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On the occasion of the ESMA anniversary conference, the AMF pays tribute to the progress made by the European markets authority under Steven Maijoor

Over the past ten years, the European Securities and Markets Authority has contributed to the production and implementation of financial regulations in Europe. The Capital Markets Union (CMU) project could be an opportunity to further reinforce its effectiveness by endowing it with new tools.

An authority created in the aftermath of the 2007-2008 crisis

The violence of the 2007-2008 financial crisis led European lawmakers to set up a new European financial supervision system combining a network of micro-prudential and macro-prudential authorities capable of ensuring homogeneous and consistent financial supervision within the European Union. Together with the European Systemic Risk Board, three European supervisory authorities were created on 11 January 2011, charged with supervising the banking, insurance and occupational pensions and financial market sectors.

ESMA was established by the European Regulation of 24 November 2010, replacing the former Committee of European Securities Regulators (CESR) in response to "financial globalisation" and the "integrated and interconnected reality of European financial markets". It is an independent authority, set up to "protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses".

The legislators also vested it with direct powers. In Europe, ESMA is in charge of supervising credit rating agencies and was very rapidly entrusted, under the EMIR regulation on derivatives, with the supervision of trade repositories, which consolidate important data on non-centrally cleared derivative contracts.

An authority at the service of supervisory convergence

Since 2011, ESMA has contributed to establishing European financial market legislation. With the help of national authorities such as the Autorité des Marchés Financiers (AMF), ESMA has prepared and submitted to the European Commission a large number of drafts for binding regulatory measures in application of European legislation (technical regulatory and implementing standards).

It has also promoted the harmonised application of these texts by adopting guidelines, recommendations and opinions. Over the years, its peer reviews have made it possible to work gradually towards a common supervisory culture and practices, which the common supervisory actions (CSA) will help to reinforce in the future.

The ESA reform and EMIR 2.2

The reform of European Supervisory Authorities, which came into effect at the beginning of 2020, has given ESMA new direct supervisory powers over administrators of critical benchmarks and reporting data providers with cross-border operations. These players are now under ESMA approval and supervision. ESMA's powers and convergence tools were also reinforced.

The Regulation of 23 October 2019 amending EMIR (known as EMIR 2.2) reinforced ESMA's role with respect to the licensing of clearing houses (CCP), supervisory convergence concerning the supervision of European CCPs and the recognition of third country CCPs. It introduced a classification of CCPs based on their systemic character for the European Union, and placed third-country systemic CCPs under the direct supervision of ESMA. It also created a new committee within the ESMA, the CCP Supervisory Committee.

Investor protection

The development of ESMA has also done much for investor protection. With the new powers conferred by the European regulation on Markets in Financial Instruments (MiFIR), ESMA made use of its intervention powers for the first time in the very first year of application of MiFID 2. For example, in the summer of 2018, it banned the marketing, distribution and sale of binary options to retail investors in the European Union. It also imposed restrictions on

the marketing of Contracts for Differences (CFD). The AMF extended these measures in France in the summer of 2019.

The experience of Brexit and COVID-19

The last few years have shown how far we have come. Following the referendum on the United Kingdom's exit from the European Union, ESMA published general principles in May 2017, and then three sector-specific opinions in July 2017, to clarify the interpretation of existing rules and thus to encourage the consistency of approval processes and implementation of laws at the European level. For three years, ESMA also established a supervisory coordination network that enabled, for the first time, the examination of the many practical cases of requests for relocation of UK-based entities, to ensure a high level of overall consistency.

"During the last four years, I have seen how ESMA has become a cornerstone of the regulatory and supervisory framework for financial markets. The review of European supervisory authorities and EMIR 2.2 have further reinforced its role at the European and international level". **Robert Ophèle, Chairman of the AMF.**

In 2020, the COVID-19 crisis created an unparalleled upheaval. For listed companies, the question arose as to how to communicate and within which timeframe, amid growing uncertainty about the consequences of an unprecedented pandemic. For investment service providers and management companies, the question was more about how to fulfil their obligations in a remote working context. Many of these question required answers at the European level, and ESMA acted as a coordinator for national regulators.

Towards a stronger ESMA, guardian of the Capital Markets Union

The European Commission's Capital Markets Union project represents a new opportunity to strengthen the European Authority's powers in the medium term. The AMF is therefore strongly in favour of providing more tools to ESMA in the future to promote supervisory convergence between national competent authorities and to avoid regulatory arbitrage among Member States (common interpretation of legislation, no actions letter). It would like ESMA to be closely consulted ahead of the legislative process by the European Parliament and Council and to play a defining role in the preparation of the Commission's equivalence decisions and in their ongoing monitoring.

ESMA should also continue the actions that it has undertaken to ensure the best possible use of data in its missions of supervisory convergence, investor protection, market integrity and direct supervision.


Enhancing the powers of ESMA will further develop the Single Rulebook and implement an event greater level of European supervision that the AMF is seeking.

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