



Reflections on the Capital Markets Union

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Good morning everyone.

It is a pleasure for me to participate in this important event, which is taking place at such a special time for Europe and for the European financial markets, just a few weeks away from what appears to be the effective date of Brexit, without or, as I hope, with a deal. I would like to thank AFME very much for inviting me.

And it is a pleasure for me to share this session with the chairman of the AMF, my colleague Robert Ophele.

In my presentation, I wanted to refer to some concerns or matters which, in my opinion, should be particularly taken into account in the next phases of the CMU, the European Capital Markets Union project.

As I was saying, this is a very special moment.

We need to rethink and relaunch the CMU project, after having achieved a good part of the objectives of the first phase (which we should recognise were quite modest) and in the face of the Brexit "earthquake", in order to continue to have efficient and internationally competitive markets in the European Union.

And the moment is especially opportune for other reasons too: some time has passed, and we already have some experience, since MiFID II began to be implemented, and the same can be said in respect of other important pieces of legislation of the post-crisis financial regulatory package (such as PRIIPS and EMIR), and we are currently implementing the reform of the ESAs.

The recent initiative to create a select group of high-level experts who are currently working on a report on the next steps of the CMU is therefore commendable.

The Spanish Securities Market Commission (CNMV) is looking forward to hearing the conclusions of this group of experts and, of course, we are trying to contribute to their reflections; for example, by answering the questions they have asked during the consultation process they have carried out.

A word about the impact of Brexit.

Depending on the final outcome, on whether or not there is a deal and on the outline of the European Union's definitive relationship with the United Kingdom, it is clear that Brexit obliges the Member States and the institutions of the European Union to make

an additional effort to ensure an efficient European capital market capable of competing successfully in the international arena.

We even face a risk of regulatory competition from the UK once it is outside the European Union, what may be somewhat paradoxical as the UK has been the great promoter of European regulation in the field of capital markets. The successes and errors of European regulation are to a large extent a British legacy, which makes a bit surprising some of the criticism, fortunately not so significant, that from time to time suggests from the other side of the Channel Brexit may be an opportunity for the United Kingdom to free itself from over-regulation in the area of securities markets and investment services, a regulation, the European one, that would be cumbersome and mechanistic and scarcely based on principles that can be applied flexibly.

(By the way, these criticisms are in some cases in my view totally unfounded. Take for example the recent liquidity problems in certain funds based in the UK. Some have criticised the 10% limit on investment in non-listed assets applicable to UCITS as an excessively simple and mechanical rule; but it is clear that this rule, which is very tolerant, is a secondary rule which only sets an extreme limit; the fundamental rule that management companies of UCITS must respect in the field of liquidity is, at all times, to maintain portfolios with a sufficient and coherent degree of liquidity and have procedures in order to monitor and control liquidity. Nothing to do with a simple and mechanistic approach.)

Let me also say, before I refer to those concerns or issues that, in my opinion, should be especially borne in mind in the next phases of the CMU project, that I consider a good idea the one recently expressed by some European Ministers, including the Spanish Minister Nadia Calviño, to change the name of the CMU to underline the relevance of the project for European citizens; for example, that it be renamed "Union for Investment and Savings".

Let's now go to the concerns and ideas for consideration in the next phase of the CMU:

- Firstly, a general point of philosophy: the CMU cannot be a project that weakens the existing significant local financial markets.

I am thinking of markets like Spain, which have a certain size and critical mass.

The aim of the CMU is to increase the share of market-based financing and that market-based financing reaches as many companies as possible, including SMEs.

This requires capillarity, penetration; it is, of course, necessary that there is an integrated capital market in Europe but also that there continues to be a plurality of markets with critical mass and complete ecosystems (that is, a plurality of financial centers or local markets with a significant level of activity in all or most segments of the financial services industry, and capable to attract and retain a sufficient number of good professionals in all areas).

This idea is relevant for any new regulation and, in particular, for the purposes of a possible review, after an initial period of application, of some aspects of pieces of legislation such as MiFID II.

Two examples.

- One, the rule of "unbundling", which is very difficult to challenge as a principle, but which is reducing the supply of research, especially that

relating to small and medium-sized companies, and hindering the development and even survival of a good number of brokers and specialised local firms. I don't know exactly what can be done, but, apart from trying to find ways to encourage research regarding local companies, at least we would have to modulate the rule on the basis of the principle of proportionality.

- Two, the MiFID II rules which seek to promote most trading in a transparent manner and through trading venues that compete fairly. These are rules that ultimately seek to protect confidence in the markets and the quality of prices and that should be rigorously applied and even reinforced.

Experience also shows -think of Brexit- that it is not wise to over-rely on a single or dominant financial centre. As we say in Spain -I think it is said everywhere- no hay que poner todos los huevos en la misma cesta – you shouldn't put all your eggs in one basket.

Contrary to what some might say, I firmly believe that maximum integration is possible without the need for us once again to have an absolutely dominant financial centre.

And it goes without saying that, as part of those local ecosystems, regulation should also respect what I like to call the supervisory factor. More integrated supervision of capital markets in Europe does not necessarily mean more centralisation. It is important that countries such as Spain continue to have a robust supervisor and relevant local competencies.

It is clear that ESMA is doing a fantastic job as the common or central regulator in the European Union and that it should exercise some important additional direct supervisory functions, like critical Benchmarks or third-country infrastructures, but in my view ESMA should focus, above all, on effectively promoting supervisory coordination and convergence.

- A second concern is that the CMU project should not only pay attention to the strict scope of financial regulation. It should also enter the tax field, which is like the elephant in the room. If we want truly interconnected and integrated markets, we must tackle the fiscal angle. There is a need for tax harmonisation in the area of financial products and services and generally in the taxation of savings.

It is impressive how tax regulations influence the structure of the market in different European countries and especially the way in which investment products are distributed in each of them.

In France, for example, more than 80% of investment funds are distributed through products with an insurance component, which differentiates very much the French market from, for example, the Spanish one.

And the differences in the tax treatment of investments in SMEs or in the field of venture capital, private equity or alternative investments are huge.

Not to mention the difficulties there have been in harmonising from a fiscal point of view the new pan-European personal pension product included in the very recent EU Regulation of June 2019, an instrument that could be very interesting for promoting more investment in the markets by European citizens

and also an instrument that can contribute to creating a common culture of long-term savings and investment throughout the Union, or at least one that is more similar.

- Thirdly, the CMU project needs to emphasise the convergence of supervisory practices.

On the one hand, in a truly integrated market there can be no supervisory authorities acting in a very different manner. The level of supervision must be high and similar throughout the European Union.

Here the role of coordination and promotion of supervisory convergence of ESMA is crucial, as is the effective use and development of the tools at its disposal: breach of EU law; creation and effective functioning of colleges and supervisory networks; peer reviews, in which ESMA should have a leading role; guidance, opinions and Q&As, etc.

On the other hand, more attention needs to be paid to the cross-border provision of investment services, in particular to retail investors, which should be under effective supervision, as is the general case of locally provided financial services.

The current European regulation attributes exclusive competence to supervise to the authority of the home member state, which is affected by a clear problem of incentives when supervising the activity of its firms outside its territory and which often does not even have sufficient capacity to do so.

I am referring to areas such as CFDs (contracts for differences), whose distribution, as you know, is largely carried out by telephone or mainly via the Internet by firms based in Cyprus and other countries.

I think that the home country principle is configured in European law and operates too radically in the field of investment services, and that it should probably be revisited, but in any case such a principle, even if it is understood in a radical way, is perfectly compatible with there being a broad and continuous exchange of information and cooperation between the home and host country.

The aim is to ensure equal conditions of competition and always an adequate level of supervision.

- Finally, I believe that there are areas in which unified regulation at European level is urgently needed, not just desirable. For example crowdfunding, which is essentially and vocationally cross-border, or in the field of crypto-assets.

Finally, I would simply like to mention two issues which, in my opinion, should also be on the European Union's reform agenda in this area of capital markets from now on:

- Firstly, the need to encourage companies to access capital markets. I am thinking in particular of the equity market, and IPOs. In the first phase of the CMU some efforts have been made to simplify regulation on specific points with this objective in mind, but it is not enough.

There are many reasons which make advisable that companies go public from the point of view of the common good.

It is desirable, and the CMU project responds to this, to further develop the capital market and achieve a more balanced mix between bank and market financing (an aspect in which Europe lags far behind the US), and we all know that the listing of companies on regulated markets or MTFs is to a large extent the basis for everything else in capital markets.

Going public, in addition, implies more and better financing; more transparency and accountability (even from a social point of view); contributes to the professionalisation of management and favours the growth and ambition of companies. There is even a democratic element in being listed: making it possible for any citizen to invest in companies directly.

We are currently going through a phase of scarcity of IPOs, which seems clearly related to two factors:

- First, the situation of the markets, especially affected in these times by uncertainties (end-of-cycle environment, Brexit, the trade negotiations between the US and China, certain geopolitical uncertainties, etc.).
- Second, the competition from venture capital and private equity in general, a phenomenon that has very positive aspects; which has had, also in Europe, great development in recent years, and that determines that many companies do not choose to go public or delay doing so.

Private equity competes in terms of price (among other things because, when pricing, it tends to consider the expectation of a management more radically focused on the creation of value), but also in terms of process.

An IPO process, especially where it involves companies of a certain size, is too complex and takes too long, which is a major competitive disadvantage compared to private equity, especially in a context of markets affected by major uncertainties such as the current one.

Despite this scenario, it is important to look for ways to make it more attractive for European companies and to encourage them to go public, also SMEs.

This includes, of course, avoiding any regulation that unnecessarily links different types of requirements and obligations to the status of listed company.

In my opinion, this should be a relevant objective in the new phase of the CMU as well.

- And secondly, another elephant in the room: the need for greater openness and harmonisation, not only of rules and supervisory practices, but also of the attitude of governments, regarding the market of corporate control, which, it seems we have forgotten, is an important part of a truly integrated capital market. Restrictive policies and attitudes to defend the national ownership of large companies should not have a place within the European Union.

The 2003 takeover bids Directive was a step forward, but it is clear it fell short.

In the context of an ambitious CMU project, this file needs to be taken up again.

This concludes my presentation. Many thanks once again to AFME and many thanks for your attention