Danuta Hübner
Chair of the Committee on Constitutional Affairs, European Parliament

EMIR review and CCP supervision

Speech at the APCO forum event on the review of EMIR
27 September 2017, APCO worldwide, Brussels

This is a file on which I know that the stakes are high and much passion is involved.
We have a proposal on the table, we should look at it, see where it is good as it stands, where it brings progress regarding the resilience and efficiency of the system, where it can be improved and where there are some gaps and issues to be addressed.

In this regard, I would have two broad messages for you and a couple of considerations on the substance of the file.

The first message I will have is that there are multiple files in discussion. There is the euroclearing proposal, there is the REFIT review proposal, there is the recovery and resolution proposal, there is the proposal to amend the statute of the ECB, and finally the review of the ESAs. There are interrelations, links between all of these files. Therefore, we should have in mind a need for clarity and consistency and we should be careful of matching adequately the issue with the legal instrument. The interactions mean that rapporteurs need to cooperate on some issues and that we shall work with the necessity of clarity and consistency in mind, not that the debates should be confused. We should not be bound by the deadlines set on the files of each other and we should discuss each issue in relation to the instrument that aims to address it.

And that takes us to my second message I would want to deliver here, which is that we need to proceed rather swiftly on euroclearing. The Commission helped us a lot in this regard by tabling two separate proposals reviewing EMIR, thereby helping the co-legislators to concentrate specifically on the issue of CCP supervision. There is slightly over one year left both before the current legislature ends and before the Brexit takes effect, and the ordinary legislative procedure is intrinsically lengthy. Therefore, if we want an agreement reached and a piece of legislation published before the end of the Parliament's term,

work should start now. I know that the Council shares this point of view on the need for speed, and is even keener on being fast: the Estonian presidency is planning to hold two meetings per month and would wish to have a general approach by the end of the year.

Let me now outline some main elements that I will consider in my approach of the file.

I think here we have to distinguish two dimensions.

The first is the changes to the supervisory architecture within the Union. On all these issues, the reforms introduced by the proposal are good and going in the right direction. For instance, in the current context, I would welcome key elements such as:

- the creation of the CCP Executive session in charge of exercising all CCP-related tasks of ESMA
- the need for non-objection by ESMA on supervisory decisions taken by national authorities, similar to what exists in the case of many supervisory powers exercised jointly by the ECB and national competent authorities within the SSM
- the increased involvement of the central bank of issue through its representation in the executive session and the need for its non-objection on the decisions of the National Competent Authorities,

The need to strengthen the supervisory architecture for capital markets following Brexit is obvious, and CCPs are a few very specific entities that require an experienced supervisor. Therefore taking steps towards a more integrated EU supervision mechanism for CCPs will allow economies of scale. It is also good, given the increased importance of CCPs, to take their resilience seriously. If clearer procedures led by a specialised EU entity could help the smooth implementation of EMIR, which is assessed as, generally speaking, a success, then this is very welcome and will bring progress.

There are some aspects that I would wish to investigate further and understand better.

For instance, I still need to explore whether the composition of the executive session is the right one. For the moment, it seems that this is the case. It will be a rather small group, which is a good thing from an effectiveness point of view.

In particular, it will focus on only two categories of key actors: central banks and National Competent Authorities. It will be flexible and targeted since temporary members will be chosen depending on the CCP concerned.

I also need to look carefully at whether the joint procedure is not too burdensome and whether we could have fewer joint ESMA/NCA procedures.

This means I might wish to see if there could be more tasks directly performed by ESMA instead of binding non-objection in order to streamline the process. In a similar vein, I would like to see if some tasks are likely to be routine and at the same time time-consuming. If such tasks are identified, I would consider either keeping them at the national level or paying attention to the internal organisation of ESMA so that the right level of staff can be in charge of it. The point is to make sure that we do not have an issue similar to what happened with the SSM in the case of fit and proper assessments.
There, everything had to be vetted by the highest level and then the ECB had to introduce delegation of powers to allow high level officials to take these decisions.
I finally need to look carefully at whether the balance between ESMA and the central bank of issue is the right one. As you know, central banks of issue do not have voting rights in the executive session.

We need to pay attention to the knowledge of local markets and of different types of markets, such as commodity markets, which have specific characteristics.

The second aspect is the part dealing with the supervision of third country CCPs is the most difficult and politically charged. With Brexit, we have to better understand what could happen if the current EMIR arrangements stop applying to the UK overnight should at least be considered and addressed. We also have an opportunity to strengthen an equivalence regime that we knew to be too weak.

We have two goals there: improving the system and getting some form of insurance against a disruptive Brexit.

In terms of content, in principle, the additional powers conferred to ESMA on Tier 2 CCPs look fine. They are rooted in the existing acquis as they mirror the provisions applying to trade repositories (TRs) and credit rating agencies (CRAs), which were themselves copied from antitrust legislation, a core EU competence. They are powers and procedures to which I guess ESMA is used in practice, since it has had direct supervision over these two types of entities for a number of years (in the case of CRAs it will be eight years since the first regulation was passed) and has already used fines both against a TR and against CRAs in the past. The only, but not necessarily minor, issue is that, now, we are applying these powers to new entities and to foreign jurisdictions. So, there might be a trade-off between the scope and the content of the powers, that is, less powers in exchange for criteria that would bring more Tier 2 CCPs in scope, or the other way round.

The very contentious point will be the assignment of a CCP to a category. There, I would say that the proposal is a good basis to the extent that it leaves a lot of freedom for the future discussions. The Commission has avoided pre-empting the debate by making choices that would have made discussions difficult and raised red flags, such as the disruptive and not-evidence-based scenario of an automatic location policy. It has given a lot of flexibility to ESMA and to itself on two key elements: the assessment of significance and the decision that a CCP is too systemic and must register in the Union. That way, either we can embed this flexibility in the final text or tweak the proposal in any direction we want.

Another very good point is that the text responds to the need for proportionality. There is a scale, from equivalence relying on the third country supervisor to location decision.

I would here sketch a few ideas, although it is still very early.

My preliminary view is that the Commission might have gone a little too far in this proposal in the direction of flexibility. Flexibility has of course its merits when facing an uncertain environment such as the one that will emerge from Brexit. However, precisely, in such an unstable EU and global context and on a key issue such as this of clearing, it might be better to provide more predictability and certainty. This is why I think we should probably put clearer guidance in the text concerning the criteria for the assessment of significance. We can discuss and calibrate these criteria so that we avoid concerns from other jurisdictions such as the US but also keep a system which is effective enough so

that we can address the concerns stemming from large systemic entities for the economy of the Union being out of the Union.

I would also see the merits of avoiding confusion and carrying out the significance assessment on an asset-class basis. Indeed, for instance, interest rate swaps are a global market where the integrity of liquidity pools matters strongly. There, potential financial stability benefits of increased control or indeed location would need to be balanced against the risk of creating smaller and more unstable markets and increasing costs all along the clearing chain. In contrast, sovereign debt repos are closely related to sovereigns and to monetary policy transmission and the threshold for considering the activity in this area significant could be significantly lower. This asset class approach could be interesting and I would like to investigate exactly the system existing in other jurisdictions in order to see how the assessment is done over there.