ECMI, Task Force on Rebranding Capital Markets Union

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15:15 – 16:45 Session 2. Status quo: Supervising more integrated capital markets with new technological developments

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I am delighted to be here at the ECMI task force on rebranding CMU to provide my views on the challenges of the Capital Markets Union, in the short term and looking ahead to the coming years, with a focus on supervising more integrated capital markets with new technological developments. In my presentation, I will also address the topic of financial literacy, as this is rightly included in the programme of the task force.

1. **CMU**

The Capital Markets Union project started in 2015 and aims to broaden access to finance for companies and to increase investment opportunities in Europe. In its communication of 28 November 2018 the Commission stresses the need to accelerate work on the pending CMU proposals. So far, only three out of thirteen of the Commission's original proposals contributing to the CMU have been adopted.

The Commission rightfully asks for a collective effort from the co-legislators to contribute to this objective of deeper capital markets, which is key to growth and financial stability.

As a financial regulator, I believe it is especially important that under the current Commission/EP legislature the review of the ESAs be finalised to ensure a more efficient system of financial supervision. To achieve that outcome, all parties involved should identify the proposals on which they all agree and focus on a quick trialogue and agreement. One should not lose the momentum or throw the baby out with the bathwater. A delay of many years, which would be the result of a “no-deal”, would be undesirable for all stakeholders in the EU supervisory system.

It would, however, be a misconception to consider that the CMU requires a centralized model of supervision. The drivers for the CMU and for the Banking Union are quite different.
An enhanced internal market is facilitated by a coherent supervisory framework, but is fundamentally driven by market forces: in other words, a centralized supervisor does not per se create or magnify the internal market.

Moreover, the discussion of the Commission proposal has demonstrated that the debate about which authority is best placed to supervise the single rulebook should be based on the difference between wholesale (B2B) and retail (B2C) markets.

Wholesale securities markets are more integrated and are mainly regulated at European level. As such, a supervisory role by ESMA in wholesale markets can be more efficient. ESMA has already been granted supervisory powers for credit rating agencies and trade repositories, and it has a natural role to play as regards similar B2B activities.

By contrast, retail markets are by definition less integrated. European securities markets are in this respect very different from the banking market. This is due to different industrial structures within the EU, different local investor preferences and behaviour, different applicable national laws (tax legislation, contract law, general consumer protection law, etc.), language barriers and so on. The European securities market is a combination of many local ecosystems.

The industry also recognises the importance of these ecosystems, as they offer very different products to various Member States across the EU depending on local investment behaviour and preferences. It is also clear that producing investor documentation in the local language is key to protecting consumers and ensuring a high level of investor trust.

Given the above, it is my firm position that NCAs are therefore best placed to supervise the compliance of retail products with the applicable legislation. NCAs have developed expertise in the applicable legislation, understand the language, thanks to their proximity have a good view of the products sold on their market, are close to local investors and understand their preferences and vulnerabilities.

2. CMU in the next five years

From a regulator's perspective, the development of a thriving Capital Markets Union requires sound and appropriate products and effective supervisory systems applied in a consistent way. Some challenges remain to achieve such a Capital Markets Union. I will elaborate on those challenges from my own experience as a supervisor of financial products and conduct of business rules.

2.1 Firstly, I believe *consistent implementation* of the single rulebook, including the recent post-crisis regulatory reforms, is an important building block of the CMU in the coming years.

A truly integrated EU capital market requires both a single rulebook and harmonised supervisory practices. When supervisors take unjustified different approaches to the single rulebook, and where supervisory outcomes diverge, that can create challenges for the effective functioning of the internal market. The single rulebook will only deliver an internal market in practice when supervised consistently.

ESMA deploys a range of tools to promote supervisory convergence. ESMA has published the results of, and is working on, a range of peer reviews. Peer reviews cover such topics as High-Frequency Trading, the prospectus approval process, fair, clear and not misleading information, and suitability under MiFID. I welcome especially the increased use of site visits by ESMA to regulators to obtain better insight into national supervisory practices. The results, in general, show that a single rulebook does not automatically guarantee consistent national practices and that further convergence work is vital. Such convergence is also in the interest of investors. In this respect, it should not be forgotten that only when investors feel sufficiently protected will they be willing to enter the capital markets and participate. In the future, there needs to be a shift of time and resources within the ESAs from the regulatory side to supervisory convergence. Reviews should assess not only the consistency but also the efficiency of supervisory outcomes. The enhancements to the ESAs' convergence toolkit that the ESA review - when approved – will bring, should then be put into practice quickly and with sufficient resources.

Regarding supervisory convergence in the field, it is important to ensure a level playing field not only among the various Member States, but also among comparable products (cross-sectoral consistency). In our view, the single rulebook should guarantee consistency in the rules applicable to economically equivalent products, so as to avoid regulatory arbitrage between sectors. It is therefore essential that the ESAs cooperate closely and take a horizontal approach across various financial sectors

2.2. Moreover, a sound supervisory system in an open internal market requires that, in case of infringement, instant *intervention measures* be taken to keep investor trust.

Having the necessary tools and powers to react quickly is particularly important when the Member State of supervision differs from the Member State where the products are sold and thus where the investor risk lies.

The regulatory system should ensure that inappropriate or particularly complex products are not allowed to be marketed to retail investors. Inappropriate and overly complex products pose a major risk of causing consumer detriment, which results in an overall decrease of consumer confidence in financial products. The Belgian supervisor has been a pioneer in protecting the consumer in this regard.

Firstly, in 2011 we introduced a Moratorium (a voluntary standstill) on the distribution of particularly complex structured products. The Moratorium lays down the criteria used to qualify a structured product as overly complex and thus not to be sold to retail clients by distributors that sign up to the Moratorium. Since the launch of the Moratorium, structured products have become less complex on the Belgian market.

Secondly, supervision of advertising material is crucial. Consumers mostly find out about financial products through advertisements, and they base purchasing decisions on these materials. We must assure that the information is accurate, that the advantages and disadvantages of a product are presented in a balanced way and that the advertisements are written in a language that is easy to understand. The FSMA checks the advertisements of funds, regulated savings accounts, structured debt instruments and derivatives before their publication. This ex-ante supervision of advertisements has led to a significant drop in consumer complaints about these products.

Finally, in 2014 Belgium introduced a regulation banning the distribution to retail investors of certain financial products that are, by their very nature, unsuitable for distribution to retail clients. One example of such a ban is for financial products for which the return depends, directly or indirectly, on virtual money. A second regulation followed in 2016 to ban the distribution to consumers of specific types of derivative contracts, such as binary options, via electronic trading platforms. The distribution of such derivative contracts had led to significant losses on the part of investors and many consumer complaints. Furthermore, the regulation bans a number of aggressive or inappropriate distribution techniques.

These national bans in Belgium anticipated a power now entrusted to ESMA and all NCAs to ban certain financial products in case of important consumer detriment. Unfortunately, MIFIR granted this power to ESMA for only a period of three months that can be renewed. Given the pan-European nature of the risks, it would have been more appropriate for ESMA to be able to determine itself the term of the ban. In my view, it should there be made explicit in MIFIR that ESMA has the power to determine itself the term of a product intervention measure, subject to appropriate monitoring of the impact of the measure. The current review of the ESAs would be an appropriate occasion to give ESMA this tool.

*2.3. Consolidation of the CMU **within the EU27** with the Action Plans on Sustainable Finance and FinTech?*

In the next few years, plans to develop a CMU 2.0. will be developed. This CMU 2.0. should build on the successes of the CMU and determine clear priorities. The new project should also take into account recent developments, such as Brexit and the EC's Action Plans on FinTech and Sustainable Finance.

Brexit makes the need for a strong CMU more urgent, especially given the need to ensure, over the longer term, more independent financing capacity on the part of the EU 27.
The deepening of the EU-27 financial markets will need to be accompanied by sufficient oversight and tools to address new risks in

certain parts of the system. More cooperation between supervisors may be needed to ensure a comprehensive European view on market participants active across the EU 27, e.g. via the use of colleges.

Moreover, the links between the CMU and the EC's recent Action Plans (on **FinTech and on Sustainable Finance**) are manifest. The CMU will need to incorporate these new policy orientations into an integrated approach to EU capital markets development.

Firstly, it is important to take into account the objective of the EU to enable the EU financial sector to lead the way to a greener and cleaner economy. CMU proposals should be **sustainable** and future-proof, and help to reorient capital flows towards more sustainable investment.

Since technology is transforming financial markets, it goes without saying that the CMU should take the opportunities and risks of **FinTech** into account. The EU should indeed address any emerging vulnerability while also harnessing the benefits of innovation.

As an example, one can refer the phenomenon of **crypto-assets**. The FSB undertook an initial assessment of crypto-assets and concluded that they did not currently pose significant risk to global financial stability. The FSB recognised that risks could increase if crypto-assets became more widely used or if linkages with the rest of the financial system grew. It also highlighted the serious issues crypto-assets pose regarding consumer and investor protection. Work to address these issues is being undertaken by national authorities and global standard-setting bodies. Within the EU, it is essential that for reasons of a level playing field and equivalent investor protection, a pan-European policy be developed in this field.

As part of the FinTech action plan, the EC asked ESMA to analyse the characteristics of crypto-assets relative to existing EU rules. The basic question is whether the various types of tokens are securities/financial instruments. For those crypto-assets which are indeed financial instruments, one will need to assess whether existing applicable rules need calibration, and for those deemed not, whether a separate regulatory regime is needed. FISC, the ESMA committee dealing with financial innovation, is examining this issue and the results of its analysis will be shared with the EC shortly.

Another issue that should be on the radar is **cybersecurity a**nd the associated operational risks. While past crises had their roots in financial losses, it is not impossible that the next financial crisis could come from non-financial sources, including cyber incidents. In this domain as well, ESMA intends to report to the EC if legislative improvements are needed to promote cyber resilience.

Other topics in the FinTech area that need close follow-up are licensing requirements for FinTech actors and other innovative market players, and the issue of outsourcing of cloud services.

3. Financial education & CMU

Financial inclusion, consumer regulation/supervision and financial literacy are key building blocks for enhancing individual decision-making in financial matters. This will in turn contribute to improving financial well-being, restoring consumer confidence and promoting a jurisdiction’s financial stability.

One of the lessons of the financial crisis for regulators consisted in rethinking the traditional paradigm of the ‘rational financial investor or consumer’. The theory of “bounded rationality” claims that people can aim for rationality, but cannot be reasonable all the time. Human beings are subject to irrational impulses**,** and irrational behaviours can aggravate a financial crisis. Individuals tend to follow the mainstream and ignore objective signs and indicators ("herd behaviour") or tend to look for short term advantages ("instant gratification"). Regulators should draw on these sorts of insights from behavioural economics.

In this respect, financial education is intended to give people financial knowledge and skills, but it should also give people the capacity to understand themselves better and recognize their behavioural biases when taking decisions. In so doing, consumers can develop their critical sense and reinforce rational behaviour in the area of financial decision-making.

The toolbox of a modern financial regulator should include transparency requirements, rules of conduct, product governance and product intervention. In addition, financial education plays a significant complementary role, not only by providing financial knowledge and skills but also by fostering rational and responsible behaviour on the part of consumers.This last aspect is all the more important in a digital environment.

To tackle these challenges a collective effort is needed from many stakeholders. These include governments, regulators, schools, financial sector participants, academics, NGOs, civil society etc.

To discuss the matter of **financial education at EU level** is not straightforward, given the subsidiarity principle. Nevertheless there is an argument that a successful CMU can be strengthened by enhancing financial literacy, given wide disparities in levels of financial education across and within the Member States.

Faced with increasingly complex financial products, consumers and SMEs may make unwise financial decisions without a proper understanding of the risks involved, or they may miss optimal investment or funding opportunities, especially cross-border ones. Enhanced financial literacy could also contribute to correcting the investment biases towards regulated saving accounts at the expense of more long-term and/or more risky investment. The recent ECB report on *Financial Integration in Europe* (May 2018) has underlined that enhancing financial literacy among the population through education systems would help develop equity markets (and their contribution to risk sharing).

There might be room at EU level for a more structural exchange of experiences on financial education programmes, including on CMU-related initiatives to strengthen SMEs' knowledge about access to capital. The ESAs could play a role in coordinating these exchanges of experiences.

Let's not forget as well that there is a link here with the objectives of the sustainability action plan of the EC. Indeed, the High Level Experts Group on Sustainable Finance has recommended that the Commission promote greater financial literacy on sustainable finance, and support member states in developing national strategies for financial education with a strong sustainable finance component, and the incorporation of financial literacy components into school curricula.

As this report recommends, further efforts are needed to empower citizens to choose the financial products and services that best suit their needs. Finance literacy efforts with a focus on sustainability can be expected to translate into increased demand for sustainable financial products.