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Good morning ladies and gentlemen, many thanks to FIA for giving me the opportunity to share with you, at the beginning of this conference, some thoughts on the future of EU financial regulation.

Much has been done over the past decade to strengthen the robustness and integration of capital markets in Europe. As a new European legislature opens and as the UK leaves the EU, the time is ripe to think about the main areas of work and principles that should guide the action of EU legislators and regulators for the coming years.

It is all the more necessary than while the common basis for regulation and supervision has progressed considerably, several limits are however emerging:

- limits related to the abundance of regulatory details, which, instead of protecting against divergent interpretations and circumvention, can have the opposite effect while creating costly complexity for all stakeholders;
- limits to the political will to move towards further integration, despite the new challenges created by the United Kingdom's exit from the European Union;
- limits to the European Union's ability to support and encourage the competitiveness of its markets and players and to define balanced relationships with other regions of the world.

The next European parliamentary term should thus propose a new way of building a “Markets Europe”, which should be as ambitious as it is pragmatic. The challenges ahead include how to ensure the dynamism of the EU27 capital markets, Europe's attractiveness and competitiveness, and how to respond to digital and environmental transitions.

I will first elaborate on our need, in the EU, to improve our regulatory process and our ability to work together; then I will try to identify in which areas we should concentrate our efforts as a priority; I will conclude on our relations with third countries.
In recent speeches, both Andrey Bailey(1) and Sam Woods(2) have delivered a consistent picture of the future of the UK regulatory system as opposed to the EU regulatory setting. The former would “ take on board practical experience more rapidly, and it would be based more on principles that emerge from experience in public policy” while the latter would be hobbled with “detailed rules that can tend to become overly set in stone”, “with a large body of technical rules set out in the equivalent of primary legislation”. I don't know if this EU approach is enshrined in the DNA of continental legislators, but it has been the obvious answer to a very fragmented regulatory and supervisory landscape. When you can't rely on a single supervisor you are inclined to foster harmonization by putting a lot of details in the primary legislation. These limits to the EU approach are well known and the AMF has regularly argued in favour of a more principle based legislation giving ESMA appropriate tools to build a more unified and reactive supervision(3), alongside an appropriate level of accountability.

Little has been achieved through the ESAs Review, especially in terms of direct supervision, and the constant refusal by the EU co-legislators to grant ESMA a “no action letter” tool illustrates the European lack of agility. The new approach developed by Andrew Bailey and Sam Woods is a challenge for the EU; we should also be more pragmatic, both in regulation and supervision and we will have many avenues for enhancing our supervisory stance.

First, we will have several opportunities for improving the quality of European standards through the coming review of many key regulations and through the development of new ones in some still largely uncovered areas such as sustainable and digital finance.

The regulatory approach should be based on more robust drafting procedures, the proportionality of the rule, its readability and consistency, and the ability to evolve in response to market developments. In order to achieve what is needed:

- First, to adapt responses and tools (legislation, level 2 texts, guidelines, Q&As, etc.) to the issues at stake, ensuring that the divide between legislative acts and delegated acts as well as between directives and regulations are respected; basically fulfilling the recommendation of the Lamfalussy report, and using Level 1 regulation only for setting out framework principles.
- Second, we need to set realistic implementation dates for all actors (regulators and regulated entities), including by ensuring that Level 1 provisions only come into force after the essential Level 2 measures have been finalised and published.
- Third, we need to take better account of the feedback from stakeholders and be able to swiftly correct provisions that clearly cannot be applied, do not meet the objective set and/or create distortions of application between jurisdictions; in some cases, this may involve the implementation, in an exceptional and coordinated manner, of emergency mechanisms to suspend the application of the provisions concerned and to protect stakeholders from any proceedings for non-compliance with these provisions. To illustrate these distortions with an issue which is relevant for you, I can mention the worrying regulatory differences between major jurisdiction, namely the US and the EU, on the exchange of bilateral margin for equity options.

But we should also work better together. The European financial landscape will be profoundly transformed by the United Kingdom’s exit, Europe's leading financial centre. Financial actors have opted for various and less centralised organisational models. This new geography of financial activities, marked by the coexistence of financial centres of varying sizes and specialisations, requires a rethinking of day-to-day relations between supervisors, without seeking to define a single, rigid framework for interactions because of diversity of the models chosen and likely future developments. It is also about breathing life into the mechanisms created by the texts recently adopted for the review of the European Supervisory Authorities and EMIR 2.2 and pursuing convergence efforts. So what does all this mean?

- First, developing a more collegial approach between supervisors of entities located in several of the most significant Member States, creating an effective framework for interaction and information sharing between supervisors, with the participation of the SSM for large investment firms; this framework should not weigh upon decision-making processes but should define working conditions in an integrated multipolar market.
- Second, better articulating supervisory responsibilities between home and host Member State authorities, in particular with regard to conduct of business and investor protection rules, which also requires better information on the activity actually carried out in

host countries; where appropriate, consideration could be given to strengthening host country supervisory responsibilities along the lines of the MiFID regime; it means also combatting "jurisdiction shopping" by introducing, where relevant, provisions preventing financial entities from choosing as home Member State a country in which they do not carry out any substantial activity, but which they use instead solely to passport services or products out to target markets.

- Third, increasing transparency with regard to sanctions and considering ways of harmonising practices, for example by defining peer reviews dedicated to the law enforcement function and the links to the supervisory function.

Let me turn to the areas that should be given priority in the implementation of this new regulatory approach. I will mention five of them.

First we need to redesign the architecture of asset management texts for greater readability and convergence.
In just a decade, the texts regulating the asset management industry have gone from two to around ten, covering players, or products, or certain specific services. The overall architecture is robust and, on the whole, effective, but difficult for stakeholders to understand, especially as implementation may vary from one Member State to another; it is also challenged by the trend towards the development of ETFs, that modifies the distribution chain profoundly. Forthcoming reviews of the AIFM and UCITS directives provide opportunities to strengthen the consistency of the regulations applicable to an industry that tends to spread over several countries: management company in one country, delegated management in another, registration of the fund in a third country and marketing across the whole European market.

- As part of the review of the AIFM Directive, a common set of rules for asset managers should be defined, clarifying and harmonising obligations in areas such as conflict of interest management, reporting, delegation, definition of leverage, as well as the provisions applicable in cases where ancillary investment services are provided.
- Texts that give rise to differences of interpretation should be clarified; in particular, the Eligible Assets Directive, which is an integral part of the UCITS framework, dates back to 2007 and should be reviewed and modernised; it could be transformed into a regulation to ensure uniform application and preserve the key principles that have made the UCITS brand successful on the European and international markets.

Second, the PRIIPs regulation should be simplified in order to better inform investors. I will be very brief since PRIIPS is not a concern for FIA.

The PRIIPS regulation responded to a strong demand for better pre-contractual information on "packaged" investment products for retail investors, regardless of their regulatory status. But the framework does not fully meet the needs that had been identified and has created misunderstanding among many stakeholders, including regulators, regarding the rigidity of the system. We need to improve the framework.

Third, MIFID. After nearly eighteen months of implementation of MiFID2, the functioning and effects of the new regime must be assessed in order to make the necessary adjustments, without calling into question the objectives that underpinned the reform. It is also a question of recalibrating the rules to make them fit for a single market of 27 states. In particular, there is a need to adjust certain provisions, in particular those covering position limits, certain reporting obligations and certain investor information requirements that could be better adapted to their needs; we should also review the appropriateness of our rules with regard to our goals: the development of LIT markets, the emergence of a European consolidated tape and the supply of high quality research. Regarding the trading obligations – for share and derivatives – I will advocate for maintaining their principle. I do not think that best execution is sufficient for ensuring a proper functioning of the markets. Trading obligation is a way to ensure that regulations on transparency, tick size, trading halt, short selling or reporting apply in a harmonized manner on the trading perimeter. Here again we need obviously to fine-tune the Derivative Trading Obligation regulatory framework in order to avoid having, after Brexit, market participants facing two sets of different regulations for the same transactions.

Fourth, sustainable finance. In March 2018, the European Commission proposed an action plan for sustainable finance which represents a real opportunity for Europe to consolidate its lead and to facilitate a proper channelling of financial flows. Several proposals were completed within a very short time frame. The challenge now is to maintain the momentum and ensure the consistency and effectiveness of the framework. I am glad to see that your conference discusses the impact of ESG issues on listed derivatives and how to facilitate the sustainability of listed derivatives products. We have a collective responsibility to demonstrate that finance can effectively integrate ESG factors and be a key contributor to a more sustainable economic model. Methodological and data challenges are considerable, both for issuers who need to better assess the risks and opportunities related to environmental and social factors, and for managers and investors who need to step up their integration of these factors into their risk management and investment strategies. The role of regulators is mainly to guide stakeholders through the proliferation of existing private standards by developing a more unified and robust reporting framework at European level and to address the topics of ESG data robustness and verification, non-financial research and rating, not to forget the issue of the supervision of service providers due to their major role in the market and as market consolidation is well under way.

Fifth, developing a European digital strategy for financial services. The innovations made possible by new technologies are accelerating the transformations under way in the financial industry and are creating new disruptions. Four structural trends are emerging: digitalisation of assets, use of blockchain network technologies to modernise market infrastructures, emergence of "platform" models offering a horizontal offer of services, and automation of procedures through intensive data use. The current regulatory framework – and in particular its sectoral logic based on well-defined categories of actors and products – cannot respond to emerging models and often constitutes a real entry barrier. It is therefore a question of preserving Europe's competitiveness in tomorrow's financial landscape, without posing a threat to financial sector stability, to well-functioning of markets or to investor protection. In these areas where national legal frameworks are still underdeveloped, there is a need to rapidly adapt several regulations to the rising "tokenisation" of financial intermediation, while addressing the issue of the European Union's positioning in the data economy, including the interaction between the General Data Protection Regulation (GDPR) and the development of blockchain-based technologies and artificial intelligence.

I will conclude with some thoughts on Europe's relations with the rest of the world in the area of capital markets.

Existing equivalence regimes in European financial services law pursue different purposes depending on the texts. In some cases, this involves opening up the European market to third-country actors (MiFIR), in others it involves enabling European actors to fulfil their obligations under European texts by using third-country infrastructures (EMIR clearing obligation, MiFIR trading obligations) or by using metrics or information produced according to third-country standards (as is the case in Prospectus, Credit Rating Agencies and Benchmarks regulations). The heterogeneity of the goals pursued implies that each regime should be calibrated in a sui generis way, finding the appropriate balance between referring to third country rules and supervision of third country authorities (concepts of deference and substituted compliance) and, conversely, the direct imposition of European rules, which may in some cases be justified on grounds of market surveillance, investor protection or equal treatment between European and non-European entities. In the context of Brexit, it becomes essential to review existing third country regimes; it is also necessary to reconsider the appropriateness of the discretion that European law grants to Member States to exercise in certain areas such as national private placement regimes under AIFM or national third country regime under MiFIR in the absence of an equivalence decision.

When reconsidering the approach towards third countries in the texts on financial services, we should keep a proportionate, risk based approach. This is precisely the new supervision regime introduced by EMIR 2.2 for third country CCPs. The tiering approach should deliver regulatory treatment proportionate to the risks that the CCP may present to the EU; as you may have noticed in the ESMA consultation paper recently released, tiering would be based on multiple indicators, the rationale being to have a complete overview of the risks attached to the third country CCP allowing to provide the appropriate balance between an outcome-based approach and a more rule-based approach. Appropriate balance which should, in short, be the EU way of dealing with financial regulation.

Thank you for your attention.

Notes

1. "The Future of Financial Conduct Regulation", Andrew Bailey, Bloomberg, London, 23 April 2019
   https://www.fca.org.uk/news/speeches/future-financial-conduct-regulation
2. Stylish regulation", Sam Woods, UBS Financial Institutions Conference, Lausanne, 16 May 2019
   https://www.bankofengland.co.uk/-/media/boe/files/speech/2019/stylish-regulation-speech-by-sam-woods.pdf?la=en&hash=C63CBBE35E4CFEB15133D1B0D836A347757FD19D
3. "From Brexit to financial innovations, new challenges for financial regulation", Robert Ophèle, OMFIF, London, 15 March 2018
   https://www.amf-france.org/Actualites/Prises-de-paroles/Archives/Annee-2016?docId=workspace%3A%2F%2FSpacesStore%2F02d32070-8a04-434a-a237-5b402bbf7139

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