment of a single rule book and strong

supervisory convergence efforts. Hence, so to say, in the EU we have become less outcome-based in some cases precisely to improve the functioning of the internal market.

Equivalence process: closer monitoring, more transparency and consistency

As indicated earlier, one key part of the improved EU approach is the more frequent monitoring and review of equivalence decisions to detect emerging differences between EU and non-EU frameworks on time. I am glad that the ESAs' review gives ESMA both this new requirement and the necessary resources to live up to this important task starting in early 2020. Once we have implemented the necessary processes, we will continue to be as transparent and consistent as possible when conducting our part of the equivalence processes. I know how much value stakeholders attach to transparency and consistency regarding equivalence processes.

In this context, clear and transparent communication is an important part of regulatory cooperation with our non-EU partners. The underlying EU equivalence frameworks for various sectors of capital markets are complex, and so through dialogue we can help the international community to better understand the EU framework, which I am personally committed to. More generally, good cooperation between regulators is one of the key-pillars of successful cross-border regulation and supervision and ESMA continues to be committed to that, both on a bilateral basis and through active participation in global standard-setting bodies like IOSCO and the FSB.

Brexit and the exchange of secondary markets data

Finally, I want to make a remark on Brexit and the exchange of secondary markets data. It may sound surprising given how long the Brexit process has been with us, but these remarks risk being premature: without the Withdrawal Agreement and Political Declaration being agreed by both sides, it is uncertain what the framework for regulatory cooperation in financial services will be. What is certain, irrespective of the future regulatory and supervisory arrangements, is that the financial markets of the UK and the EU27 will continue to be highly interconnected, especially in trading.

According to the draft Political Declaration, the future relationship will be governed by the regular arrangements regarding third countries and both the EU and UK are committed under this Declaration to undertake equivalence assessments and endeavour to conclude these

before the end of June 2020. That approach is consistent with the UK leaving the EU and the need to have a level playing field across third countries. Having said that, personally I think there is one area where, in the future, we need to consider if additional arrangements can be achieved: this concerns the exchange of secondary markets data.

Currently, data is exchanged daily between all EU NCAs, including the UK, to facilitate, for example, the combating of market abuse. This data exchange is governed by extensive and detailed regulatory requirements. As trading will continue on a cross border basis with the UK, it is essential that we consider how we can continue to exchange data with the UK FCA. Global integration of financial markets can only be viable in the long term when regulators can continue to access the related data on a cross-border basis. That is essential to protect investors and the integrity of financial markets.

Concluding remarks

Ladies and gentlemen, it is time to conclude. The EU's approach towards cross-border regulation and supervision is changing. The improvements will lead to a more proportionate regime, where we will be better able to assess and address risks affecting EU financial markets. However, what will not change is our belief in the importance of the successful functioning of global financial markets. This is not without self-interest: making sure that we have effective cross-border regulation and supervision is essential for the future attractiveness and competitiveness of EU financial markets.

Thank you for your attention.