



Appearance of the CNMV chairman before the Commission for Democratic Quality Audit, the Fight against Corruption and Institutional and Legal Reforms

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Mr Chairman, ladies and gentlemen,

First of all, I would like to thank you for having invited me to this Commission, which deals with a very relevant matter linked to the world of financial supervision, which includes the CNMV, and which I have had the honour of chairing for the last month and a half.

I understand that the purpose of this Commission is to reflect on possible improvements to be considered in the functioning of supervisors and my intention, therefore, is to focus on independence as the backbone of its institutional design.

The first question to ask is: independence, for what?

Independence should not be an end in itself. It is an instrument to achieve better results, to better meet the objectives of an institution. This is why a finalist concept of the notion of independence is always used in this area.

As far as securities market supervision is concerned, I believe that the reasons for ensuring independence, both from the government and from those supervised, boil down to three.

Firstly, to the arbitration function that securities market supervisors perform. Securities supervisors are very often called upon to resolve conflicting interests and this requires an extraordinary exercise of impartiality. It can be between investors and entities, between issuers and their shareholders, between a bidder and a company or even public interests of the State. In such cases, the decision-making body is required to be as little influenced as possible by the participants or stakeholders in the transaction, and to do so with technical rigour and the utmost respect for the applicable regulations.

Secondly, it responds to the high specialisation, sophistication and influence (I would even go so far as to say power) of the sector they supervise. The financial markets and the entities that operate in them are among the most sophisticated and specialised of any country's corporate fabric. This requires that the supervisor be

adequately endowed with human and technical resources and managerial autonomy to interact with the community in a sound and efficient manner.

Thirdly, it is due to the corrective and punitive function they exercise. Financial supervisors have significant administrative sanctioning powers, and can potentially impose very large fines. This requires a very demanding degree of impartiality that is completely detached from political, business and circumstantial considerations.

For these three reasons, throughout the developed world, and especially in the European Union, it is accepted as a basic principle, reflected in regulations, that the securities market supervisor must be independent of both the government and those supervised.

Having identified why and to whom independence must be assured, I believe it is a must to point out the three dimensions, according to the existing consensus, on which independence must be based: financial resources, personnel and governance.

The supervisor's financial resources are the principal element in which the principle of independence takes form. The idea is twofold: to ensure that they are sufficient to interact with the supervised community and that their sufficiency is not conditioned by government preferences.

The second dimension is personnel. On the one hand, it is essential to build stable teams who are sufficiently trained and up to date with the changes that finance is undergoing, but also who can be retained by the institution through career opportunities.

The third dimension of independence is the governance of the institution. Here, the international consensus also points to the advisability of having collegiate bodies, as well as procedures for appointing the institution's highest representatives that guarantee their suitability. Similarly, removal or termination systems are needed to avoid political or lobbying interference.

In a democratic society, counterbalances are just as important as the above-mentioned ingredients of independence. It would be irrational and dangerous to shield the independence of an institution without subjecting it to checks, balances, counterbalances and a demanding level of scrutiny. In my view, the counterbalance to independence is threefold: accountability, judicial review of decisions and public scrutiny.

The independent financial supervisor should be subject to a specific, clear and continuous accountability mechanism. It should be identified to whom it is accountable, with what frequency and for what purpose, and with what level of detail. In most advanced societies, this authority is parliamentary, in order to make the connection with democratic legitimacy.

Judicial review mechanisms should also be provided for all decisions taken by the supervisor, through an effective and clearly defined process. Likewise, its economic and operational management must be subject to auditing, by means of public accounting and auditing control bodies.

Last but not least, the supervisor must be subject to public scrutiny, through a demanding regime of transparency, in everything that is not subject to the duty of

secrecy, but also to public dialogue, and above all, to monitoring and criticism by the media.

One sometimes wonders to whom independent authorities are accountable. It is clear that in developed countries they are accountable to Judges, Parliament and public opinion.

What I have just described is not my particular view, although I share it, of this issue, but a brief synopsis of the international principles and consensus on the supervision of securities markets, as can be derived from the best practices that have been issued by organisations such as the OECD, the International Organisation of Securities Commissions (IOSCO) or the International Monetary Fund.

They are also fully consistent with the most recent experience we have in the European Union of creating and shaping new financial supervisors. In the aftermath of the crisis, four new financial supervisors were born in the EU between 2010 and 2014: the three sectoral authorities for securities, banking and insurance (ESMA, EBA and EIOPA) and the ECB's single supervisory mechanism for banking supervision (SSM). These new institutions are, in my view, a key point of reference, as they offer us a mirror in which to look at ourselves and assess how we national supervisors have stood the test of time and what best practices we can incorporate to better face the future. Although I am aware that this is another legal framework, I will use them in my presentation as the most recent, advanced and relevant benchmark to consider in order to improve the quality of our supervisory institutions.

I am not going to describe here in detail the functions and activity of the CNMV, although if you are interested, I am of course at your disposal for further information. Our objectives have always been clear since 1988: investor protection, market transparency and correct price formation.

I will give you just a few figures to gauge the size of the sector supervised by the CNMV: we oversee the management of some 300 billion euros of collective investment vehicles owned by some 12.6 million unitholders, we supervise the trading of 565 billion euros worth of securities, the accounts of 130 listed companies with an aggregate balance sheet of 4.4 trillion euros and the activity of 350 investment service providers.

But I venture to say, Mr Chairman, that this Commission is less interested in what works well and should be a source of pride, which is the majority, than in what could be improved and enhanced.

To detect areas for improvement, it is sufficient to analyse the various external evaluation exercises to which the CNMV has been subjected in recent years, of which I will highlight three.

Firstly, the IMF published in October 2017 its most recent report on the Financial Sector Assessment Program (FSAP). The report acknowledged the progress that had been made since 2012 on the proposed reforms. However, out of a total of 18 key recommendations, the one related to the independence of the securities market regulator was still "ongoing". In particular, it recommended strengthening the independence of the CNMV by reconsidering the representation of the Ministry of

Economic Affairs on the CNMV Board and also stressed the need to abolish the prior approval of the Government to increase human resources.

Secondly, in 2020 the CNMV underwent an external evaluation exercise carried out by an international consultancy firm, based on a comparison with a sample of 16 financial sector supervisory bodies from other countries. Among the areas in which the CNMV deviates from best practices, autonomy in the definition of staffing and talent management stand out.

Thirdly, I would also like to mention that the conclusions of the Inquiry Committee on the financial crisis in Spain and the financial assistance programme, which were published in January 2019, pointed out that effective supervision requires supervisors with sufficient means and an adequate level of independence.

In my opinion, the degree of effective independence of the CNMV is reasonably high, but there are some specific improvements that could be considered. In each one, where relevant, I will point out how that issue is dealt with by supervisors in the European Union.

Let me be clear on this point: the main current threat to the effective independence of the CNMV, and therefore to its proper functioning, is the current regime of recruitment, remuneration of staff and retention of talent. The staff of the CNMV, currently totalling around 420 people, is insufficient for the numerous new competencies that the Commission has been assigned in recent years, as the post-crisis regulatory edifice was completed. But that is not the most worrying thing; rather it is two auxiliary elements that I will detail for you:

The CNMV has lost in practice the autonomy to cover staff members leaving, being subject to a mechanism of public employment offer which means, for example, that the staff we lost in 2019 will be replaced in 2021. And this despite the fact that you, ladies and gentleman, or those who preceded you in 2015, introduced a specific provision in Article 18 of the Spanish Securities Market Act, to explicitly exempt the CNMV from being subject to the public employment offer for the mere replacement of staff who leave. This exception has been implicitly deactivated year after year through the Budget Laws. Given the size of the teams in an institution of our size, for a staff member who leaves to take two years to be replaced could mean that a team is operating with one-third or one-half fewer staff during that time, waiting for administrative authorisation to replace the employee who has left.

The second element is determined by the fact that the CNMV lacks the minimum flexibility to offer a professional career to its most valuable employees and thus to apply talent retention formulas, as it is subject to the prior micro-control of the Executive Committee of the Interministerial Remuneration Committee (CECIR) for any remuneration, promotion or management decision for each of the groups of employees, even if the overall limit on staff expenditure and their growth rate is respected. It is therefore extremely difficult for us to support the professional growth of our employees and this has an impact on their motivation and turnover. 31% of the departures in the last five years were technical staff with average experience who opted to apply to the Bank of Spain, which does have such mechanisms.

It should be borne in mind that CNMV staff are not mobile to and from the rest of the administration, as they are not part of civil servants' bodies and are employed by

the CNMV itself. This makes the situation I am describing to you all the more unusual. And just think that the expenditure is financed exclusively and entirely by fees paid by the supervised private sector and not by the taxpayer and, moreover, does not increase the public deficit. This is a paradox that is difficult to explain and damages the effectiveness of a function that is so important for Spanish society and for the protection of investors.

What we are asking for is simple: that overall staff expenditure be subject to strict control as a whole, by the Ministry of Finance, the Ministry of the Civil Service and by this Parliament, but that we recover the flexibility to replace departures without waiting for years (as this Parliament agreed at the time) and to make internal adjustments, within the overall wage bill. It is also clear what we are not asking for: we are not asking for a substantial increase in the average level of remuneration, nor are we asking for a relaxation of the overall control over total staff expenditure.

A legislative approximation to the staff autonomy regime of the Bank of Spain or the Fund for the orderly restructuring of the banking sector (FROB) would be sufficient to solve the problem, without jeopardising one iota of effective financial control over the CNMV or incurring any deficit.

With regard to the governance of the CNMV, I believe it is important to point out some aspects for this Commission to consider. As regards the procedures for appointing the Chair and Vice-Chair, I believe that they are appropriate, as they take place transparently and are subject to the scrutiny of the Economic Affairs and Digital Transformation Commission, before whom they appear and are put to a vote before being ratified by the Government.

As for the length of the term of office, I have always believed that terms of office lasting more than one legislature (for example, five or six years) and without the possibility of renewal, help to strengthen the real independence of the person holding the office. Following the European parallel, ESMA mandates are for five years (renewable once) and the SSM for five years (non-renewable).

With regard to the collegiate governing bodies, I believe that the balance of the functions of the Board and the Executive Committee is appropriate and that they are of the right size to allow for a broad but manageable debate. In any case, I agree with the proposal made in this same sub-committee by the Governor of the Bank of Spain to review the system of ex officio commissioners. In fact, the system of ex officio commissioners from other institutions is very rare in supervisors in other developed countries (except in some authorities with very large boards of 15 or 20 members). The reasons that led to the implementation of this design of ex officio commissioners in 1988 have now been overcome and can be satisfied through mechanisms such as those that now exist (cooperation agreements that we have had in place for years with the Bank of Spain, coordinating institutions such as the Spanish Macropprudential Authority (AMCESFI), etc.). As you can imagine, when coordination is needed among supervisors, or with the Treasury, these are not normally issues that can wait a month until the next Board meeting, but require immediate attention, through channels that already exist regardless of the current presence of the ex-officio commissioners on the Board.

In addition, in a possible regulatory reform, the independence of CNMV commissioners could be reinforced by introducing the explicit provision contained in other similar bodies (but not in the Securities Market Act) according to which third

parties or authorities, even governmental, should not try to influence the criteria of the members of the Board, nor should they seek or accept instructions from external bodies.

Please allow me, in any case, to clarify and underline that these proposals are not motivated by a negative experience of the participation of ex officio commissioners or of relations with the government. On the contrary, I believe that we have had and continue to have the immense good fortune of having very valuable people and contributions on the CNMV Board. And I believe it is appropriate to point out at this juncture that the relationship with the Ministry of Economy, not only at the current stage, has been extraordinarily respectful of the CNMV's independence. It is, in my view, a matter of strengthening the institutional design going forward, to elevate to a regulatory requirement what has almost always been standard practice.

In this respect, and again following the European parallel, as you can see, the European Commission has a voice, but no vote, on the ESMA Board and the banking supervisor (the ECB, which would be similar to the Bank of Spain) does not form part of the ESMA Board, but it has very fluid formal and informal coordination agreements and mechanisms in place. Similarly, in ESMA's regulations, and also in those of the European Central Bank, European institutions (including the Commission and the Parliament) are explicitly prohibited from giving instructions to or seeking to influence ESMA commissioners and the latter are explicitly prohibited from seeking instructions from any institution, government or external actor.

Having addressed the factors of independence, it is time to mention the counterbalances, starting with transparency.

I believe it is important to improve public information on the CNMV's activities and contacts, and it is up to those of us who run the CNMV to do so. In our case, we will have to combine these increased public disclosures with strict respect for the duty of secrecy imposed on us by the regulations.

That is why we are going to start publishing the events and meetings attended by Chair and Vice-Chair after the event, as other supervisors do. This will include meetings and events that have taken place with associations and entities, so that interaction with the industry and investors can be known, except for data related to supervisory issues.

In addition, we will strengthen the activities carried out by the CNMV's Advisory Committee.

I also believe it is appropriate to advance in the forms of relations with the sector and with investors, establishing regular contact forums in which to deal with the questions and considerations of investors, service providers and issuers.

In terms of formal accountability and hierarchical independence, I believe that the current system is generally positive, but falls somewhat short in some respects if we are to bring it up to international standards:

- The law does not clearly indicate which is the institutional accountability body of the CNMV. It states that its Chair shall appear at least once a year before the Economy Commission of the Spanish Parliament on the occasion of the presentation of the annual report. In my view, a specific mention of a parliamentary accountability mechanism would further entrench that basic principle.
- Practice shows that the frequency of appearances by the Chairman of the CNMV before the relevant Commissions of this Parliament is low and almost never exceeds once a year, which may make parliamentary control less effective and relevant.
- In another order of things, remains of an old conception of an entity dependent on the Government can still be detected in the Spanish regulations in some Independent Administrative Authorities. For example, serious and very serious sanctions imposed by the CNMV must be appealed before the Minister of Economy as a prior and necessary step to resort to legal action, whereas the logical regime would be to go directly to the contentious-administrative jurisdiction, as there is no hierarchical relationship.

Following the European parallel, the regulation governing ESMA's activity specifies that it is accountable to the European Parliament and Council (note that it excludes the Commission, which is the executive arm) and its Chairman appears before the ECON committee of the European Parliament frequently, several times a year, including for draft regulations where the Parliament wants to know ESMA's technical opinion or to receive its technical advice on very specific details. Furthermore, sanctions imposed by ESMA are not subject to appeal to the relevant European Commissioner, but to an independent appeal body and then to the CJEU.

Allow me to reflect on the advisory function. It is not uncommon for the European Parliament to seek ESMA's informal technical advice and judgement at sub-committee meetings on specific legislative issues. I believe that this function of loyal advice, from a truly independent institution to the very democratic body to which it is accountable, helps to strengthen the quality of the rules without compromising one iota the sovereignty of the chamber, which retains full decision-making capacity and is merely the recipient of free technical (never political) advice, which it is free to follow or disregard.

Before concluding, I would like to refer briefly to the supervisory model. As you know, in Spain we have a sectoral model (with one supervisor for banking, another for the securities market and investment services and a third for insurance and pension funds). The reality is that this system does not properly address the increasing interconnectedness between the three sub-sectors and the conflicts that can arise between solvency and conduct objectives.

In contrast to this model there are others, such as the single or integrated supervisor model or the model known as twin peaks, designed around one supervisor for the solvency of institutions and another for the rules of conduct of agents. This is the

model that has been in force for some time in several countries because of its conceptual soundness and because it better prevents the potential conflicts of interest between solvency and conduct objectives which I have just mentioned. And it does so precisely because it has the virtue of making these conflicts explicit, which allows them to be managed more effectively. A conduct supervisor should not be concerned about what the effect of a decision in favour of an institution's clients will be on the solvency of that institution and vice versa as far as a solvency supervisor is concerned. In addition, this model allows for the development of a high degree of specialisation in the field that generates economies of scale in its application to all financial sub-sectors.

To conclude, I would like to mention the possible changes in the institutional architecture of supervision and regulation, both in its Spanish and European dimension.

In the former, as you know, there has been some public debate in recent years on the creation of an out-of-court resolution authority for investor complaints and on the possible integration of the Spanish Accounting and Audit Institute (ICAC) into the CNMV. Both projects are worthy of extensive debate and the CNMV is at the disposal of this House and of the Government, in its advisory role, if so required.

The second issue, on changes in the European scene, is linked to the project called Capital Markets Union, which promotes the strengthening of financing via markets as opposed to bank financing. It is possible that there will continue to be a debate in the coming years as to which powers should be exercised by national supervisors, in our case the CNMV, and which should be exercised by ESMA. On this point, in the interests of brevity, I would say that, in my opinion, we must apply the principle of effectiveness, according to which powers must be exercised by those who can provide the greatest effectiveness and who are closest to the problem. In this respect, the national authorities are undoubtedly the best placed to supervise the majority of financial activity, while ESMA has areas of action where it is more effective and closer, for example, in sectors where a few providers provide services to the entire Union (rating agencies, Euribor, data providers, information repositories, etc.).

In any case, as we have learned with the Banking Union, the centralisation of some supervisory powers does not mean less work for local supervisors, and well-endowed, independent and operational national institutions will continue to be needed. Therefore, the reflections on independence that have been the focus of my speech remain fully valid even in that scenario.

Thank you very much for your attention. I would be happy to answer any questions you might have.