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# *Brexit and EMIR 2.2: what future for CCP supervision and for the EU/UK regulatory cooperation in financial services?*

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The EU now is in the process of adjusting its regulatory framework in order to strengthen financial stability.
In the first wave of post-crisis reforms, a lot has been done on strengthening the resilience of the European banking sector.
Now we need to do exactly the same for the capital markets in general, and the market infrastructures in particular: strengthening their resilience. There is an ongoing policy-making trend related to stability that we are witnessing.

This is the context in which we have been looking at CCPs. They are crucial intermediaries in financial markets, acting as the buyer to every seller and the seller to every buyer in crucial markets such as derivatives and repos. Both are huge markets. The ECB in the explanatory statement to its recommendation on the amendment to the article 22 of its statute mentions estimates according to which the daily values of euro-denominated repos are EUR 101 billion and daily values of open positions in euro-denominated Interest Rate Swaps are EUR 33 trillion.

After the 2008 crisis, in reaction to the role that over the counter derivatives have played in the triggering of the crisis and in order to reduce the risk associated with them, it was decided at the 2009 G20 Pittsburgh summit to channel derivative transactions through CCPs. This has increased the importance of CCPs in the financial system and the related risks associated with the failure of a CCP. It is also worth mentioning here that over the recent years the expansion of clearing businesses has taken place in the conditions of abundant liquidity sources. It is not at all clear that these conditions will continue to prevail.

This trend in turn called for good regulation and supervision of CCPs and this is why a lot of attention has been devoted to CCPs at the international and EU level recently.

A joint workplan on the resilience, recovery planning and resolvability of CCPs has been agreed in 2015 by the CPMI, the IOSCO, the FSB and the Basel Committee. As part of it, the CPMI, the IOSCO and the FSB have issued guidance on CCP recovery and resolution and issued further guidance on the implementation of the Principles for Financial Markets Infrastructures (PFMIs) in July 2017.
A joint CPMI-IOSCO framework for the supervisory stress testing for CCPs has also been issued in April this year. We are still waiting now for the FSB in consultation with the CPMI and IOSCO to deliver a report and a possible draft guidance on the

adequacy of financial resources of CCPs and on the treatment of CCP equity in resolution, at the end of this year.

It is in those contexts that we need to see the Commission proposal of November 2016 on CCP recovery and resolution, and then the whole process of adopting the report in Parliament, and also, now, the Commission proposal and ensuing debate on CCP supervision that I had the pleasure to lead.

So, what I want to insist on, even before we move on to the rest of the debate, is that we are in the process of improving financial stability and the resilience of the European financial sector.

And this also means, if you look at the broader picture concerning CCPs, that we cannot dissociate EU and third country CCP supervision. If we strengthen supervision towards third countries, we have to do the same within the Union, work in favour of supervisory convergence and strengthen the EU level supervisor, which is ESMA. A more integrated supervision of CCPs within the Union is logically tied to the strengthening of the powers of EU authorities over third country CCPs.
We need ESMA to become a credible supervisor, both within the Union and internationally. Therefore, the approach we take towards CCP supervision should be the same whether we are dealing with EU or with third country CCPs.

The ECON committee adopted the legislative report on CCP supervision on 16 May with a very broad majority of 45 votes in favour, 4 against and 5 abstentions. I have obtained the mandate to go directly to trilogue negotiations and am now waiting for the Council to adopt its general position.
To my knowledge, the Council has an almost final position, quite close to the Parliament's one, as regards the supervision of third country CCPs, but has barely started to discuss the supervision of EU CCPs.

The key priority in this file has been to find, within ESMA, an arrangement for the supervision of CCPs that would work for EU CCPs as well as for third country CCPs. I am convinced that, after Brexit, in order to reduce supervisory fragmentation, take better into account the cross-border dimension of the activities of CCPs, allow economies of scale and pooling of expertise, prevent supervisory forbearance from national authorities getting too close to the entities they supervise, we need a more European approach to the supervision of CCPs and we need ESMA to have a strong role in supervising all CCPs, not only third country CCPs.

This has first meant finding the right organisation within ESMA. In order not to pre-empt the review of the ESAs, but also to avoid establishing new institutions, I proposed to replace the executive session by an internal committee of ESMA, based on an existing provision of the ESMA regulation, article 41, and called the CCP supervisory committee.
The Committee would exercise its tasks in relation to both EU and third country CCPs and be composed of permanent and of non-permanent members. Permanent members will be appointed following the standard procedure that we use for instance for SRB members and will be subject to specific accountability requirements towards the Parliament. Non-permanent members will be the national competent authorities

and the central banks of issue which will be relevant to the CCP in relation to which the supervisory committee is convened.
The Supervisory Committee would decide by a simple majority and would submit to the Board of Supervisors of ESMA draft decisions.
Those draft decisions would need to be approved by a simple majority of the Board of Supervisors when they relate to a series of areas deemed as important such as collateral, interoperability, liquidity, margins, authorisation, recognition, review of recognition. They would be deemed adopted unless a qualified majority of the Board of Supervisors opposes them when they relate to other areas.
Going beyond ESMA's internal organisation and concerning the exact architecture for the supervision of CCPs within the Union, we know that ESMA needs to continue building up its staff, its expertise and its capacity, growing into its role of a fully-fledged, credible domestically and internationally, supervisor. I wanted in my report to give already more powers to ESMA in some areas and to lay clearly the direction of travel for the future. This is why I proposed to differentiate the involvement of ESMA depending on the decision concerned. According to the report, competent authorities would have to obtain the binding consent of ESMA for some decisions, consult ESMA for other decisions, and adopt other decisions on their own without consulting ESMA or having its consent.

In order to allocate responsibilities, I decided to require the consent of ESMA over decisions that relate to the crucial issues of authorisation and extension of authorisation, where sometimes a lack of supervisory convergence has been proven to happen (e.g. competent authorities have been disagreeing over whether some new activities of a CCP require extension of authorization) and also for some corporate-governance-related issues such as conflicts of interest, outsourcing (as outsourcing shifts the ability to control risk ), conduct of business and acquisition of qualifying holdings. Then, ESMA should be consulted on all decisions that currently require the involvement of the college.
The rest of decisions would still be taken independently by national competent authorities.

Also, we cannot forget that ESMA is not just ESMA. It is a small entity, but an entity that has the ability to call on the already available expertise of national authorities. In particular, experts will come from national authorities, will be seconded to ESMA, and will just provide their expertise on CCPs another scale, the EU level. We also have colleges, which are crucial for information-sharing and cooperation and on which we can build, to some extent, in order to reinforce the European dimension of CCP supervision. This is why I have introduced in my report concrete requirements to strengthen colleges and give ESMA a stronger role in colleges: lower the threshold for requesting binding mediation after college members have objected a decision on authorisation, allowing college members to make recommendations to improve the resilience of a CCP, allowing ESMA to assess the risk management practices of CCPs.

Then, as regards the supervision of third country CCPs, I would have a few points to highlight.
First, we need to strengthen our system for the supervision of some third country CCPs - not all of them, but only the most significant ones.

We are now witnessing a general direction in discussions on equivalence and third country regimes. according to which if activities that are significant for the Union are performed outside the Union, the third country concerned will have to accept greater supervisory input from the Union.
In the case of CCPs, this is clearer than anywhere else, since the weakness of the supervisory regime for third country CCPs had already been pointed by ESMA in its August 2015 opinion on the review of EMIR. But more Union supervisory input does not mean we would be trying to take any powers away from third country regulators in their own country, but that we want to create the conditions for better cooperation between supervisors where the interests of the Union are at stake.
EMIR does not regulate third country markets, which will continue to be regulated under third country law, by third country regulators. However, it will regulate third country CCPs entering the EU market and conducting activities that affect EU customers.
This is where we heard a lot of concerns from the US. They mostly related to a concern that the powers of ESMA over systemic third country CCPs would be wider than those of the US CFTC over third country CCPs.
Of course, the whole point of this new regulation is to strengthen the supervision of third country CCPs, so we could not preserve for US CCPs a status quo that was not satisfactory for the Union.

There were also concerns we could not address because of deep structural differences between the logic of the US system for CCP supervision and this of the Union system for CCP supervision.
In the US, the focus is on the clients. This means it is the financial intermediary serving the clients, so the clearing member, which is regulated by the legislation and the CFTC supervises only the clearing services offered by third country CCPs to “US persons”. Then, the whole US system for CCP supervision is built around this logic. Third country CCPs operating in the US maintain two rulebooks: one for US business and one for non-US business. Most of the time, the CFTC issues no-action letters in order to waive obligations applying to third country CCPs when those obligations concern clearing services that those CCPs do not offer to US clients.

The EU EMIR is based on a completely different logic. The subjects of the regulation are CCPs. EMIR applies to a CCP as a whole once it is recognised and to all the services that the CCP is licenced to offer. It does not distinguish between different types of clients or between different services offered by a CCP. What it does is to distinguish between the conditions for the authorisation of EU CCPs and the conditions for the recognition of third country CCPs, while in the US all CCPs, whether domestic or third country ones, have to register directly. In the EU, distinction between the different clearing services or clearing activities of the same CCP may only come in practice, through more or less focus paid by ESMA to different services depending on their importance for the Union. This approach has been chosen because in the Union, we consider it is intrinsically difficult to insulate the respective risks posed by different services and because we are mindful of the complexity that supervision by clearing services might entail in practice (how to deal with shared services such as IT or accounting? How to really determine what service information relate to?).
Therefore, it was not possible to have an approach that would be identical to the CFTC one and in which the EU would supervise only services provided to EU

clearing clients by third country CCPs without a full overhaul of EMIR, which we did not see desirable.
However, there were a number of ways in which within this framework it was possible to make the supervision of third country CCPs more proportionate.
And here I would really see proportionality as a key word: we impose new requirements on third country CCPs, but they must remain proportionate to the level of systemic risk posed by the third country CCP to the Union.
We are first of all imposing additional requirements only on those CCPs that are systemic for the Union. For the other ones, the regime will remain unchanged. So, we have been able to build on this a basic proportionality framework. I have tried to make sure to exploit all the possibilities I was seeing to create more proportionality.

A first element is the introduction of a comparable compliance mechanism, in which a third country CCP may ask ESMA to check whether the requirement imposed on third country Tier 2 CCPs to comply with EMIR might be satisfied, in some areas, by compliance with some third country requirements that apply to the CCP and might achieve the same outcome as EMIR.
I am convinced that, in general and obviously not only in the case of the US, comparable compliance has a huge potential and can be very useful in helping avoid duplicative requirements and conflicts of law.

There was also an issue that was stressed quite a lot from the US side and related to the possible inconsistencies between the assessment made by ESMA when assessing the comparable compliance of the CCP and the assessment made by the Commission when granting equivalence to the jurisdiction of the CCP. In both cases, it will be more or less the same thing that will be assessed: the framework of the third country, that is, the legislation and how it is implemented. However, the Commission and ESMA are two different entities, with potentially different approaches to their assessment of equivalence. In order to prevent such inconsistencies, I mandated in the text that, when assessing comparable compliance of a CCP, ESMA should take into account the provisions of the act that granted equivalence to the jurisdiction of the CCP.
There is also the whole issue of the specific criteria that will be used by ESMA for assessing the systemic significance of a third country CCP and putting it into a category, either Tier 1 or Tier 2.
Those criteria will be of the utmost importance since it will be the category in which a CCP is put that will determine the intensity of supervision.
The risk was that those criteria might unduly lead to considering some third country CCPs, including US CCPs carrying out activities which we agree are not systemic for the Union, as systemically significant, and therefore subject to enhanced EU supervision. Those activities might be for instance the clearing of transactions on third country equities in a third country, or the clearing of some agricultural commodities.
The specific criteria for assessing the systemic significance of a CCP will be defined by the Commission in a delegated act, so there was only so much I could do at this stage. I tried however to already give in the recitals, which are legally binding and have to be taken into account in the interpretation of the text, some indications of what activities should not be unduly considered as presenting a systemic risk. In particular, recitals of the Parliament's report state that agricultural commodities are not systemically significant, and specify that the delegated act on criteria for

assessing the systemic. They also specify that the assessment of the systemic significance of a CCP should take into the "complexity, volatility and maturity of the transactions cleared and the extent to which these transactions are denominated in Union currencies". This specification might help US CCPs, since it would make sure that US CCPs clearing transactions of third country equities in a third country, or clearing some agricultural commodities, would not be unduly considered as systemically significant for the Union. However, it is above all a way of ensuring proportionality in the supervision of third country CCPs. Enhanced requirements should only apply to CCPs that might present a systemic risk for the Union, and if a CCP is not systemically significant, it should not be subject to them, no matter where they come from.
We also had debates concerning whether the assessment of systemic significance of a third country CCP should include all activities carried out by the CCP or only the activities carried out in the Union. It seems obvious that activities that are taking place outside the Union should not affect the assessment of whether a CCP is systemically relevant for the Union. However, the fact that overall a CCP is big and complex might be relevant to its systemic significance for the Union. So, the final compromise is that the assessment of the systemic significance of a CCP is to be done taking into account the business of the CCP in the Union, and also business outside the Union when such business outside the Union affects the overall complexity of the CCP.
I also propose less frequent reviews of recognition decisions if a CCP clears a low amount of financial instruments denominated in currencies of the Union, with thresholds to be defined in a RTS explaining when the amount of financial instruments cleared in a Union currency by a CCP is considered significant. This is still in this spirit of matching the intensity of supervision with the effect of the activities of the third country CCP on Union clients and members.

There is in the text of the regulation an option left to the Commission, based on an analysis made by ESMA and the central banks of issue, to deny recognition to a third country CCP in case it is too systemically significant for the Union. I believe it should remain there as an insurance mechanism. However, it must be fact-based and evidence-based. I have retained denial of recognition as an option, as a requirement that might be imposed by the Commission on the basis of a recommendation made by ESMA and central banks of issue. There has been no intention to weaken the option to deny recognition, but I want it to be evidence-based, proportionate and not made either in a discretionary way or for political reasons. It is a decision that is likely to be very disruptive and so should not be made lightly. This is why I made the procedure for denying recognition less discretionary, more proportionate and more evidence-based. For instance, I proposed additional criteria to be looked at by ESMA and central banks of issue when it recommends to the Commission to deny recognition to a CCP based in its significance for the Union. Since we do not know how disruptive such a decision to deny recognition might be for EU clients and members, I also proposed that the Commission, when deciding to deny recognition, would be able to set an adaptation period and would have to look at whether or not it needs to grandfather existing contracts held at the CCP. I also proposed that denial of recognition should be made per service. I finally decided that the legal act denying recognition would be a delegated act and not an implementing act, so as to give the European Parliament a proper right of scrutiny over such an important decision.

My final point regarding the supervision of third country CCPs is that, Brexit or not Brexit, and whatever the third country we are referring to, effective cooperation and exchange of information between EU and third country supervisors will be absolutely crucial. We need to leave them a chance to work and, if it does not work, use the possibility to withdraw recognition.
This is why I did my utmost to create the best conditions for this cooperation to develop and to work. The European Parliament was very committed to improving the quality of supervisory cooperation and exchange of information, and to this end we mandated in the text many elements to be included in memoranda of understanding between Union and third country supervisory authorities, in particular elements on cooperation between EU and third country regulators in emergency situations and the involvement of ESMA and the central bank of issue in decisions taken in emergency situations affecting a third country CCP.
I have also been made aware by experienced supervisors that memoranda of understanding not being respected in practice might be more problematic than incomplete memoranda of understanding. Therefore I included in the compromises two elements giving a more binding nature to memoranda of understanding. One is the right for ESMA to withdraw the recognition of a CCP if it finds that, due unsatisfactory information sharing with the third country supervisor, it cannot properly exercise its powers over the CCP concerned. The second is the requirement for ESMA to inform the Commission confidentially if a third country authority fails to comply with the provisions of a memorandum of understanding, after which the Commission might decide to review the implementing act granting equivalence to the third country.

The last issue related to EMIR that I would like to mention relates both to EU and third country CCPs and is the role of central banks of issue in the supervision of CCPs.
There, we had a trade-off, which I would say is a classical one when designing legislation, between legal certainty and predictability. The more clearly and exhaustively the powers of the central bank would be spelled out in the text, the higher the legal certainty but also the risk that central banks might not be able to react to unforeseen exceptional circumstances, because they would need a tool that might not be given by the regulation.
This is the balance I tried to achieve in the list of requirements that a central bank could impose on a Tier 2 third country CCP as a precondition for recognition. It could not be “any requirement” that the central bank wished, for reasons of predictability and legal certainty, so I worked on drawing up a clear list. According to the report, central banks would be able to require from a Tier 2 third country CCP the reporting of any requested information, where information has not already been obtained by ESMA, the commitment from the CCP to fully and duly cooperate with the central bank of issue in stress tests and the opening by the CCP of an overnight deposit account with the central bank of issue.
I also introduced a possibility for central banks to impose, in exceptional situations, requirements consistent with the EMIR requirements and which are are within the competences of the central bank of issue. Those requirements may relate to liquidity risk controls, settlement arrangements, margins, collateral or interoperability arrangements, in order to address systemic liquidity risk affecting the transmission of monetary policy or the smooth functioning of payment systems. In order not to give a

blank check to the ECB, exceptional measures can be imposed only for a limited period of six months and then extended for another six months by the central bank after consulting the co-legislators, and then prolonged by the central bank only if the central bank is authorised to do so by a Commission delegated act. In order to offer a high degree of certainty while retaining some flexibility and allow to take into account possible lessons from experience, the list of requirements that a central bank could impose on a Tier 2 third country CCP as a precondition for recognition will be closed but the Commission would have the right to amend this list by a delegated act, on request of any central bank.
Then, we had a less important issue which was that the binding consent procedure proposed by the Commission did not allow to solve disputes in case the central banks of issue and ESMA or the national authority would disagree on a decision. I therefore replaced it by a comply or explain procedure in which central banks are only consulted on decision related to monetary policy. ESMA or the national authorities, depending on who is in charge of taking the decision, should do their utmost to comply with the recommendations of the central banks and should explain any significant deviation from those recommendations to the central bank concerned.

Of course the Brexit context did matter in our reflection. The UK will clearly not be an ordinary third country. So yes, Brexit adds a layer of uncertainty and political tension to the discussions on the EMIR file but it should in no case be an event that influences or guides our decision. Brexit is a one-off event and should not impact the making of our legislation, which is here to stay and has to be designed with the long term in mind.
However, it so happens that due to Brexit, the EMIR file is part of the recent Commission proposals which are looking at establishing a renewed and improved equivalence regime. This is why I would like to say a few word about this issue.
We have been thinking very hard, for quite a number of months now, about the model for the future relationship between the EU and the UK after Brexit. One issue seems to be rather well established which is that we cannot have only a free trade agreement that would address all aspects of financial services.
Actually there is no precedent for such a solution. This is for good reasons, I believe. The EU framework for financial services is about the single market. This framework is integrated, aims at providing financial stability, protecting consumers and ensuring a level playing field. This sector is deeply regulated, based on single rulebook and strictly supervised, with a crucial role of European supervisors promoting convergence. All that does not come within a free trade framework.
Therefore, I would expect only some horizontal issues related to financial services, such as the right of establishment to be addressed through FTA.
FTAs provide also possibility of a prudential carve-out.

Actually, when it comes to financial services in the Brexit context we have been left with two competing possibilities.
On one side, this is the equivalence regime that has been the standard in the relationship between the Union and third countries for almost a decade. On the other side, what some called “bespoke dynamic mutual recognition”, in which the EU and the UK would agree in advance their desired regulatory outcomes for financial services after Brexit. Then, as long as those outcomes are comparable, UK regulators could set rules of their own and UK firms could access the Union market.

The problem with bespoke dynamic mutual recognition is that it might endanger the regulatory autonomy of the Union. An agreement, in which we would agree in advance on the common outcomes to use in order to grant and maintain market access to third country firms or in which we would agree to be bound by some international standards that the Union has a limited power to shape, would reduce the ability of the Union to set its rules independently. It could mean serious, permanent constraints on the EU and even expose us to potentially serious stability issues as ruletakers.

Then, there are some more practical issues raised by mutual recognition. One is the issue of what we use to divergence monitoring. If we agree in advance on what the outcomes to be achieved will be, this might make the system inflexible for both parties. Agreed outcomes might become at some point obsolete or no longer suited to an emerging new situation, so we need at least ways to review them. If we use international standards as an equivalence test, they do not exist in all areas, and certainly are not at the same level of detail in all areas. They are also typically and on purpose broad enough to leave a wide scope for divergence. They are in addition minimum standards, which creates a problem to assess whether the EU and a third country diverge in areas where either of the two,parties has gone further than international standards.
A second practical concern relates to the effectiveness of the system to be set up in order to monitor convergence and possibly settle disputes.
All this is why we still think, in the Union, that the best basis for the future EU/UK relationship in the field of financial services is equivalence. And let me also stress that equivalence has so far worked well for the EU and also for our international partners. The Commission has taken more than 200 equivalence decisions covering about 30 jurisdictions. There has currently been no complaint from the major non EU financial centre, the US, that equivalence prevented them from being as active as they wanted in the Union.

However, equivalence raises a few issues. I would like to list some of them here and comment on them.

First, not all pieces of legislation contain equivalence provisions for third country entities. Equivalence provisions exist in EMIR, in MiFiD, in the regulation on credit rating agencies, in the Securities Financing Transactions regulation, in the regulation on central securities depositories. They do not exist for banking activities relating to deposits, in insurance or in the payment services directive. Sometimes, it is for good reasons, as we have pieces of legislation that do not relate to market access. This is the case for instance, of BRRD or CCP recovery and resolution, which are about crisis management and not about ongoing business and where what is needed is supervisory cooperation in crisis management, not market access. Sometimes it happens because we have older pieces of legislation from before the time when we started to reflect on equivalence or because third country provisions were overlooked.

Then, equivalence is a regulation-per-regulation approach. It is not horizontal. We might hear again in the future about the idea of an “omnibus” piece of legislation on equivalence, but it seems extremely complex to achieve. Each industry has different needs and a different conception of equivalence because they carry out different

activities, and  are located differently across the Union and globally, so it would be very difficult to get a one-size-fits-all approach.

Then, the decision by the European Commission to grant equivalence to a third country is an arbitrary, unilateral decision, also proportionate, which can be easily withdrawn by the Commission. It is always risk based, done case by case. This is clearly seen on the EU side as a way of protecting the interests and stability of the Union but  of course does not create the certainty that the partners of the Union would wish.
Finally, under some pieces of legislation, and the original EMIR was a case in point, equivalence, once it is granted, implies a lot of reliance on third country supervisors for the supervision of third country entities. Current equivalence has not been seen as a process and so too little attention has been paid to the monitoring of whether, once equivalence is obtained, a country keeps meeting on an ongoing basis the conditions for equivalence.  That might not be appropriate to a context in which we will have a new large financial market in proximity, outside internal market, outside EU jurisdiction. When we started with equivalence, it was for relatively small things. If now we want it for a big economy, we have to strengthen it and it has to be enhanced.

This is why the Commission has committed to improve the equivalence regime and make it suitable for the post-Brexit environment, creating an “enhanced equivalence regime”. EMIR 2.2 is the first report that will introduce a revised or “enhanced” approach to equivalence. It seems clear for the moment that this enhanced equivalence will most likely mean two elements. The first means imposing greater supervisory input from the Union wherever an entity based in a third country is recognised to provide services in the Union but does not manage its risk in the Union and where therefore its recognition might bring uncontrolled risk to the Union. The second element is the toughening or strengthening of supervisory cooperation.

We have a similar approach to EMIR in the review of the investment firms, with articles dedicated to cooperation with third countries and agreements with third countries. It indicates that the EU is indeed trying to achieve this fine balance between regulatory cooperation and requirements relating to the location of activities.

You can also see this new approach in the ESAs review. In the ESAs review, the famous article 31a that the Commission proposed to insert in the ESMA regulation would give ESMA a stronger role in the monitoring of delegation and outsourcing arrangements concluded by supervised entities, for instance investment funds. ESMA would be authorised to deliver an opinion, that the national competent authority will have to await before taking its decisions, on outsourcing or delegation arrangements. This will refer to the cases where outsourcing or delegation results in a substantial part of the activity of the entity being performed outside the Union or where there is a risk transfer of a substantial part of the activities of the entity outside the Union. This is basically meant to give the Union more control over financial entities in situations where the entity would be established in the Union but risk would be managed outside the Union.

In any case, in the current context and whatever the future relationship with the UK will be, a big chunk of responsibility in mitigating risks from Brexit lies with the firms, with their contingency planning and preparedness for Brexit.

There are clear and specific risks from Brexit. The biggest concerns relate to CCPs. Brexit means that there is a risk that UK CCPs will lose access to EU members and clients and that EU members and clients will lose access to the CCPs they need in order to net their transactions. This will likely result in higher cost of clearing. This is why, with EMIR 2.2, we have started to work on a framework that would allow the recognition of UK CCPs in the Union.

And we probably also agree that there are risks from Brexit in the area of trading as well, with British trading venues no longer being able to serve EU clients and EU firms no longer able to conduct their trades through UK venues. Similarly, this might result in higher cost of trading.

There are also many other technical issues, not really recognized as challenges today. One of them is contract continuity. The future of existing long-term contracts concluded under the passporting regime is one of those issues not coped with. They include bilateral insurance contracts but there are also derivative contracts or data exchanges contracts which are crucial for stability. For instance, fifty percent of EU aviation is insured in UK .Those contracts will stay valid but some regulatory actions can impact the execution of contracts or capacity to deliver services. Maybe some financial institutions can adapt their contracts but it is impossible to find one horizontal solution for all actors at EU level. So, we need a case by case approach.

To address those risks, one part of the answer is those contingency plans that are required from financial market participants by supervisors. In this regards, not all firms are at the same level of preparedness, with large firms being the best prepared and small firms in general lagging behind. Even though we hope to reach a deal on transition, firms need to carry on with contingency planning now. If there is no transition it is already too late for business. The only certainty we have is that until the last moment there will be no certainty
What we can expect is that this contingency planning can involve different decisions on relocation of activities, application for new licences or for the extension of existing licences, because branches from UK market entities will be branches of a third country, or adjustment of booking models.
Then, of course, there will be areas where institutions and regulators will have to intervene in order to help address the risks.

One of our challenges with Brexit preparedness is to find the dividing line between what should be the reasonability of firms themselves and what needs intervention from regulators. The industry has to know the direction of future regulatory requirements. The Commission and all of us, legislators, institutions and authorities have to do our job and give this direction. But then it is for the industry to create its future structures and I would urge the industry to prepare for frictions which might emerge if there is no agreement on withdrawal which would mean no agreement on transition. It is in nobody’s interest and we do everything to avoid this scenario. But it is not excluded. So preparations are essential. We are in this respect fortunate

because the financial services industry is used more than others to operating in an uncertain or at least moving environment. This makes me more optimistic.