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“European supervision is needed to keep the EU Capital Market open, global and attractive”

“Changing the fundamentals? EMIR 3.0 and the future of clearing”

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I would like to start with an observation regarding the current work on the revision of the European Market Infrastructure Regulation. All of us who negotiate its final shape, share the opinion that a failure to find agreement is not an option. It is true that the current version of EMIR allowed market participants to get through the risks generated by different forms of crisis. One must not come to the conclusion that it was the national solution to supervisory system that worked well. It is also true that even the best legislation requires adjustment. The current EMIR is an example of an unfinished business as in 2018 there was no political will to move toward more European supervision. It was the EMIR framework and rules that kept the market sufficiently efficient in coping with difficult challenges and rules worked, but it was clear how far we are from the best solution.

During the energy crisis spillover to financial sector we could see the lack of information to which ESMA should have access and be at the steering wheel. We also see the weaknesses of over-prescriptive approach to legislating while using the level two legislation could have increased the flexibility of decision making. And finally, we need to adjust the legislative framework to substantial changes in the clearing markets as the clearing landscape has changed significantly.

Post Brexit experience was an additional argument in favor of the Commission’s reflection on how to protect European markets, their stability and competitiveness when more than 90% of the euro denominated interest rate swaps are cleared in London. The conclusion was that a regulatory intervention was needed. Active Account Requirement (AAR) is part of the response. In my view, an important part of the response are supply side measures, improving the competitiveness potential of the clearing framework, and, last but not least, part of the response is also a European supervision.

It is not a secret that the EU needs humongous investment. There are, of course, several options here when it comes to the sources of funding. It can be European public funding similar to the Next Generation EU system. There can be a further relaxation of the state aid rules but we know only too well how diversified the fiscal space across the EU membership is. We can also take seriously the unlocked potential of private investment through the expansion of capital market. This would require efficient post trade market infrastructures. It could facilitate efficient capital allocation, strengthen the global role of the European economy, provide a solid foundation for a European Capital Market Union.

With this context in our mind we approached the EMIR review in the European Parliament. We saw the need of finding the best way to cope with a clearing system where London is not anymore part of the EU. We saw the need of strengthening the EU clearing system while making it more efficient and attractive, and seeing it not only as a hub for euro clearing but as globally competitive structures and markets, open to clearing of all currencies. EU financial services require openness and competitiveness.

We focused on the supply side measures where we moved beyond the Commission proposals, simplifying the framework, reducing administrative burden, and in general, facilitating the offering of new services and products. I believe that this is where the most effective relocation policy and the single most effective measures to increase clearing in the EU in the long term can be found.

When it comes to the Active Account Requirements, the Council and the Parliament seem to have a very different approach. When you break them down, however, you can see similarities between proposals on scope and the type of contracts, which are subject to the AAR. Where we see substantial differences is the approach to the phasing of the AAR.

Both the EP and the Council provide for an active account with operational and activity requirements in the first phase. We share the objective of reducing financial stability risks and the fact that a follow-up assessment by ESMA is needed. However, in the EP we believe that there is no need for a new legislative proposal after that assessment. We should use this review and the discussions to define the exact criteria that ESMA should consider when carrying out assessment, and create

the conditions for the first phase to start automatically or quasi-automatically. A new legislative proposal would take several years and run counter to the objective of ensuring the resilience of the European financial system.

This is why in the Parliament we propose a Commission Delegated Act (DA) on the basis of the ESMA report introducing a quantitative threshold for the Active Account Requirement, subject to a number of clear criteria (focused on the impact of the AAR on EU counterparties competitiveness) and a careful cost-benefit analysis. The adoption of a DA is a much more flexible and rapid instrument compared to the legislative proposal, while it allows to maintain the co-legislators' role. We hear that the Council asks for an impact assessment, but any Delegated Act follows an engagement of the Commission with market participants and an analysis of its impact on market participants. I trust there are elements to discuss and identify a common lending zone. And, it goes without saying that the AA is a tool that can and must be designed and calibrated in a careful and proportionate way to avoid undermining the competitiveness of the European market participants. While ESMA is reluctant to add a competitiveness angle to their supervisory power, considering its consequences for the integrity of the single market seems fully legitimate.

Strengthening the power of the European CCPs as global competitors requires a holistic approach taking into account the entire framework, including the national solutions, where compliance, uniformity and harmonization across the EU market is fundamental. There are 14 EU CCPs. Some decisions are taken in an often divergent way by National Competent Authorities, in some of them ESMA is involved. That is why another element we have been focusing on in the EP, and maybe the most important one, relates to the supervisory arrangements within the EU. And I would like to thank Klaus Löber for his very clear and assertive speech earlier. As I said before, since the end of EMIR 2.2 negotiations in March 2019, the clearing landscape in the Union has undergone major changes, with 14 EU CCPs expanding their services across markets, currencies and owners, and in certain cases, across multiple jurisdictions.

It is evident that the current approach of decentralised supervision is no longer suitable to address the increasing cross-border exposures cleared at EU CCPs. We must move towards a European, more coordinated and integrated approach to the

supervision of EU CCPs, especially as more systemic activity is expected to shift towards the Union as a result of the Active Account Requirement. Enhanced cooperation in itself is not enough - we need to move toward European supervision. In the European Parliament we are very united on this topic, and we will call with decisiveness for ESMA to become the supervisor of European CCPs. We cannot possibly aim to strengthen our Capital Market Union (CMU) with 27 different national supervisors. Europeanized supervision would strengthen risk monitoring, minimize systemic risk and spill-over effects across Member States, in particular for the most systemic and cross-border relevant among them, as we reduce the number of supervisory procedures that CCPs have to deal with.

With ESMA in the driving seat we could achieve efficient supervision that takes into account the cross-border issues and the competitiveness of EU market participants, while appreciating the local features of CCPs and cleared markets. And it could add to the financial stability objective, the competitiveness angle, so important for the European capital market and the integrity of the single market. We should also not forget that ESMA is today a direct supervisor of systemic CCPs in third countries, in light of their systemic importance - it is a paradox that it cannot have the same role for the most important and systemic European CCPs. Relooking at our supervisory framework with a more European mind-set is a necessity if we want to become a more attractive place to do business. Member States were not ready to engage in the discussion on the EU CCPs supervision in 2017, and it seems that today their readiness remains limited, but the Parliament is really united on this topic.

To conclude, any EU policy to further develop central clearing in the EU should be part of a clear long-term strategy in the context of the CMU. We need to keep the EU financial markets open, global and attractive, while strengthening the international role of the euro. A major step on the supervision can add strong component to this process.