

„CMU- what needs to be done?“

- Keynote by Markus Ferber, MEP -

Dear Ladies and Gentlemen,

first of all, thank you very much for the kind invitation and the opportunity to speak to you today.

I am glad that so many people attend this conference as we are certainly dealing with an important topic: the fate of the Capital Markets Union.

I was asked to give you the high-level picture of what the European Union's agenda in financial services looks like over the upcoming months, what keeps us busy and what is likely to be finished before the elections in 2019.

While, I want to give you realistic picture of what can be finished in the upcoming months, I would also like to point out what needs to be done in an ideal world - in particular when it comes to the capital markets union.

Clearly, since the financial crisis policy-making in financial services has been in overdrive mode and this has affected all areas: from clearing to banking regulation to advisory services and investor protection. By and large, I strongly believe that the changes we have incorporated over the past years in Europe and beyond have made financial markets more transparent and efficient - but most of all more resilient. And that is good news for wholesale and retail clients alike.

Part of the reason, why we have managed to make the financial world a safer place was that international cooperation, for example via the Basel Committee for Banking Supervision, the Financial Stability Board (FSB) or IOSCO, has worked well. While international cooperation in financial services regulation has worked excellently over the past few years, there is a severe risk that this lucky streak will come to an abrupt end.

On the one hand, this is due to the fact that the US administration has become far less open to the idea of multilateralism and international cooperation, but goes for an “America First” policy in all sectors. Arguably, this is bad news for an international system that heavily relies on cooperation. The second issue that might cause severe disruptions and is clearly the elephant in the room, when it comes to the future of European financial services regulation, is Brexit.

The United Kingdom’s decision to leave the European Union has easily been the single most impactful event in the history of European integration in the past decade. Since, the day of the referendum more than two years ago, it has absorbed much of our attention during times that are characterised by political turmoil and uncertainty anyway. As you all know, things looked very bright for a brief moment when the announcement was made that we have a deal, but only a few days later it became quite clear, that while we might have a deal on the table this is by no means a done deal. In light of what has been going on in Westminster over the past few weeks, the prospect of getting a meaningful deal through House of Commons is slimmer than ever before. A “no deal scenario” by now is a very distinct possibility.

Arguably, one of the most prominent issues being discussed in the context of Brexit is the question of how Brexit will impact the EU financial system.

Even if we land at a favourable scenario that implies an orderly Brexit and a comprehensive free trade agreement, Brexit still comes with some tough nuts to crack with regards to financial markets and financial services legislation.

There are no easy answers to those points, but I would like to pose some questions just to give you an idea of the magnitude of the challenges ahead. Among the questions to be solved:

- Will there be any sort of access to the Single Market (especially for financial services)? Will there be any sort of **passporting**? Will there be sector specific equivalence decisions or even some sort of a horizontal deal? Right now, the EU equivalence regime does not provide for any special treatment and at the very moment, I do not see any way or reason how and why this should be changed for the UK.
- With the EU equivalence system designed for either smaller countries nearby (e.g. Switzerland) or larger countries far away (e.g. United States), will we have to rethink our approach towards equivalence fundamentally? And if that is indeed necessary, can it be done in time?
- Can the EU afford to lose a big financial services hub and deep pool of corporate finance such as London? What will be the ramifications for the European economy?

- What will happen to London-based **Euroclearing**? The European Parliament has adopted a sensible no-nonsense report that would put European supervisors firmly in charge of how supervision of Euroclearing in third countries is conducted (with the option of forced relocation on the table as a last resort). However, this approach would have to be confirmed in negotiations with Member States, who seem to be unable to agree on a negotiating position in the first place.
- How can we ensure **contract continuity** both for businesses, but also for retail customers that have taken out a loan in the UK or have signed an insurance contract in the UK. Even if those contracts continue legally, we still need to make sure that the same level of investor protection still applies.

Those are only the immediate questions that come to mind, when thinking of London and the UK as financial markets hubs. But there is also implications for the EU itself:

- Will we have to adjust EU financial services legislation? For example: most **quantitative thresholds** for the definition of liquid markets or tick sizes in MiFID II are based on EU28 calculations and have to be adjusted if the biggest market leaves.
- What are the implications for the **Capital Markets Union** project (that was originally championed by a British Commissioner)? Will it die a slow and silent death? Or will it get a new push because it is more needed than ever? So far, I have the impression that the European Commission has not really lived up to the urgency of the situation. For example the Commission's new focus on "sustainable finance" seems to be severely out of touch with the challenges that lie ahead.

In my opinion, all eyes should be on the idea of making the Capital Markets Union “Brexite-ready” - and not on painting the CMU green.

- What are the implications of losing a market-friendly and ordo-liberal force when it comes to strengthening the **Single Market**, reforming the **Banking Union** and the Economic and Monetary Union?

Just listing the points makes it very clear that the challenges coming with Brexit could hardly be overestimated. And those were just the issues that are at stake if things go well. If we really end up with a “no deal scenario” we will be facing another set of challenges. Arguably with so much uncertainty around, I can only recommend to any industry player to hope for the best, but definitely prepare for the worst.

What I am missing at the moment and what would be dearly needed in these times would be a **comprehensive strategy to make the Capital Markets Union** and the EU financial services system “**Brexite-ready**”. This is something, the European Commission should definitely put high on their agenda. I know that the European Commission has stepped up contingency planning over the past few months, which is only sensible. However, the contingency planning for the worst-case scenario will mean that we will have to change some key pieces of EU financial services legislation, either on level 1 or on level 2. Even if we can agree on fast-track procedures in both the Council and the European Parliament, we will need a couple of months at least to pass this sort of legislation. And I would not necessarily consider fast-track procedures the default option as those will be politically heavily charged discussions.

In light of the obvious time pressure, the Commission should at least start publishing the proposals for Brexit contingency legislation so that the Co-legislator could get ready to act if a no-deal scenario eventually materialises. All we have seen so far, is a communication with some high-level principles.

Apart from dealing with the Brexit fallout, the Economic and Monetary Affairs Committee in the European Parliament, will also deal with quite a few other files until the end of the term. However, I do not believe we will get everything done within the next six months. This is not because the European Parliament is lazy, but mostly because the European Commission has opted for an extraordinarily bad timing for publishing their proposals. If you think back over the whole cause of the legislative term, the Commission has published very few proposals in the area of financial services for most of the time. But since the beginning of this year, the Commission offloaded about **30-40 proposals at the same time**, which results in extremely heavy workload in our committee.

So, we have to think about priorities. Arguably, everything that has already moved to the stage of interinstitutional negotiations between Member States and the European Parliament has a good chance of being completed. The most high-profile one is the so called “**banking package**” containing the revision of the capital requirements directive and regulation (**CRD/CRR**) as well as the revision of the resolution framework (**BRRD/SRM Regulation**).

The banking package is high up on both the Council and the Parliament agenda and there is a good chance of finishing this file before the end of the term, if all parties negotiate in good faith. When we briefly stick in the area of banking regulation, I would also like to see some significant progress on the **prudential backstop for non-performing loans** as we should get on with the task of risk reduction in the banking system. Risk mutualisation projects such as a common deposit insurance system (EDIS) I would consider at best of secondary importance though.

Then of course, I consider the **EMIR files** a big priority - particularly in light of Brexit. From a financial stability perspective, it would be very advantageous if we could get the provisions for **CCP Supervision** and for **the CCP Recovery and Resolution** file into EU law before Brexit happens. The European Parliament has been ready to negotiate on these files for quite a while and I also believe that the Parliament approach is a very pragmatic one. I very much hope that the Council makes some progress on those files fast. The same goes for a file that I am the rapporteur for, the **Investment Firm Review**. Given that around half of the investment firms that are currently based in the European Union come from the UK, this file clearly has a distinct Brexit dimension. In order to establish a level playing field and make sure that third country investment firms, that are active in the European Union, play by European rules, getting this file done would be very important. In fact, the negotiating team has focussed in particular on tightening the rules that govern third-country equivalence - precisely because we wanted to have a proper post-Brexit-framework for investment firms ready before the UK leaves the EU.

The European Parliament's Economic and Monetary Affairs Committee has voted on the investment firm review in late September. So the Parliament is ready to enter into interinstitutional negotiations. What I hear from the Council side, an agreement on their position can be expected by December. That would leave just enough time to complete triologue negotiations. Another file, that many industry representatives pay close attention to, is arguably the review of the European Union's System of Financial Supervision (**ESA review**). As you will be aware of, progress on this file has been slow in both, the European Council, and the European Parliament, which leads me to conclude that there will be only a dim chance that this file can be finalised within the next half year. However, in the Parliament we have the clear ambition to make as much progress as possible on the ESA review, but from what I hear, the discussions in the Council are very contentious and slow-moving. I believe that these should be the big lines, the Economic and Monetary Affairs Committee should focus on. At the same time we can reasonably assume to finish smaller - and less controversial - files like the covered bonds proposal, the update of the SEPA regime regarding currency conversion or crowd-funding.

Looking further into the crystal ball, in **the next legislative term**, we have to deal once more with the **PRIIPS file**. Arguably, the key information documents as they are now, are very problematic and cause a lot of confusion for retail clients. I would even go so far as to say that the information contained in the PRIIPS key information documents are misleading in many instances.

This issue has to be fixed fairly quickly. In the meanwhile, I am strongly in favour of preventing the problem from spreading. That means that the PRIIPS key information document should not replace the UCITS key information document as long as the PRIIPS one is not fit for purpose. We have the opportunity to fix this issue in the context of the work on the file that intends to facilitate the cross-border distribution of investment funds. And I have tabled some amendments to address exactly these points.

Other than that, we have to think a little harder of where we want to go with the Capital Markets Union. So far, the Commission has mostly tackled the easy issues and has not even had much success on that front. The two issues that are the **biggest barriers** for further integration of EU capital markets are certainly **tax and insolvency issues**. Both are among the hardest to push through the Council, but they are the ones with the biggest impact. On insolvency: Cross-border investments are only attractive if potential investors can be assured that **contracts and claims can be enforced within reasonable timeframes** and with reasonable effort. On tax: cross-border investments need a common tax treatment; if that is not a given, there will always be a barrier; the European Parliament has advocated for a **common set of rules via the CCTB** - the Council has to deliver now.

The other issue to look a little harder into **new technologies changing finance**: currently, we are dealing with the legacy issue of integrating old systems that developed while they were apart; we should not make the same mistake all over again. For new technology such as **FinTechs, Vir-**

tual Currencies etc. we should start with a European framework from the beginning in order to avoid fragmentation. The way we have dealt with innovative payment solutions in the framework of the second **Payment Services Directive** shows that this can be done and yield sensible results.

The Commission proposal for a crowdfunding regulation is a step in the right direction, too. But I think we should be bold and go a step further and also look into the regulation of virtual currencies - particularly from the perspective of investor protection. **Markets for virtual currencies are like the Wild West.** Those markets lack transparency, are extremely volatile and are prone to manipulation and fraud. However, retail investors should be able to be sure of a minimum level of protection. And I believe that this should not be too hard to do. In fact, I see two very obvious ways: **Either** we need a **dedicated framework** or we need to make clear that virtual currencies are **subject to the existing set of rules** by classifying them as **financial instruments** under MiFID II. Both ways would work. It is just about picking one and going forward decisively so that investors can be certain that there is a minimum level of protection.

As you can see, a lot remains to be done until the end of this term in the Economic and Monetary Affairs Committee and we will hardly have to face boredom. In my opinion the big headline should be "Brexit preparedness". We need to increase the resilience of the Banking Union and the Capital Markets Union. Also, we have to make sure that the existing rules work together well - in particular in the area of investor protection. These, are the very basics that should be prioritised.

However, I sometimes feel that the European Commission, who is in charge of preparing all legislative proposal, make some bad choices in terms of prioritisation. While Brexit-preparedness is only slowly progressing and work on the Capital Markets Union has almost come to a standstill, the Commission keeps focussing on topics such as “sustainable finance”, which are far less vital and can only be considered of secondary importance. However, I can assure you that the European Parliament will work with high pressure on getting the priorities that I have just outlined over the line as soon as possible. Thank you.