AUTORITÉ DES MARCHÉS FINANCIERS

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Discours de Robert Ophèle, président de l'AMF – Conférence OMFIF (Official Monetary and Financial Institutions Forum) - "Economic position of Europe, integration, and reforms" – 14 octobre 2021 (en anglais uniquement)

Seul le prononcé fait foi

It is fair to say that the financial regulatory agenda is currently somewhat overcrowded in the EU. Of course many of these regulatory issues are also on the agenda in other jurisdictions, be it the UK or the US, but due to the specific EU regulatory process, where regulatory proposals are taking a fair amount of time before being finalized and implemented, they are piling up.

Let me distinguish three types of regulatory challenges.

- We have those that could be treated through the regular reviews of existing regulations and are needed in order to improve them on the basis of their track record: we have the MIFIR/MIFID review, the AIFMD and ELTIF review, the CSDR review and even the ESAP project;
- we have those challenges triggered by new issues such as sustainable finance with CSRD or digital finance with MICA and the DLT Pilot Regime;

- and finally, those challenges who could be treated as an implementation of what we call now our "open strategic autonomy" policy stance be it in the field of information and communication technology with DORA or with regard to some key market infrastructures such as CCPs.

I will not bore you with a detailed discussion of each reform but just try to illustrate how, properly finalized, some of them could shape the future of EU financial markets and should be viewed as decisive steps in the direction of a tangible Capital Market Union in the EU.

In the first category of regulatory reforms, dealing with well-known issues and where we already have a good basis that needs to be improved, I will put the consolidated tape, the ELTIF regime and the ESAP.

We should not fool ourselves.
The consolidated tape is not the silver bullet, but by starting with post-trade consolidated tape for equity, with the timely addition of pre-trade data and moving to a consolidated tape for bonds, this would facilitate best execution, to some extent narrow the competitive gap between large and small market players, marginally reduce the cost of data, concur positively with the price formation mechanism, facilitate the valuation of assets and materialize the CMU.

To make it possible, I believe that requesting mandatory free-of-charge contribution by trading venues and APAs, and accept to review the requirement to provide post trade data free of charge after 15 minutes would be game changers.

This will be part of the MIFID-MIFIR review, which is indeed a very welcome opportunity to fine-tune a regulation that is key to structure our financial markets and deliver consolidated tapes that would palpably illustrate the CMU.

I observe that, in parallel to the EU review, the UK has launched a consultation on the very same perimeter, supporting the current framework but with a certain disinclination judging by the 42 times the word "However" is used in this consultation.

I will mimic this stance: MIFIR is a very fine regulation, however, it is overly complex and has not sufficiently delivered to achieve the good price formation mechanism we had in mind when drafting the regulation.

How to increase the efficiency of our markets? Consolidated tapes could help but I would advocate for a drastic simplification of the framework.

Equity and bond markets are nevertheless of different nature.

With regard to the equity market

- We could first limit the transparency waivers to large-in-scale orders and orders held in an order management facility, removing the reference price and the negotiated trade waivers for liquid and illiquid instruments. Combined waivers would therefore no longer be relevant and the famous Double Volume Cap would become pointless thanks to the simplification of the waivers.
- We could also limit trading via systematic internalisers to transactions above the pre-trade large-in-scale threshold.

I do believe that only orders of a relevant size deserve the protection of a transparency waiver and that small orders are more useful for the price forming mechanism and for best execution if put on a lit market.

The bond market is a very different case.

Continuing on the consolidated tape story, it is striking that many market participants and public authorities are indeed prioritizing consolidating fixed income data. The underlying rationale of such a priority is clear: bond markets are far less transparent than equity markets; a very large proportion of trades is executed OTC without standardization and transparency requirements are loose.

Taking this feature of the market into account, developing a consolidated tape based on the current transparency requirements would be of limited benefit. I suspect also that for some of the proponents of putting the “bond tape first”, this may be a way of postponing the equity tape sine die.

Actually, before setting about to develop such a tape, we should first review the transparency framework.

While the pre-trade transparency framework is relevant, it is the post-trade framework that is key for bonds.

Here again, I would advocate simplification:

- Abandoning the size specific to the instrument -SSTI- waiver.

- Broadening the perimeter of the liquid instruments by jumping immediately to stage 4 of the liquidity determination process as foreseen by RTS2.

- Requesting publication of post-trade information as closely as possible to real-time with volume masked for illiquid instruments only and LIS transaction with a deferral of the volume after a short standardized period of time covering both private and public paper, no longer with a national option.

Obviously due the specific and highly competitive nature of the bond market - and let us not forget, we have a trading obligation for equities and derivatives, whereas there is no bond trading obligation - due consideration should be given to possible unintended consequences.

Nevertheless improving transparency while preserving the legitimate interests of liquidity providers can only boost the liquidity and the attractiveness of EU markets.

The review of European Long Term Investment Fund framework (ELTIF) is an opportunity to develop an EU-wide financial product allowing retail customers to invest in non-liquid assets. At a time when so many infrastructure financing and venture capital are needed, it is really key to enlarge the investor base and share more broadly the benefit of higher return. When you address retail customers, liquidity of the product is important. I do believe that the new ELTIFs could propose some liquidity to these investors either by developing a secondary market or by allowing redemption in a carefully framed way, i.e. with the appropriate frequency, be it monthly or quarterly, and the appropriate gates.

The European Single Access Point (ESAP) for both financial and non-financial information will also be a significant step towards a market Union. It would be especially useful at a time when non-financial information is expanding rapidly and when ESG data are becoming more and more important and costly in the investment selection process.

Moving to the new territories, the regulatory frameworks currently developed in the sustainable and digital finance areas, are also very significant steps towards a meaningful capital market union sharing the very same standards. The Corporate Sustainability Reporting Directive and the currently Level 2 regulation developed by EFRAG are very well advanced – I am for example referring to the recent climate standard prototype – and it is an interesting legislative case where Level 1 and Level 2 advance in parallel. Delivering on these issues at a time when international standards are also heavily discussed under the umbrella of the IFRS Foundation illustrates what we precisely have in mind when advocating for the double materiality and when we consider that the contemplated international standards could be a very relevant baseline but are not sufficient from an EU perspective.

Finally, the concept of open strategic autonomy has progressively expanded from the security and defense dimension, to many other areas, such as energy, healthcare and, with the UK exiting the EU, to the financial services.

Actually one could suspect that it is a catch–all or portmanteau concept were almost anything can be hung maybe hiding protectionism with the finery of openness.

It should be just the opposite if you carefully identify your most strategic dependencies and concentrate your effort on them, I do believe that it is a very fruitful concept that could shape the EU agenda for the next few years in the financial services area.

In that perspective, full dependency on some third country IT services – cloud computing for example – or on the third country clearing of financial instruments denominated in your currency are highly problematic. While full relocation does not make sense, a more balanced state of play should be pursued. It cannot be a short-term target but some decisive ameliorations should rapidly be achieved.

Regarding clearing, where the equivalence clock is ticking, I do expect that continuity with the current situation will prevail provided a shift of part of the Euro business is effective in order to ensure a critical mass of clearing in the EU. The end of the pension fund exemption could, at some point, be the appropriate opportunity to accelerate the move. If not, a removal of the equivalence for client clearing would be inevitable and would be detrimental to all stakeholders.

France is taking the EU Presidency next year, no doubt that on all the issues I have mentioned; we will try to give a decisive push in order to reinforce the effectiveness of our Union.

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