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“EMIR 2.2 implementation: the case so far and a vision for the future”

Opening remarks

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In the European Parliament, at the end of the legislative work on EMIR 2.2, we believed we had a good piece of legislation, for both good and bad times.

It was not about Brexit, even though you might remember that ECB had identified derivatives clearing as a major source of risk in case of a no deal Brexit scenario. The regulation was about the long-term response to global needs, to the growing importance of clearing. It was about financial stability and competitiveness of Europe’s financial sector and its global relevance.

One of the most difficult discussions during the inter institutional negotiations of the EMIR 2.2, also within the EP, and with market participants - and as you know there are many stakeholders in the case of clearing, was the issue of location policy, with very radical ideas on the table . We all had in the back of our heads that all works well in good times but what matters most is what will happen in a crisis. Finally, we managed to avoid making relocation policy based on automaticity. Regulatory framework ensures that any relocation ought to be a process with reflection, arguments, conversation and communication. The spirit that won was to avoid imposing mandated location and having it as a last resort tool.

Then of course, the UK left the EU and the overall situation today, since the end of transition, makes it very difficult - if at all possible, to develop a balanced relationship. Political environment for decision on equivalence is, unfortunately, not neutral. In general terms, I would say that the best option, in the case of clearing,

which is an area where the Union does not have yet sufficient clearing capacity and needs to further develop, would be in my view to find a good balance between a long term solution based on a strategic approach to capital market union, and some sort of short to mid-term continuity to avoid anything close to cliff edge or market distortion.

If you ask me if EMIR works, I would say that it has certainly passed the test during the Covid induced crisis of 2020. CCPs have performed well. There were no default cases, despite the surge in the clearing activity and an observed rise in initial and variation margins. In addition, Article 25 provides, in my view, a space that allows for financial stability on the one hand and building competitive financial sector that matters globally, on the other.

However, whatever the role of EMIR, I trust both sides would benefit from constructive trust based cooperation. The equivalence decision adopted in 21 September 2020, while allowing for the recognition of UK CCPs under EMIR, it also includes the requirement to establish cooperation arrangements for recognition and supervision between supervisors. A new MOU was agreed between ESMA and Bank of England. It is very clear, and Klaus Loeber will certainly speak about that, that equivalence decision in line with EMIR allows for ESMA's comprehensive review of the systemic importance of UK clearing houses, their services, activities and taking appropriate measures to address stability risks. It, also, allows examining whether the CCPs or some of their services are of super systemic importance and such CCP should not be recognized to provide certain clearing services or activities. I understand that ESMA is currently conducting such a comprehensive review.

We do not have yet a history of implementation of the EMIR 2.2 rules, but there is a legal framework allowing the institutions, commission, ESMA, ECB to look at the stability risk and the need of putting further development of the clearing industry on market power base and competition. The EMIR framework provides opportunities to not only oversee third country CCPs in good times but also to prepare for, and indeed intervene, during a crisis. ESMA has the power of direct nature over UK CCPs due to the equivalence and recognition, which of course apply only as long as equivalence remains valid.

ESMA is playing an increasingly important role as supervisor, which is very relevant in the context of hopefully emerging capital market union. Nevertheless, within the current EMIR framework, any relocation will lead to supervision by NCAs, which will become responsible for potentially super systemic infrastructures and their services within the EU, and ESMA CCP Supervisory Committee would only be able to conduct peer reviews on NCAs handling of relocations. For some of us it is a source of frustration, even though EMIR 2.2 has successfully enhanced supervisory convergence role of ESMA with regards to EU CCPs. ESAs review, has also provided for additional tools to promote convergence in supervision. So ESMA indeed builds, and I would say - successfully, a common supervisory culture. We have also CCP Recovery and Resolution framework in place, also in UK as part of its regulatory framework.

But, in the EP we are aware of financial constraints under which Klaus Loeber and his team operate in terms of budgetary resources and those coming from fees.

When reflecting on the way forward on equivalence decision, which hopefully will be communicated by the end of the year, it is hard not to take note of complicated overall relationship with UK. In particular, as we also have behind us the experience with Covid when good neighbours were becoming not so good neighbours, basically overnight.

The situation is clear - UK that used to be EU financial center, also benefitting from single market framework, has floated away. Equivalence regarding clearing, the only one currently related to UK, expires end of June next year. My understanding is that the Commission should get at the beginning of December assessment from ESMA. And that it is in the interest of the Union to avoid any drastic moves that could jeopardize financial stability or produce any cliff edge. I, also, can imagine that the Commission is looking at all options, at pros and cons of each of them. If one of the potential options is mandatory relocation, then it can only happen through the mechanism of EMIR 2.2 and based on ESMA's assessment. It does not come as surprise that member states are divided.

And three options seem to be on the table. First, the renewal of the equivalence, and here my judgement would be that it could be a temporary one with some strings attached. Second, the termination of equivalence, within EMIR legal framework. Thirdly, something in the middle, largely depending on ESMA's assessment, potentially exempting some services or products, in line with EMIR.

We also know that market driven relocation has been rather very slow so far. There does not seem to be a big appetite for voluntary reduction of the exposures in the short run. This process would need much more time to become effective, reach a meaningful level and expand clearing in the EU based on competitiveness and resilience, while reducing the monopolistic situation in UK. And I also imagine that whatever the decision by the Commission, an important element will be the communication to the market. We cannot afford any disruption.

Of course, the decision on the way forward is important but for any decision a clear plan, a strategy, vision of the direction to go is needed.

And time will matter.

I tend to think as well that whatever the decision, in the long-term reduction of exposures is inevitable. Whatever data we use, we talk about big numbers.